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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting number 41 of the Standing Committee on Justice and Human Rights. Today is Tuesday, December 7, 2010.

You have before you the agenda for today. We are continuing our review of Bill C-48, an act to amend the Criminal Code and to make consequential amendments to the National Defence Act.

For the first hour we have with us Anthony Doob, professor, Centre of Criminology, University of Toronto. We also have Allan Manson, professor, Queen's University, Faculty of Law.

During the second hour of our meeting, we will have three further witnesses on the same bill. That will wind up our witness list.

I remind you that at our next meeting we will be going to clause-by-clause consideration.

Professor Doob and Professor Manson, I think each one of you has been told you have 10 minutes to present. Then we will open the floor to questions.

I will begin with Professor Doob.

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

Professor Manson and I thought it would make sense for us to coordinate our comments because we think the most important message related to your consideration of Bill C-48 is something that probably has not been raised previously with you.

To understand the problems created by Bill C-48, one has to consider a few important issues. Most Canadians almost certainly believe that sentences should be proportionate to the offence and to the offender's responsibility for that offence.

That said, however, accomplishing proportionality is difficult, sentencing itself is complex, and sentencing issues are integrally related to decisions made within the correctional system.

Unfortunately, this bill provides evidence of an unwillingness to look at sentencing as a complex and integrated problem. When the government made major changes to sentencing in the mid-1990s, that was at best a timid first step. Most observers believe that those amendments changed few things, but they created a framework for future work that unfortunately hasn't happened. It's not clear that any government in the past 15 years has been willing to take sentencing seriously by looking first to identify what sentencing can and should accomplish, then examining circumstances in which sentencing is successful, and then fixing real problems, because there's an inconsistency between the agreed-upon principles and the outcomes of sentencing in the corrections process.

Obviously this government has been active. The last time I looked, since April 2006 the government had introduced about 60 bills that it calls “crime bills”. Most of them have much more to do with punishment than crime, but they have not made our sentencing or punishment system more coherent.

Unfortunately, as many people have almost certainly told you, you are not going to change crime through legislative changes in punishment, much as you might believe this to be true. These bills and changes to our sentencing system will not affect crime, just as this bill will not contribute to a fair or effective sentencing regime.

The most serious problem is that bills like Bill C-48 appear to give a message that the criminal justice system is completely broken, that judges and the Parole Board and the legislation governing the release of murderers must currently be unfair, and that only in 2010 did these problems get noticed.

Bill C-48 is not about balancing the rights of victims and offenders. It simply adds another level of presumptive punishment to a system that needs careful attention, not simplistic changes.

The difficulty is that you are dealing with problems piecemeal. Let's look at three bills: Bill C-48, which changes the nature of sentencing of certain murderers; Bill C-39, which changes the way in which parole decisions for ordinary offenders are made, among other things; and Bill S-6, which will abolish the faint hope clause for those convicted of murder in the future.

None of these bills respond to real problems with sentencing. Indeed, you haven't provided anything but conjecture about the need for change in these three areas. These bills are doing something else. They're tinkering with sentencing, but not looking at the serious, real problems, both with sentencing and the relationship between sentencing and conditional release.

As I have already mentioned, about 60 crime bills have been introduced in Parliament since 2006. From that, you'd think we had a crisis to deal with, and that the government either had no time to look at the problem as a whole or was incapable of doing so. We don't have a crisis in Canada on crime or on sentencing, but it may be that you as parliamentarians are not interested in looking carefully at something as serious as sentencing. So far, with the large collection of piecemeal legislation, in my view what you've managed to do is to make a complex and difficult-to-understand system more complex and more incoherent.

From the public's perspective, you've made things worse, in large part because of Parliament's unwillingness to look at the sentencing system as a whole. To understand what I mean, I think it's important that you look at some of what we know about matters related to parole decisions made in Canada.

The one thing that is clear about this bill is that the Government of Canada has little confidence in the parole system, just as I would suggest it has shown it has little confidence in judges in many areas of sentencing, and it also has little confidence in ordinary Canadians' judgments of those convicted of murder, as shown by your support of Bill S-6. Since this bill deals with homicide, and multiple homicides in particular, let's look at this phenomenon carefully.

● (1535)

Canada's homicide rate is no longer one of the highest in the western world. Statistics Canada reports that Scotland, the United States, Finland, Turkey, and New Zealand all have higher rates, and ours is more or less comparable to those of many European countries, such as France, Denmark, England, Wales, or Northern Ireland. More to the point, homicide rates in Canada are relatively stable.

In relation to this bill, most homicide incidents—94% in 2009—have only one victim. There were 35 incidents involving multiple victims last year. In the last 10 years, there was an average of 26 incidents a year—that's about 4.7% of all incidents—that involved multiple victims. Most of these—86%, in fact—involved people killing family or other intimates or acquaintances, not strangers, but our image of the multiple murderer is Paul Bernardo or Clifford Olson. Fortunately, that kind of person is rare in Canada and will almost certainly die in prison.

Our murderers spend more time in prison, on average, than people in other countries for which data are available. On average, those sentenced to life in prison for first-degree murder spend about 28 years in prison before being released or dying. This is higher than for countries such as England, Australia, Belgium, Sweden, Scotland, or New Zealand. We're not soft on murderers.

As you remember, when we do release those who have murdered, they're on parole for life. If you think that parole for life doesn't mean anything, you'd best request that some lifers come before you and explain what it means to be on parole for life. Parole is not a picnic.

The problem in doing the various things you are working on to lengthen the time that people spend in prison is not simply one of trying to hand down proportional punishments. It is that there is a huge financial cost involved. I know various members of the government have responded to people like me—people who have urged you to use prison resources carefully—by suggesting that if one life were saved, it would be worth it whatever the cost. I find statements like that to be remarkably naive and irresponsible. Let me use an example.

Let us imagine that as a result of this bill, something like 26 people a year—the average number of multiple murder victim incidents that we have over the last 10 years—were to go to prison for an additional 15 years, which is somewhere between the lengths of the parole ineligibility periods for second and for first-degree murder, in 15 years we would be at a steady state, with an average of about 390 extra lifers in prison awaiting parole eligibility time.

We have been told that the cost of the policy is worth it, because if a single life were saved, it would serve victims' needs. We'll get to whether we can expect a life to be saved in a minute, but that relatively small number—390 people on top of the 13,000 or so that we have in penitentiaries at the moment—would cost us about $40 million.

● (1540)

The Chair: We have a point of order.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Absolutely. I have tremendous respect for the witness, and he is certainly giving us some very important insight.

But, with all due respect for the witness, and again, I say this respectfully, the interpreters cannot keep up. We cannot follow his presentation. He is giving very important figures, but we have not gotten them yet.

I know it is easier for my English-speaking colleagues, but I, for one, want to remember those figures.

Could we ask the witness to slow down and give him a few more minutes, if necessary? Furthermore, are we going to receive a copy of his text, so we can refer to his presentation today?

[*English*]

The Chair: Professor Doob, I think it's the second time you've been asked to slow down. It's very difficult because—

Dr. Anthony Doob: I'm sorry. My text is a combination of typed and handwritten. I could make it available if somebody wanted it, but it would be easy for me to make the changes and email it back to you.

The Chair: Monsieur Lemay, you'll have the blues, and you'll have the record once it has been translated.

[*Translation*]

Mr. Marc Lemay: No, no. With all due respect, Mr. Chair, my point of order still stands. I think that Mr. Doob should provide a copy to us, even if just the English version. We will see to the translation.

Everything he is telling us about the bill is very relevant, and I would ask, first, that he slow down, if possible, and, second, that he provide us with a copy of his presentation afterwards. That is extremely important, in our view.

[*English*]

The Chair: Monsieur Lemay, there's nothing that can compel a witness to provide a document in both languages. In fact, a witness can certainly testify orally, and that forms part of the public record. There will be a written record of that, but we can ask the professor to provide, at the very least, an English version of the comments. You may have to go back yourself and listen to what you've said to properly transcribe your comments.

In any event, why don't you proceed a little more slowly?

Thank you.

Dr. Anthony Doob: Okay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I respectfully disagree with you. The purpose of my point of order was to ask Mr. Doob to provide the committee with a copy of his statement today through the clerk, who will see to its translation. That is what I am asking.

[*English*]

The Chair: Monsieur Lemay, that is exactly what I have requested Professor Doob to do, and to submit it to the clerk.

We can't compel witnesses to provide anything in writing if they don't wish to. There is an oral record and there will be a written record of it. I've also asked him, based on your request, to provide a written copy of his remarks, at least in English, to the clerk.

Professor Doob, please continue. Thank you.

Dr. Anthony Doob: Yes, I will make the changes that I've handwritten very quickly and send it back.

The point I was making was if you imagine that as a result of this bill something like 26 people a year—the number of multiple-murder incidents that we have had on average over the past 10 years—were to go to prison for an average of 15 years—somewhere between the lengths of the parole ineligibility periods for second-degree murder and for first-degree murder—in 15 years we would have a steady state of an average of 390 extra lifers in prison awaiting parole eligibility time.

We've been told that the cost of this policy is worth it because a life might be saved or that it serves victims' needs. We'll get to whether we can expect a life to be saved in a minute. However, adding that relatively small number of 390 people on top of the 13,000 or so now in penitentiaries in Canada would cost us about $40 million. This may not seem like much to you, but the question that needs to be asked is whether that is the best use of funds either for public safety and well-being or for services for victims. That's the debate that a bill like this stifles, because it commits scarce resources to a particular action without considering other possibilities.

Keeping people in prison longer has financial costs. Costs are zero-sum. Money spent on prisons means money not spent elsewhere. Let's put this in simple terms. We all agree that a man who, without real planning, kills his wife and family needs to be punished, and punished severely. Few would suggest otherwise, but the cost of a penitentiary inmate averages out to about $102,000 a year for one inmate for one year, so 30 extra years for such a man means about $3 million not spent on preventing similar crimes in the future, assuming that you're willing to spend it only in this area of public concern. That is, roughly speaking, the cost of an additional police officer for 30 years. If you want to think in terms of other interventions that have been shown to be effective in reducing crime, it is the cost of an active public health worker for 30 years. It could be whatever you want.

Surely if you were saying that you're willing to keep some hundreds of people in prison for extra years, at a cost of more than $100,000 per person per year, we should debate whether that's the best use of funds to reduce crime, increase public safety, or serve the very real needs of victims. There are choices.

The interesting thing is that we know that those who murder, when released, are not particularly dangerous. Figures from the most recently available performance monitoring report of the National Parole Board point out that of the 2,853 offenders on indeterminant sentences being monitored by the National Parole Board between 1994 and 2009, 81, or about 3%, were revoked for any form of violence, meaning anything from common assault to serious violence.

As you may know, a small number of those released on parole for murder do murder again. Indeed, a study of 4,131 people who had murdered and who were released between 1975 and 1999 showed that 13 of them murdered again, and here we do return to the adage, “If one life were saved, it would be worth it”.

Obviously these were tragic events, but the only way to have stopped them would have been to incarcerate all 4,131 forever because of the possibility that 13 of them, or three-tenths of 1%, would repeat their terrible crimes. The question then is whether the $300 million to $400 million needed to incarcerate these offenders would constitute the best use of public funds for public safety.

● (1545)

Could we save these lives, or ten times these lives, by investing elsewhere? That's the real policy choice. The choice is how many lives we save when we're talking about millions of dollars, not these particular lives. Presumably what we're trying to do is to maximize public safety.

This last fact underlines an important fact. Crime in Canada is not concentrated in a small group of people who can be identified as bad people in advance. Hence, solutions to crime are necessarily going to be difficult. Bills like the current one, which purport to be good news to victims and good news to Canadians, distort the reality of what we know about crime.

I would urge you to put your time and thoughts into addressing some of the real problems of sentencing and the administration of sentences in Canada. That way perhaps we could have a more coherent and sentenceable sentencing system than we have at the moment.

Thank you very much.

Again, I apologize for speaking too quickly.

● (1550)

The Chair: Thank you very much, Professor.

Were you doing a joint presentation with Professor Manson, or does Professor Manson have additional comments?

Prof. Allan Manson (Professor, Queen's University, Faculty of Law, As an Individual): I have additional comments.

The Chair: All right; please proceed.

Prof. Allan Manson: Thank you.

[*Translation*]

I am not bilingual, so I can articulate my remarks and ideas in English only, if that is okay.

[*English*]

I want to start by agreeing with Professor Doob that our sentencing system in Canada is in chaos. We lack workable principles. We lack appropriate guidance. We lack appropriate resources for options, including the state of our penitentiaries and prisons. All of this is being exacerbated by these piecemeal amendments to the Criminal Code.

I want to look at Canadian penal policy for a minute before we look at this particular bill. I would like members of this committee to recognize that for decades, for much of the past century, a lot of very thoughtful and serious work was done by a lot of people in developing Canadian penal policy. They were experienced, open-minded people, and included parliamentarians and even people from this committee. Behind that were consultation, debate, study, and data.

Look at the 1938 Archambault report: the principal author was J. C. McRuer. For those lawyers in the room, he subsequently became Chief Justice McRuer. The principal author of the 1969 Ouimet report was G. Arthur Martin, the dean of Canadian criminal lawyers, who later became Mr. Justice Martin of the Ontario Court of Appeal. A few years later, this committee worked very hard and very creatively in its examination of the legislation to replace capital punishment, and the members of this committee at that time deserve enormous credit. A few years after that, the McGuigan subcommittee, which came from this committee, also did an excellent study that produced changes to penal policy.

Now we've got Bill C-48. I'm going to talk about it conceptually rather than mechanically, but I first want to say something about making good penal policy.

It seems to me that there are two reasons one would reshape an aspect of penal policy. One is to fix a problem—to "address mischief", as lawyers sometimes say. The second is to add a new direction, or maybe a new dimension, consistent with the goals of sentencing.

What's the mischief that this legislation addresses? I look at the short title, which reads, "Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act." I was involved in my first murder case in 1974. I started studying sentencing as a graduate student in 1972. Until I saw the predecessor of this bill, I had never, ever, seen the notion of discounts for multiple murders. I don't know who can see that. I've never seen it mentioned. I've never heard a judge, a lawyer, a police officer, or a victim suggest that Canadian sentencing provides discounts for multiple murders.

What we do is provide a life sentence with 25 years of parole ineligibility. I can tell you from participating in murder trials, including ones in which people were convicted of first-degree murder, that the people in that courtroom appreciated that this is a life sentence, and that it is grave and harsh. I don't hear people suggesting it's lenient. I don't think there's any problem that needs to be fixed.

Moreover, let's look at the current system. The current system does respond to multiple murders. Section 745 says that any person convicted of murder who has also been previously convicted of murder is automatically sentenced to life with no parole for 25 years. In other words, two seconds equal a first automatically. That is taking into account multiple murders.

● (1555)

As well, in sentencing for second-degree murder, for which the parole ineligibility could be anywhere from 10 years to 25 years, judges are clearly required by the jurisprudence to take a look at the number of victims, as well as prior record.

So why is this bill here? Given the history that I outlined, I have high expectations for the people on this committee. I'd simply like to try to understand why it's here.

I see, Mr. Petit, that you were the sponsor of this bill, and I have some of your remarks. Why do we have this bill? I quote: "...to balance the need to protect society and denounce unlawful conduct...". Professor Doob has explained that the risk represented by paroled murderers is almost non-existent. Where is the protection? Is there not sufficient denunciation in a life sentence? Are we now going to look at life-50, life-75?

Mr. Petit also said that "...the proposed amendments reflect the fundamental principle of sentencing that a sentence must be proportionate to the gravity of the offence and the degree of responsibility...". That's true. That's subsection 718.1 of the Criminal Code. A life sentence with no parole for 25 years is our harshest, gravest sentence. It certainly achieves that.

However, later he comments about groups in the community. I note the very felicitous language Mr. Petit used: “I am confident that the measures proposed in Bill C-48 will be supported by police and victims advocates...”. I don't want to challenge his confidence—that's up to him—but I've never heard police officers or victims' advocates saying we need life-50 or life-75.

Moreover, there's a suggestion that this is cost-neutral. Professor Doob went through some analysis of cost. He didn't mention one thing. What about the added cost to the penitentiary system? On the weekend I bumped into a group of former and now-retired and current senior CSC officers in Kingston, because I live in Kingston. I asked them what it's going to be like admitting someone to an institution when they show up with a warrant that says their sentence is life-50? What are you going to do for that person? It's mind-boggling. What is the correctional plan for a 30-year-old who might be able to go to the parole board when he or she is 80?

Then I also said to them, “What are you going to do if you don't have just one? What are you going to do if you have 12? What's that going to do to the environment in that penitentiary?”

Not only are the costs of this kind of proposal enormous, but no one has thought about them. That's my biggest concern. No one is thinking about this criminal legislation. What we are seeing is the parroting of remarks, starting over a year ago from the minister, that we know what Canadians want and what victims need.

Victims don't need this. Canadians don't want this. Talk to victims' advocates. They have concerns about being treated with respect, being treated with dignity, having opportunities to voice their concerns. They're not out there looking for harsher and harsher penalties. Let's be respectful to victims, and let's not use selected anecdotal comments to frame Canadian penal policy.

The last thing I want to say to this group is that Canada has a tradition of thoughtful, considered development of penal policy. What's happened to that tradition? Is it here still? If it's still here in this building, this bill should be rejected out of hand.

I'll be happy to answer any questions.

● (1600)

The Chair: Thank you. We'll go to questions.

Go ahead, Mr. Lee, for seven minutes.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

I want to thank both of our witnesses, and I want to extend a big long-time thank you to Professor Doob. He has been a contributor to justice legislation for some decades now. I'm from the class of '88 and I recall that he made a huge contribution to the first report of this committee, which dealt with crime prevention. It's something we're still working on today.

I was struck by references in the testimony to the concept of discount. I don't want to dwell on it too much, because it may or may not survive our clause-by-clause review. Professor Manson, I think I know your view on it, because I think you expressed it, but I want to ask Professor Doob.

Might the reference to discounting in fact undermine public confidence in our justice system by suggesting that under this legislation, if a judge were not to decide on a second 25-year consecutive parole ineligibility, that he or she would be giving a discount? I'd like your reaction to that, because if I were a judge, I wouldn't like the look of this.

Dr. Anthony Doob: I would take the words that the legislation has, which is the requirement that the judge give reasons, but only in one direction. In effect that is a presumption, though it doesn't state it, so what this is going to do in those cases of multiple murders is create classes of them.

The classes are also going to be determined, to some extent, by something that is completely independent of the offence, which is, to a large extent, how much confidence the judge has in the paroling process. A judge who has confidence in the parole process is going to say, “I'm handing down a life sentence, and when that person is safe, I have confidence that the National Parole Board will be able to identify that”. Another judge might not have that confidence and therefore would, in effect, put his own stamp on it by giving consecutive parole ineligibility periods, so it seems to me that it creates mischief.

I have more confidence in the paroling process, and we're not talking about the faint hope clause. I had confidence in the paroling process, really, because of the three-step process. It was first with a judge, then with a jury, and then with the parole process.

When I look at the parole data, I don't see the National Parole Board being terribly easy on people. Most offenders who go into prison these days are being released at the two-thirds point, not prior to that. That's not a lenient parole board.

What's it's saying is that we're not confident, and we want you, the judge, to take the heat when you have something like a person who has killed his family before you. We want you to take the heat for why you didn't give that penalty. It doesn't seem to me that this is appropriate.

● (1605)

Mr. Derek Lee: Can I ask both of you this question?

I've been shocked at how much meat-chart sentencing is coming out as government policy. I just call it “meat chart”; in other words, here is the offence and here is the mandatory minimum. That seems to be taking us away from thoughtful, firm, denunciatory sentencing, which is where I thought we were trying to be as a society.

Do you think this bill would benefit if it could be changed? I'm not so sure it could be, but would it be workable to have an augmented parole ineligibility, an augmented amount of time that was less than 25 years? In other words, if a judge thought that the crimes were horrendous and that the need for denunciation was there, the judge could add other shorter periods of additional parole ineligibility. Instead of having 25 plus 25, it could be 25 plus 10 or 25 plus 5, or something like that? Would that be workable? I'm not so sure we could even do it, but I would just ask you to comment.

Prof. Allan Manson: When the Canadian Parliament and this committee first replaced capital punishment with the life imprisonment regime, the data collected at that time and presented to this committee showed that, on average, most jurisdictions that had repealed capital punishment looked to minimum life sentences of 10 to 15 years. These are all constructs, in the sense that there's no magic to any of these numbers. The 25 years came from the recommendations of the Canadian Association of Chiefs of Police.

You asked if we would have longer parole ineligibility periods if we increased it to a maximum of 26, 27, or 30. Absolutely, but there's no magic to these numbers. I think last week everyone noticed that Clifford Olson was once again denied parole. The government appoints the National Parole Board, which makes their decisions based on risk.

In answer to your question, you could always change the numbers, but there's no magic to the numbers. Twenty-five years is a long time, but it's a life sentence. Twenty-five years is just for access to the board; the sentence is life.

I bump into guys in the pen who've been there well over 30 years. Some of them represent the human wreckage of our penitentiary system, and they won't get out, because they're a mess. The latest data say that, on average, people get out after 28 years. Our people serve long sentences.

The Chair: Thank you.

We'll go to Monsieur Ménard for seven minutes.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you. Mr. Doob, I am familiar with your writings and opinions, and I have the utmost respect for your work. Once again, I can see that, as usual, it is based on bona fide research and irrefutable statistical evidence.

Now, you want to know what has happened to our system since 2006. There is something you need to understand. And this is not meant as a derogatory comment but a point of clarification. This government is not concerned with producing a more effective penal system. The only thing it is concerned with is the impact this will have at the voting booth, the effect it will have on voters. The Conservatives are convinced that if they introduce harsher sentences, that if they are "tough on crime", as they say, they will get more votes.

You have seen in your research that that has been the prevailing attitude in the United States, making it the country with the highest incarceration rate in the world. But you have also seen in your research how members of the public are informed of decisions made in judicial proceedings. You have also seen their reactions when they are faced with making real decisions in cases that are either hypothetical or factual. Is the "tough on crime" approach really what the public always favours at first glance?

● (1610)

[*English*]

Dr. Anthony Doob: The difficulty is that what we tend to do in public opinion polls favours simplistic solutions. When the public believes that sentences would make them safe because many political leaders, many police officers, and so on tell them that harsh sentences will make them safe, one can hardly blame the public for believing this is the best route to safety. The fact that research shows that it's not the best route to safety, of course, goes unsaid.

In addition, to follow up on some of the remarks that were included in your question, the difficulty is that when the public is asked these questions, there's seldom a follow-up question. Let me give you an example. Mandatory minimum penalties, which seem to be very popular with the current government, are also seen as being very popular with the public. I'm sure the government has done more recent public opinion polls than I'm aware of, but when sensitive polls have been done, there's often a follow-up question on mandatory minimums.

The first question will be to a representative group of Canadians, asking whether they favour having mandatory minimum penalties for certain serious crimes. As the government will tell you, Canadians say they favour mandatory minimum penalties. If you stop there, you'd have less than half the story.

The problem is that if you do a follow-up question, which asks if they think judges with reasons should be able to give sentences less than the mandatory minimum penalties if the circumstances of the offence warrant it, a majority of Canadians want that too, which is in effect saying they don't want mandatory minimum penalties. I think they want these things because they're told about them. They believe that sentences are much more lenient than they are.

The studies I've done over the years—and similar studies have also been done in many other countries—would suggest that what the members of the public are responding to is their belief about sentences, not about sentences themselves, because, as we all know, very few sentencing hearings—or trials, for that matter—are covered in detail in the press. One hears of a serious assault or a sexual assault or something of that kind for which the person only gets a particular sentence, and of course what one doesn't know is what that person's role was. One doesn't really know the facts of the case.

What we do know, from my own research and from other research, is that when people are given detailed information and know the facts, they're much more content with the sentences handed down by judges than they are if all they have is a description. Then an ordinary case can be made to seem sensational if the sentence looks too lenient.

[*Translation*]

Mr. Serge Ménard: So basically you are saying that people generally agree with the idea of judges having the discretion to hand out less than the minimum sentence.

I know—and you can either confirm or deny this—that a number of Commonwealth countries that have been very active in imposing minimum sentences have also set out legislative provisions to allow judges to hand out less than the minimum penalty, if the circumstances warrant it, provided that they give their reasons for doing so and justify the variance, either orally or in writing.

Can you talk to us about the outcome of applying those provisions, which people seem to want?

● (1615)

[*English*]

Dr. Anthony Doob: My understanding is that in many countries this is the case, and judges are able to go below the mandatory minimum penalties when there's a good reason to do so. Of course you then get into the question of why then have the mandatory minimum, and that may be a way for Parliament or the legislatures in different countries to give an idea about the relative seriousness of offences.

I think what one has to look at is that sentences vary enormously, in large part because the behaviour that is being sentenced varies enormously and the role of the offender varies enormously. It is very easy to say that if this was a robbery with a firearm, we therefore cannot conceive of a situation in which somebody should get less than the minimum, except that as soon as one points out that the person being sentenced may have had a very minor role, may not have held a gun, may have been in the car waiting, and may have been an 18-year-old girl, the circumstances become quite different from one's image of an armed robber. In those circumstances, I think various countries say that the judge then has to justify it and go outside.

What we're really coming down to is the understanding that we have, or should have, some confidence in judges. I think one of the difficulties with the Criminal Code sentencing provisions at the moment is that even though we have a provision saying the sentence severity should be proportional to the harm done and the person's responsibility for that harm, what Parliament has done since the mid-1990s, when that was codified, is undermine that provision and make it more and more difficult to apply.

What I find interesting is that in many instances we're not really addressing the very difficult issue of deciding what we mean by proportionality and at what level we should be doing it. We're saying that we don't really care about those nice details, that we want to simply sentence.

The Chair: Professor, I'm going to have to stop you there. We're well over time. We're two minutes over.

Mr. Comartin is next.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you, professors, for being here.

Professor Doob, I want to go back to the numbers, the 26 cases of multiple murders per year on average. Are those actual convictions, or would some of those be cases in which the perpetrator also committed suicide?

Dr. Anthony Doob: That's a good question. That's the best estimate we have. Some of those are from police homicide data having to do with incidents in which there were two or more people killed. Whether those were prosecuted would obviously depend on whether there was an offender who was alive.

My guess is that in almost all those instances.... In fact, if you look at the data, I think you'll see that in all but one of the instances the person was identified, in large part because so many of them are incidents in which people know each other.

Mr. Joe Comartin: Can we conclude from that that at least some of those cases would not be cases that would be prosecuted because the perpetrator would have killed himself?

Dr. Anthony Doob: Yes. However, the other side of that problem is that multiple murders come in different forms.

The other form of multiple murder involves separate incidents in which a person has killed twice. These are single incidents involving a single police force, usually in a single location, and there are two or more victims. If a person kills somebody on this side of town and then kills another person tomorrow on another side of town, those are going to be deemed as two separate incidents, even though you and I would say that the person has killed two people.

● (1620)

Mr. Joe Comartin: Okay. I know we're not doing this in formal terms, but the reality is we're trying to make life sentences consecutive, as opposed to concurrent. That's really what's happening. Of course we're trying to do this to deal with the Bernardo and Olson and Pickton types of situations.

I'm not aware of any other countries, with the exception of some states in the United States, that have tried to make life sentences consecutive.

Could you indicate whether that's the case? Are there other countries that make life sentences consecutive?

Prof. Allan Manson: I don't know of any. Through American television and American newspapers we've all experienced a sentencing report in which someone received three life sentences, and hearing them talk about the expressive integrity of the justice system. In Canada, the courts concluded many years ago, after a lot of consideration, that you can't—in the abstract, in theory, or in reality—have a sentence consecutive to a life sentence. When someone dies, his life is over. This has been Canadian law for a long time. Anything else is just notional.

Mr. Joe Comartin: The other reason for this bill—and you'll hear this from Conservatives—is to avoid having victims' families and friends repeatedly go through hearings, whether it's under the faint hope clause or the parole system. We saw this with Olson last week.

I believe there are alternatives to using this approach. Have either of you considered what some of those alternatives might be, as opposed to using the approach in Bill C-48?

Prof. Allan Manson: We have to be respectful of both the views and the grief of victims, and Canadian criminal law has gone a long way in 30 years to be respectful. I'm not saying we've succeeded or that the job has ended. A big part of that is giving people information about the process and giving them an opportunity to participate, and the National Parole Board has done that. The CCRA provides an enormous amount of material to victims. There are specific provisions of what is available.

I don't know how you can look into the future and predict how a family is going to think or feel 25 years down the road. If people want to continue to participate, they ought to be able to participate. The difficulties of that, though, are just inescapable, if you're going to be respectful of someone's views and someone's grief. Conversely, you can't make penal policy based on the views of a small group of people, so it's a difficult situation.

I read the newspapers last week and we'll see how that matter progresses, but as you pointed out, you're talking about two or three people in the country.

Mr. Joe Comartin: Professor Doob, what about the idea of taking away the right to repeatedly apply for parole? Could that authority be given to the Parole Board?

Dr. Anthony Doob: Let me back up. I think that there is a certain level of incoherence between the sentencing provisions and the release provisions. To some extent we're talking about that level of incoherence. I think that these are difficult questions. What is the appropriate length of time for offenders between parole hearings? It may be that this question should be revisited.

I am reluctant to make a suggestion on the fly, however, and the reason I'm reluctant is that I don't know the history of it. The Parole Board is very conservative on releases. We know that, and the data are absolutely clear on that, but what happens with these sequential hearings and what should the length of time be? Should it be varied, and should it be varied with a parole? I don't know the answer, but it seems to me that it's a legitimate question to raise.

At the same time, it is not something that one wants to start by having me or anybody else around the table pick a number. I think you want to start by asking what we know about this process, what we know about the decisions being made, and how we can make this a sensible process.

● (1625)

The Chair: Professor Doob, I'm going to have to cut you off there.

We're going to go to Mr. Rathgeber for seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you to the witnesses for your attendance. It's nice to see you both again.

Professor Doob, I listened to you very intently. I want to make sure that I understood you correctly. You told my friend Mr. Ménard that generally you don't believe in minimum mandatory sentences, and you believe that judges ought to have discretion to give something less than the minimum in the appropriate circumstances. Is that correct? That's what you said.

Dr. Anthony Doob: Yes. In the current circumstances, yes, that's correct. I think the difficulty is that I would like there to be more guidance to judges on what appropriate sentences should be.

Mr. Brent Rathgeber: You said that you have confidence in judges.

Dr. Anthony Doob: I have confidence in judges, and I believe that it's Parliament's role to give appropriate guidance.

Mr. Brent Rathgeber: Sir, you appeared before this committee on Bill C-25, which takes away two-for-one credit for pretrial custody. You'll recall that.

Dr. Anthony Doob: Yes.

Mr. Brent Rathgeber: You were opposed to that bill because it took away the sentencing judge's discretion to give extra credit for pretrial custody.

Dr. Anthony Doob: That's not correct.

Mr. Brent Rathgeber: You were against the bill.

Dr. Anthony Doob: Yes.

Mr. Brent Rathgeber: Why were you against the bill?

Dr. Anthony Doob: I was against the bill because the credit given for a day of pre-sentence custody under the current bill is presumptively less than the credit given for a person serving a sentence.

Mr. Brent Rathgeber: Right, and you think that the pretrial judge ought to have the discretion to remedy that mathematical imbalance.

Dr. Anthony Doob: No, my starting point on that was that the judge should be able to set the credit for pre-sentence custody, which, as a starting point, would be the same as if that person were serving that time as a sentence. Given that a 60-day sentence does not mean 60 days in prison, 60 days in pre-sentence custody should be given the same kind of credit a sentenced person would get.

Mr. Brent Rathgeber: I understand that.

Let's fast-forward to the bill in front of us here today. The language is deliberate in proposed subsection 745.51(1). The court "may"—not "must", but "may"—"having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission", and it goes on, "order...that the periods without eligibility for parole for each murder conviction are to be served consecutively".

Now, you're an educated man. I don't have to explain to you the difference between "may" and "shall" or "may" and "must". I would think, sir, that since you are in favour of judicial discretion....

In fact, it goes on. It goes on to read: "If a judge decides not to make an order under subsection (1), the judge shall give, either orally or in writing, reasons for the decision."

You told my friend Mr. Ménard that a court ought to give reasons when it varies from a minimum mandatory sentence in other proposed pieces of legislation. With all due respect, sir, how do you reconcile your opposition to this bill, which gives discretion to trial judges, with having advocated so eloquently in the past that judges ought to have that very discretion?

Dr. Anthony Doob: My starting point on the sentences for murder is that there's no discretion on the part of judges. The reason there's no discretion is that it's a sentence of murder, and murder means life in prison. The person is serving a sentence for the rest of his or her life.

The issue about this bill, it seems to me, is that it raises a set of questions. I think there are some legitimate questions about the way people serve life sentences in Canada and serve sentences in general, but I think this particular bill takes one part of it and just grafts it on without thinking about, for example, how this is going to play with the abolition of the faint hope clause, so if you're asking—

● (1630)

Mr. Brent Rathgeber: I want to get to Professor Manson. I only have probably less than a minute.

Prof. Allan Manson: Do you want to ask me about "may"?

Mr. Brent Rathgeber: No. I know that you also know the difference between "may" and "shall". I want to ask you—

Prof. Allan Manson: That wasn't going to be my answer, but—

Mr. Brent Rathgeber: Well, we'll see if we have time.

You told us, in your opening comments, to talk to victims and victims' advocates and see what they have to say about this bill.

Prof. Allan Manson: I said to “listen” to victims.

Mr. Brent Rathgeber: Well, I think you yourself should listen to victims. Are you aware that Susan O'Sullivan sat at this very table last Thursday and advocated passionately and strongly in favour of this bill?

Prof. Allan Manson: I am, absolutely.

On victims, you are being disrespectful—

Mr. Brent Rathgeber: Did I hear her—

Prof. Allan Manson: Let me finish—

Mr. Brent Rathgeber: Did I hear her improperly? You told me to listen to her.

Prof. Allan Manson: No. What I'm saying is that you're—

[*Translation*]

Mr. Marc Lemay: Mr. Chair, there is no respect for the interpretation process. Listen, Mr. Chair, I do not want to take you to task, but we should at least let the interpreters do their job. They cannot even keep up; they are on the second-last sentence. If I were to talk as fast as they do, they would not be able to follow. Please, Mr. Chair, do something. This is ridiculous!

[*English*]

The Chair: Monsieur Lemay, I've told you once, I've told you many times, and I've told everyone at this committee that every member of this committee has a right to conduct their examination of the witnesses as they see fit, provided they don't talk over each other.

I've seen you interrupt witnesses, I've seen virtually every member of this committee interrupt witnesses, and I allow it to go on unless it clearly becomes disrespectful and violates the decorum of this place.

I'm exercising my discretion. If it gets out of hand, believe me, I will intervene, but at the same time I want to preserve the independence of each one of you to examine the witnesses as you wish, as you would appreciate in a courtroom as well, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Point of order, Mr. Chair. I will ask that, from now on, you listen in French. You will see that you cannot follow what is being said for long, because that is exactly what I am trying to do. I am listening in English and in French, but the interpreters cannot keep up in French. I do not want to interrupt, but enough is enough. And that is three times now.

[*English*]

The Chair: Monsieur Lemay, I'm going to allow Mr. Rathgeber to continue.

Go ahead, please.

Prof. Allan Manson: Can I answer the question now?

Mr. Brent Rathgeber: Yes, go ahead.

The Chair: Yes, please.

Prof. Allan Manson: I said listen to victims, but don't do it selectively. It is disrespectful to victims to treat them as one homogenous group in which everyone thinks the same and everyone responds to grief, pain, and loss in the same way. A variety of people in Canada are victims and provide services to victims, and many of those people will recognize that the people who commit crimes come from the same communities as the victims.

Let me finish, please.

They will recognize that if you want to fight crime, you do it in the communities, not with harsher sentences.

I'm not being disrespectful to Ms. O'Sullivan. I have no doubt about what she said here. I'm saying that's an individual view; listen to the broad spectrum.

Mr. Brent Rathgeber: Well, with all due respect, it's more than an individual view. She is the victims' ombudsman for the victims of Canada. She sat at this very table last Thursday and told us what groups she consulted with. She has a network of victim advocacy groups from coast to coast to coast. I think it's you who are selectively listening to victims, sir.

Thank you.

The Chair: Thank you very much.

We're at the end of our time for the first panel. I want to thank Professors Doob and Manson for appearing. Your testimony will be helpful as we continue our review of Bill C-48.

Rather than suspending, members, we'll continue.

You have two items before you. First of all, we have a budget for Bill C-48.

Monsieur Lemay, we have a couple of items to deal with before we go to the next panel.

You have before you a budget for Bill C-48. It's in the amount of $7,750. I would need a motion to—

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I move its adoption.

The Chair: Mr. Murphy has moved its adoption.

(Motion agreed to)

The Chair: Then we also have the sixth report of the subcommittee, which is the steering committee.

Do we have a motion to adopt it?

Mr. Murphy moves its adoption.

(Motion agreed to)

The Chair: We'll break for two minutes and then reconvene.

● _____ (Pause) _____

●

● (1635)

The Chair: We'll resume the meeting.

We're returning to our study of Bill C-48, an ct to amend the Criminal Code and to make consequential amendments to the National Defence Act.

We have with us for the second hour of our meeting Ed McIsaac, who is the interim director of policy for the John Howard Society.

We also welcome back Sharon Rosenfeldt, president of Victims of Violence. Welcome back, Sharon.

We also have with us, as an individual, Mr. Raymond King. Welcome to you as well, Mr. King.

We're going to begin with Mr. McIsaac. Then we'll move to Mrs. Rosenfeldt and then to Mr. King.

Please go ahead, Mr. McIsaac.

Mr. Ed McIsaac (Interim Director, Policy, John Howard Society of Canada): Thank you.

I thank the committee on behalf of the John Howard Society of Canada for the invitation to appear. We appreciate the opportunity to meet with you today to discuss Bill C-48.

The John Howard Society, as most of you know, is a non-profit organization whose mission is the promotion of effective, just, and humane responses to the causes and consequences of crime. The society has 65 front-line offices across the country delivering services to support the safe reintegration of offenders into our community.

The John Howard Society does not support this legislation. We do not believe that there is, within the Canadian public, an informed consensus in support of 50-year minimum sentences. In addition, we do not believe that such sentences can be reasonably seen as effective, just, or humane responses to the causes and consequences of multiple murders.

As was evidenced by testimony before this committee on Bill S-6 dealing with the faint hope clause, the current periods of incarceration prior to release on parole in this country for those convicted of first-degree murder are already twice as long as in most western democracies.

How do we as a country justify doubling this already excessive time in prison? What will motivate a 20-year old caught by this legislation to work towards rehabilitation, when their first eligibility for parole will be at the age of 70? At what risk are we placing those who work and live with individuals serving a minimum 50-year sentence? What message are we sending, as a criminal justice system, about our commitment to timely and effective reintegration in support of public safety?

The backgrounder on Bill C-48 that the Department of Justice released in October of this year, entitled “Ending Sentence Discounts for Multiple Murderers", reads in part:

> Families of victims argue that the fact that life sentences for multiple murders are served concurrently devalues the lives of victims and puts Canadians at risk by allowing multiple murderers to be paroled earlier than merited...

This document goes on to say:

> The proposed amendments to the Criminal Code would address this situation by allowing judges to impose consecutive parole ineligibility periods on individuals convicted of more than one first- or second-degree murder.

I do not believe we can place a value on human life. The grief and hurt of family members following the murder of a loved one cannot be reasonably addressed through amendments to the Criminal Code. The process of addressing this pain begins with the provision of individualized support and services within the local communities, and through the assurance that timely and relevant information concerning the specifics of their circumstances is made available by the responsible government agencies.

● (1640)

Second, we currently have within our criminal justice system a conditional release process that has as its priority the protection of society. Although the timing of conditional release reviews is governed by legislation, the decisions to release an individual are governed by the assessed risk the individual poses to the community. As we know, the existing system is quite capable of extending periods of incarceration well beyond parole eligibility dates.

The proposed legislation potentially extending ineligibility to a minimum of 50 years addresses neither of these two concerns, nor does it enhance the concept of truth in sentencing or the public's confidence in our justice system.

I thank you for your attention. I look forward to your questions.

● (1645)

The Chair: Thank you very much.

Please go ahead, Mrs. Rosenfeldt.

Ms. Sharon Rosenfeldt (President, Victims of Violence): Thank you very much for the opportunity to speak before the committee. Good afternoon to everybody.

It was very quick notice to get to this committee, and I apologize that I don't have notes to hand everybody. I can certainly type up what I've quickly typed up and email it out. However, I have one piece that I will give you later for all the members. It's in a suggestion that I'm going to put forward.

This long-sought-after reform on sentencing made its way through the House in Bill C-247, which was authored by Liberal MP Albina Guarnieri 10 years ago. This is not a new issue; this has been around a long time. The bill died in the Senate, but we are very glad to see it returned through Bill C-48, introduced by the current government.

I know the current government. I've heard them speak many times, and they also give tribute to Ms. Guarnieri. As I said, this is a very important issue and has been around for a long time. I think it would be really good at this point to be able to settle it once and for all.

As you can tell, the bill simply gives a sentencing judge, in the defined circumstances of sentencing a person who is convicted of more than one murder, the discretion to impose consecutive parole ineligibility periods for the multiple murders. This is accomplished in proposed section 745.51 of the Criminal Code.

From our reading, this would apply to cases of persons who are convicted of a second murder, or more murders, following an early murder conviction, such as Daniel Gingras—if you're not familiar with Daniel Gingras, I'll be happy to answer that during questions—and also apply to persons who are convicted of multiple murders at the same trial, such Clifford Olson, Paul Bernardo, or Russell Williams. That is our reading of the section, but we urge you to make sure this is the case, because it makes no sense to not allow both scenarios.

We understand, in following the discussion on other bills, that there has been concern expressed by some members of Parliament over mandatory minimum sentences because they reduce judicial discretion. As you know, murder already has a mandatory minimum sentence of life imprisonment, although, with parole eligibility, the "life" part of the sentence does not necessarily mean being imprisoned. Bill C-48 would actually give judges more discretion at sentencing, so hopefully those MPs who have taken the position opposing a reduction in judicial discretion will support this bill, because it actually increases it.

This bill will apply, thankfully, to relatively few offenders, but that does not diminish its importance. Our system should have the sophistication, integrity, honesty, and discretion to treat multiple murderers differently. A consequence of this bill will also be, at least once it's passed, to possibly prevent victims' families, such as Ray and me, from having to go through the two-year nightmare of our children's killer demanding parole. This bill, as currently drafted, won't help us. Other changes are required for that, but it is a very important step to prevent the unintended and needless revictimization of victims' families in the future.

While I appreciate that it may be too late to incorporate into this bill the changes I just mentioned, I want to leave the committee draft amendments to the Criminal Code modelled directly on the judicial screening mechanisms that the former Liberal government enacted when it restricted the right of access to the section 745 advanced parole release of convicted murderers. It basically replicates the judicial screening process for a future parole hearing for murderers like Clifford Olson if they are denied parole at the 25-year point.

The screening judge would consider the request and could deny it, if unrealistic or without grounds, and disentitle the murderer from reapplying for a period of up to 15 years. It has narrow application to these horrendous cases, but it will prevent the revictimization that our families have just endured and the revictimization of others in the future.

Frankly, we are capable of better than what the current law permits. I hope that Bill C-48 can either be amended to include these provisions, or that one day, before Olson's next parole hearing, I will be back before you to urge passage of these measures.

● (1650)

I urge all members of the committee to support this bill, which provides judges with greater discretion to recognize the increased severity of multiple murders at sentencing by providing consecutive parole ineligibility periods.

That's all I have to say on that.

On a personal level, I can tell you one thing: it's tough. It's tough after 29 years, it's tough after 26 years, and I'm not so sure why we have to go through it. I have been around a long time; I understand laws and I understand people who work with offenders. Honestly, I'm not a vindictive person. I know all offenders aren't like Clifford Olson. I know that.

Honest to God, it's tough. I'm still coming down from it. I'm turning 65. When can I put my son to rest? My husband is gone. The last time he had his eyes open, he had brain tumours. He was right out of his mind and rolling on the floor. He climbed out of his bed and he was screaming, "Parole? Clifford Olson?" I don't think I can take it anymore.

I'm so sorry; I know we're not supposed to be emotional. I know better than that; I truly do. I know better than that. I didn't mean for this to take place. It really is tough, though. There has to be a way. If this bill isn't passed, maybe....

This is what I brought. Our policy adviser quickly drew this up for us. We're getting pretty desperate. There are five family members, five parents who have already died. When can we bring some justice for our kids? We don't have anything for them.

People talk about Clifford Olson all the time. He talks about himself. We're in a real catch-22. We attend these parole hearings because we have to put a face to the children he murdered. We're serving a life sentence along with him—we are—and it's not just us and it's not just Clifford Olson. His name makes me sick, because everything seems to relate to Clifford Olson, when there are other characters like him that we're talking about in this bill. It isn't only a Clifford Olson, and there are other families that will come after us.

Oh God, I didn't mean to do this. I really apologize, committee; I really do. I haven't done this in.... I'm sorry.

The Chair: Mrs. Rosenfeldt, there's absolutely nothing for you to apologize for. We are so grateful that you're here at our committee. Take all the time you need.

Did you have anything else to say?

Ms. Sharon Rosenfeldt: No, I think I'm fine. I just meant to read this.

The Chair: Okay.

We'll move to Mr. King. Again we're looking forward to what you have to say.

Mr. Raymond King (As an Individual): Good afternoon, and thanks for letting me be here. I just found out yesterday that I was going to be here, so I don't have anything prepared. I don't have facts and figures. I can only speak personally.

When this started for me 29 years ago, we weren't in the process of anything. If this hearing had been 30 years ago, we wouldn't be here, yet the other side seems to have representation forever. It's getting better, but we're still behind.

I've been to three parole hearings for Clifford Olson, and in each one he's made a mockery of the justice system. Each time, the first thing he has said is, “Nobody in their right mind would let me out”, and yet we have to go through it over and over and over again for no apparent reason.

I think this bill is long overdue. Giving the judges more discretion is a good thing, as Sharon said. I have to agree with everything she said, of course.

I think we have a right, as survivors, to attempt to put our lives back together again, and it just hasn't happened. Obviously Clifford Olson is an extreme case, but there are others like him, and there will be others like him in the future. The people who come after us have to be protected, and this is one way to do it.

I think that's all I have to say. Thank you.

The Chair: Thank you very much.

We'll open the floor to questions. Given the fact that our time is short, do we have consensus that we go with five-minute questions? Is everyone okay with that?

Some hon. members: Agreed.

The Chair: All right.

Ms. Jennings, you have five minutes.

● (1655)

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Chair.

I'd like to thank all three of you—Mr. McIsaac, Mrs. Rosenfeldt, and Mr. King—for being here today.

Mrs. King, I would like to echo what our chair just said to you. You have absolutely no apologies to make. I think that, if anything, the emotion that you've brought to this issue probably strikes to the heart of what this bill may have as its objective, so that you and families like yours and Mr. King's will not have to go through the agony.

I believe you were in the room when Professor Doob and Professor Manson spoke. Basically they were opposed to the possibility of consecutive parole ineligibility and did not believe that if it were possible to amend the bill in order to allow the judge the discretion to deem parole ineligibility consecutively for two or more murders, given the circumstances of the crime committed—the offender, the victim, all of that—the judge might have discretion that the second consecutive life sentence and parole ineligibility could be less than the 25 years added to the original 25 years.

Is that something you would be open to?

Ms. Sharon Rosenfeldt: Basically, when they were talking about adding, say, 25 years plus 10 years, or something under the 25, I would say not. I think that we should stay with... It's long been that we've had 25 years; 25 years seems to be the figure. We keep playing with these numbers all the time on parole. When these multiple murderers are sentenced to life in prison, we just really don't see that.

People talk about the statistics. I know that people say Canada is the country with the highest number of people who serve their time in prison. I, on the other hand, am still not overly sure about that. I would really like there to be some very up-to-date statistics on that. All kinds of numbers are thrown out all the time. One time I hear one set of numbers; another time I hear another set of numbers.

So, no, I would prefer to stay at.... I would, and our organization. It's either 25 times two ,or three, or whatever.

Thank you.

Hon. Marlene Jennings: Okay, and I apologize. I misspoke your name. It's Mrs. Rosenfeldt, not Mrs. King. I apologize—

Ms. Sharon Rosenfeldt: That's okay, no problem.

Hon. Marlene Jennings: I apologize, especially because we know each other.

Do I have any time left?

The Chair: You have a minute and a half.

Hon. Marlene Jennings: Thank you.

I appreciate your frank response. I will build on that response.

In your statement to this committee you said that there are some multiple murders that are particularly heinous, that stand out from murder in which family members may be killed in one tragic incident, etc.

Do you agree that the judge should have the discretion, then, to determine?

Ms. Sharon Rosenfeldt: Definitely, I agree, and that's the part of the bill that makes me feel quite comfortable.

I actually do have quite a bit of faith in our justice system. I do have faith in judges. There are certain times when I say, “Where are they coming from?” However, we are Canadian, and I am a proud Canadian, and if I don't like things, then we can maybe go about trying to have them changed. However, to me the part in this bill that gives the judges judicial discretion is really quite significant.

Hon. Marlene Jennings: Thank you so much, Mrs. Rosenfeldt. I apologize that we don't have enough time to hear from the two other witnesses, but thank you for being here today.

● (1700)

The Chair: Thank you.

We'll move to Monsieur Ménard for five minutes.

[*Translation*]

Mr. Serge Ménard: Thank you, Mr. Chair.

I have a great deal of sympathy for you. I have a great deal of sympathy given what you have been through. And I can fully appreciate how painful it must be to attend another hearing that, in all likelihood, is virtually pointless and that is being sought by a criminal who has not only murdered people but who is also trying to inflict even more suffering on those he has already victimized. Now, did you attend Clifford Olson's first parole hearings?

[*English*]

Ms. Sharon Rosenfeldt: Yes.

[*Translation*]

Mr. Serge Ménard: Okay. So your fear is having to go through those hearings again within—

[*English*]

Ms. Sharon Rosenfeldt: Yes. What I'm concerned about is having to do that every two years until he dies or until I die.

[*Translation*]

Mr. Serge Ménard: Has it been more than two years since you attended the first hearing?

[*English*]

Ms. Sharon Rosenfeldt: Yes, it has. The first hearing was right after the 25 years, and then he didn't apply. He didn't apply for the second hearing, but he was in a lot of trouble at that time because he was selling all his paraphernalia to murderauction.com, and the prison came down on him big time. I don't know what happened behind the scenes, but we received a letter saying that he would waive his parole hearing this time.

Clifford Olson does not ever voluntarily waive a parole hearing, so I don't what happened. I can't believe he got a soft heart, but, yes, he got into big trouble by selling his stuff on that awful website.

[*Translation*]

Mr. Serge Ménard: A jury heard that application, did it not?

[*English*]

Ms. Sharon Rosenfeldt: Yes.

[*Translation*]

Mr. Serge Ménard: Yes. Do you think it would be a good idea if that jury could prevent him from re-applying for a period of 25 years?

[*English*]

Ms. Sharon Rosenfeldt: Do you mean within the “every two years”?

[*Translation*]

Mr. Serge Ménard: Yes. Instead of every two years, preventing him from applying, making a determination that would prevent him from re-applying within 25 years. Would that put your mind at ease?

[*English*]

Ms. Sharon Rosenfeldt: Yes.

I'm not sure about the 25. I'm not understanding the 25 years.

[*Translation*]

Mr. Serge Ménard: So not only would the jury deny his application, as it did, but it would also determine that he could not file another application for up to 25 years.

[*English*]

Ms. Sharon Rosenfeldt: Yes.

[*Translation*]

Mr. Serge Ménard: I think we could pursue that avenue, without.... Clifford Olson is a horrendous case; he is one of the worst criminals. There are family crimes, as well. We heard about a Mr. Kowbel, who had killed his father or mother, I believe, and the surviving family members were willing to support his request for parole.

There are all kinds of cases. In a year, we heard about a surgeon who was well liked, an excellent surgeon, whose wife left him and who was so overcome that he decided to kill his two children. So you cannot approach that case as you would Clifford Olson's. The jury should determine how much time must go by before the criminal is allowed to re-apply.

[*English*]

Mr. Raymond King: I would like to think that the judges we appoint would have the sensibility to determine who would qualify for Bill C-48 and who would not. Given the discretion that was mentioned, they could give a lighter sentence and they could also give a longer sentence. It's not a problem. They can determine that.

● (1705)

[*Translation*]

Mr. Serge Ménard: Yes, and they can differentiate between Clifford Olson and this surgeon, who [*inaudible*]

[*English*]

Mr. Raymond King: Exactly.

The Chair: Monsieur Ménard, we're at the end of the five minutes.

I'm going to go to Mr. Comartin.

Mr. Joe Comartin: Thank you, Mr. Chair. Thank you, witnesses, for being here.

Mr. King, to follow up on that point you were making in terms of the judiciary, I think that's probably a fairly accurate assessment. It's one of the reasons my party is considering supporting this bill, even though we have some problems with it.

In all cases we're concerned about the type of fact situation that Mr. Ménard just talked about. As you heard from Professor Doob today, the vast majority of these cases are different fact situations from the Olson-Pickton-Williams type. Those will be dealt with appropriately in terms of using this bill. I worry about other cases that may also get caught in it. That's really the concern that we have.

In that regard, there are alternatives. Ms. Rosenfeldt, you've raised a couple of them today. Possibly amendments to the procedure within the parole act would be more effective in dealing with those horrendous cases, not that any murder is not horrendous, obviously. *Épouvantable* is a good word in French, but I don't know if I can translate that into English. I think "horrendous" is as good as I can come to.

I suppose I'm making a statement; I don't really have a question.

Certainly I share what you heard from both Ms. Jennings and the chair. I share that. You have no reason to apologize at all, because emotion is a factor at play here. It can't completely guide us, but it certainly has to be a factor in doing it.

What we're looking at is these other possibilities. As much as our law is very much opposed to retroactivity, there are those few times when in fact we've been able to pass retroactive laws and have them survive. It seems to me amendments to the parole act that would deal with the Olson type of situation may in fact survive a challenge. I would be quite prepared to take a run at that in terms of legislation.

That's all I had, Mr. Chair.

The Chair: We'll move to Mr. Dechert for five minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair. Ladies and gentlemen, thank you for being here today.

To Ms. Rosenfeldt and Mr. King, I want to express my condolences on the loss that you both suffered and that your families suffered, and for the pain you've been living with all these years. I am sorry that from time to time you're forced to relive those events through these parole hearings.

Ms. Rosenfeldt, I want to address a few questions to you. You were here during the first hour of today's session and you heard from the other witnesses. One of those witnesses, Professor Manson, said that he had never heard any victims say that we need this legislation, Bill C-48, and I noticed that you reacted somewhat when you heard that statement.

Could you comment on that?

Ms. Sharon Rosenfeldt: Sure. This notion has been around a long time, as I said. It began some 10 years ago, or in 1997. I think back then it was called "volume discounts" under the Liberal government. This time it's called "discounts".

I think it was really put into context by one of the members of Parliament, who mentioned that the ombudsman's office had a long list. Trust me: there are a lot of victims out there, but not many who really want to, or can, or have the strength to, stand up and say, "No, no, no", or go before cameras or appear before committees. Why do we do it? I don't know. I can't answer that. There are so many victims who don't want to.

Ray made mention that in our justice system there are so many government-funded organizations that have the capacity to hire researchers, to hire professors of criminology, to have proper statistics, and to come to these hearings fully prepared. On the victim side, we're not there yet.

I feel that, first, we must address public safety. That's for all Canadians. Services for victims of crime will help us, but that's a totally separate issue. We should not confuse public safety issues and resources for victims of crime. We'll get there in a different way.

● (1710)

Mr. Bob Dechert: Thank you.

You touched a bit on the number of victims. One of the things we often hear from people who are opposed to legislation like this is that there aren't really very many people who have this view. Professor Manson also said that we can't make penal policy as a result of the views of a small group of people.

Do you represent a small group of people?

Ms. Sharon Rosenfeldt: No, not at all.

Mr. Bob Dechert: How many victims have you talked to?

Ms. Sharon Rosenfeldt: One of the other problems is that they don't seek us out either. They don't ask us any questions at all. They just think we're these angry, vengeful people who should really just go back into our little corners and provide these nice little services. They're saying, you know, "You'll be okay some day. Go back into your little corner and dry your eyes. You're just too emotional." We're always getting that.

In answer to your question, right now in our organization there are probably about three people in our office. There used to be about 20. Like any other organization, we're having problems.

Mr. Bob Dechert: Who do you hear from?

Ms. Sharon Rosenfeldt: I would say we represent approximately 1,000 people. It used to be probably more in the 4,000 to 5,000 range, but today I would say it is probably about 1,000. There are more services that have sprung up in provinces across Canada as well.

Mr. Bob Dechert: Do you hear from people who are not victims but who support your views?

Ms. Sharon Rosenfeldt: Oh, very much so. Actually, we probably hear more from them than from the actual victims. Victims are into their own particular set of circumstances.

Mr. Bob Dechert: The other witness, Professor Doob, said that there is no informed consensus in the Canadian public that we need these types of sentences. He seems to be saying that whatever your views are, they're not informed, or that whatever the views of all those other Canadians who think this is necessary are, they're not informed, and therefore we should disregard them as a committee.

What do you say to that?

Ms. Sharon Rosenfeldt: I could probably show him all of the emails I have received from people from across Canada, just in the past week, that I haven't even begun to be able to answer. They're on Facebook, on.... It's amazing.

Oh, I'm sorry. I lost my train of thought there.

Mr. Bob Dechert: Well, I certainly hear from my constituents, and I'm pretty sure that the other members here do as well.

Let me put this question to Mr. King. I understand that Clifford Olson said at his parole hearing last week, “I'm here because I have a right to appear. I'm not asking the board for parole, because I know I'm going to be turned down.”

Mr. Raymond King: That's exactly what he said.

Mr. Bob Dechert: How did that make you feel?

Mr. Raymond King: I've heard it before. We heard it at his faint hope clause hearing. That was the first thing he said. He just stirs the pot.

Mr. Bob Dechert: Do you believe that he'll continue to come every two years?

Mr. Raymond King: He'll come as long as he can.

Mr. Bob Dechert: It's because he has a right to appear.

Mr. Raymond King: It's so he can manipulate the system and us.

Mr. Bob Dechert: Thank you.

The Chair: Thank you.

We'll go to Mr. Murphy for three minutes.

Mr. Brian Murphy: Thank you, Mr. Chair.

We certainly all feel for the victims and the families, and we also respect the good work you do, Mr. McIsaac.

In my short three minutes, I'll tell you where I'm coming from on this. In Moncton in the 1970s there was a double cop killing of two great officers, Bourgeois and O'Leary, by two murderers. These were people we knew in the community.

Charlie Bourgeois went on to become an NHL hockey player after that adversity. Carroll Ann O'Leary went on to run hospital services. They picked up and they went on.

These two murderers have been eligible for parole. Their death sentences, in fact, were commuted to life. In that case, I'm pretty sure, had this law been in place, the trial judge might have granted 50 years without.... It was such a shocking case.

There is no doubt, Mr. McIsaac, that these were bad apples. There are bad apples. You're working with the good apples, and that's great.

In this case, I think we need to save this bill, because the judge is going to be given a choice—I gave you the facts—of between 25 and 50 years. We heard good, seasoned lawyers say that given that choice, judges are going to tend towards the lesser, because they don't want to go overboard. We have to find a way, in my opinion, to go between 25 and 50. We might see victims angry that, given the choice of between 25 and 50, a judge didn't give 35 or 40.

I wonder if you think there is a way of amending this—and I'm working on this—and if you think it would be a good thing, because in some circumstances, it might be appropriate. It is true judicial discretion to have that choice in the case of first-degree murder.

Do you agree with that type of amendment? That is to the panel, briefly, because there are only three minutes.

● (1715)

Mr. Ed McIsaac: My concern is on the casting of the die at the front end, whether it's 25 going to 27, 30, or 50. The difficulty we have, voiced at this committee and over the last two weeks since Mr. Olson's parole hearing, is the pain of appearing at a parole hearing that could be seen as either hopeless or frivolous. If you are going to put a check on that—and it may well be that it is required in cases of this nature—you would want to do it at a pre-screening of the board or use the judge-jury option in the faint hope clause. This would be better than to establish a law that will end up with someone serving a flat 50-year sentence with no option.

The Chair: I think Mrs. Rosenfeldt wanted to interject.

Ms. Sharon Rosenfeldt: How can you do that when you have multiple victims? That's one of the biggest reasons I'm against that approach. In our case, where we feel the discount comes in is that we, the victims' families, feel that once somebody has been charged with one murder, the rest are just thrown in, as happened with Clifford Olson and in the Pickton case. How can you look a victim in the face and say that for your daughter we're going to give 25 years, but for another person's daughter we're going to give only five years or 10 years? It isn't going to work. It's either 25 and 25.... It isn't going to work. We'll be back before this committee.

The Chair: Go ahead, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I just want to understand one thing, Ms. Rosenfeldt. I agree with you. What does victimization mean to you? My problem is that I am divided. It is incredibly difficult for family members to relive the events. We were talking about Olson, but would it be better not to tell them? Not to keep them informed? Not to advise them that so and so... because it is too difficult, I can understand that. That is what I am wondering.

[*English*]

Ms. Sharon Rosenfeldt: No. What I would like to see is a life sentence. When he was sentenced 29 years ago, he was given life, and that's what I hung on to as Daryn's mom. He was given a life term. I didn't even know about the 15-year parole or the faint hope clause. I didn't know that existed. I didn't even know the 25 years existed. I just breathed a sigh of relief and told my other little kids, “He's going to be gone for the rest of his life, and we're not going to have to hear from him.”

Now in this case, we will always hear from him, and we all know he's goofy, but that's what I would be happy with. I would have no problem with him or others like him being sentenced and put in prison. I don't even care if they have a TV or if they give them popcorn, but keep him off the streets. He has committed 11 horrendous crimes. Let the penalty suit the crime. I'm not talking about capital punishment, not at all, but what's been going on here is so wrong.

Thank you.

● (1720)

[*Translation*]

Mr. Marc Lemay: The families of the victims still need to be informed. Under the Criminal Code, the judge is required to make a statement, and I understand the state everyone is in in a murder case. I want to know whether he would be gone for you, you would not hear a thing about him for 25 years or even longer, it would be over.

Are we better off advising the families of victims, should we continue to advise you and keep you informed of the process or even ask a judge to intervene to prevent the individual from applying too often?

[*English*]

Ms. Sharon Rosenfeldt: Given the way the law is right now, it is definitely better to be advised. There's no question about that, but what we're asking for in this piece of legislation is for a judge to have the discretion to sentence somebody like Clifford Olson to 260 years before he could ever apply. He would be in prison for the rest of his life, and maybe others would be too. A judge would have the discretion in cases that the member of Parliament sitting beside you talked about.

The Chair: Thank you.

We'll go to Mr. Woodworth for three minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair. I'll be sharing my time with Mr. Dechert.

I just wanted to say one thing. First of all, I thank all of you for attending. I'm going to direct this comment mainly to Mrs. Rosenfeldt, although it applies also to you, Mr. King. I want you to know that when as a government member I describe to certain law professors and sometimes to certain members of Parliament the very real trauma that victims endure—not just because of the initial crime, but because of Canadian sentencing and parole provisions—I am sometimes met with a blank stare. They just don't get it. Sometimes some of these law professors just dismiss it as conjecture. They think I'm just conjecturing that victims are traumatized by our sentence and parole provisions.

That's why I want you, particularly Mrs. Rosenfeldt, to know that your evidence today is completely invaluable, because I hope it will demonstrate to every committee member that the trauma is real. It is not conjecture, and some modifications are appropriate to deal with that. It's in that light that I want to thank you for being here.

I'll turn my time over to Mr. Dechert.

Mr. Bob Dechert: Thank you, Mr. Chair.

Mr. King, you mentioned the faint hope parole hearing that Clifford Olson had some years ago. You may know that this committee dealt with Bill S-6, which is the bill to repeal the faint hope clause, a couple of weeks ago. Did you agree with the repeal of the faint hope clause?

Mr. Raymond King: Absolutely.

Mr. Bob Dechert: What would you say to anyone who thinks that maybe in the future it should be restored and put back into the Criminal Code?

Mr. Raymond King: Maybe you could try trading places with me for the last 30 years.

Mr. Bob Dechert: You might be interested to know that I understand it's the Liberal Party position to do just that, if they ever form a government again.

Hon. Marlene Jennings: I have a point of order. I believe it's incorrect for a member to make a misstatement, and I invite the member to make a statement to correct his misstatement—

Mr. Bob Dechert: I'd be happy to—

Hon. Marlene Jennings: It's never been stated that it's Liberal policy. The Liberal critic suggested that this is something a future government may wish to look at. He did not state this was official Liberal policy. I'd like to make that clarification for the benefit of our witnesses so that they have the facts on hand.

Mr. Stephen Woodworth: I'd be happy to—

Mr. Bob Dechert: May I speak to that point—

The Chair: Mr. Woodworth, you know you're cutting into members' time. Just before you go on, it isn't a point of order, as I've mentioned before. This is a point of debate, but you've put your point on the record.

Go ahead, Mr. Dechert.

● (1725)

Mr. Bob Dechert: I'll clarify by reading two quotes from the Liberal critic's statement on November 23—

Mr. Derek Lee: I have a point of order, Mr. Chairman.

We have some very good witnesses here. Mr. Dechert seems to be engaging in a debate with a phantom, and I would only.... I'd just like to suggest, through you, that he direct his questions to the witnesses and not get into this phony, stupid, back-and-forth, partisan, unnecessary, valueless....

We have some good witnesses; let's hear from them.

Mr. Bob Dechert: I think there is some value. It's on the record of this meeting from November 23, so everyone can check that.

I'd like to ask both Mrs. Rosenfeldt and Mr. King if they agree with the repeal of the faint hope clause and if they think that it should ever be restored.

Ms. Sharon Rosenfeldt: I spoke on that. I definitely agree with the repeal of the faint hope clause.

Mr. Bob Dechert: Do you think it should be restored in the future in any way?

Ms. Sharon Rosenfeldt: No.

Mr. Bob Dechert: Mr. King, would you comment?

Mr. Raymond King: I agree with Sharon.

Mr. Bob Dechert: Okay. Thank you.

The Chair: All right, we're at the end of our time, and I want to thank all three of you for coming.

Mrs. Rosenfeldt, you mentioned that not a lot of victims have the strength to appear before committees like this, and it is unfortunate. I certainly want to commend both you and Mr. King for the courage you have, despite all the pain that's been caused to you by our justice system and by Clifford Olson, in appearing before us and again reminding us that it's all about victims.

I want to ask you about one thing. When Professor Doob and Professor Manson were before us earlier today, they made a number of suggestions that I certainly would take issue with. There was a further statement that Mr. Manson made, and he said he doesn't hear any victims suggesting that murder sentences are too lenient.

Do you agree with that suggestion?

Ms. Sharon Rosenfeldt: Not at all, and again it's because he does not talk to victims. He does a lot of his work in the groups that work for offenders, so he's pro-offender. It's as simple as that. He's a very nice man, and so is Mr. Doob. All the criminologists and sociologists—all the “oligists”—are.

We're just not there yet. We speak in universities. Our time is coming, but we're not there yet, and it isn't a case of us versus them. I'm a member of the Citizen Advisory Committee for the Ottawa parole office, so I want to learn too.

I'm not a vengeful person, but there are just certain cases. Certain legislation is just not right in Canada, and it has to be looked at. We do represent a lot of victims across Canada. Maybe he should come to the victims of crime week and have a look at how many victims from across Canada come. That's in the third week of April every year. The justice department opens it.

There aren't any criminologists there who come and have a look at victims. They don't want any part of us.

The Chair: Thank you again for helping us to refocus on what's really important, which is the victims. Thank you to all three of you.

The meeting is adjourned.

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