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Wednesday, March 23, 2011

Chair

Mr. Ed Fast

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● (1535)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order. This is meeting number 55 of the Standing Committee on Justice and Human Rights. Today is Wednesday, March 23, 2011. I would note that this meeting is being televised.

You have before you the agenda for today. We are continuing our review of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts. Today we have two panels of three witnesses each.

On our first panel we have the following witnesses. We have, first of all, as an individual, Susan Reid, professor of criminology and criminal justice, and also director of the centre for research on youth at risk at St. Thomas University. Welcome to you.

We also have the Canadian Crime Victim Foundation, represented by, first of all, Joseph Wamback, who is the co-founder and chair, as well as Lozanne Wamback, who is a co-founder and director of that organization.

Finally, we have from Burnaby by video conference, as an individual, Gordon Penner. It's nice to see you again. It has been a while.

Someone indicated that you don't have copies of the agenda. Is that correct?

I'll get my clerk to provide you with copies of the agenda.

In any event, I think you've been advised of the process. Each of you has 10 minutes to present, and then we'll open the floor to questions from each of you.

Why don't we start with Ms. Reid.

Professor Susan Reid (Professor, Criminology and Criminal Justice, Director, Centre for Research on Youth at Risk, St. Thomas University, As an Individual): Thank you very much for the opportunity to appear before you today.

My name is Susan Reid, and I am a criminology professor at St. Thomas University in Fredericton, New Brunswick. I'm also the director of the Centre for Research on Youth at Risk, which houses the eastern hub of the Students Commission of Canada and the Centre of Excellence for Youth Engagement.

I have been studying the impact of juvenile justice legislation since the introduction of the Young Offenders Act, so I've been looking at this over a few years. I hope that my comments will help you as you move forward in the promotion of progressive youth justice legislation in the years to come.

"Why would you ask me what could be changed about the young offender system? I'm just another guy in blue clothes." This was a comment from a group of young men I went to speak to in our only closed custody facility in the province, the New Brunswick Youth Centre. I responded to this young man by telling him that I was very interested in what he had to say because I wanted to share his comments with those who were making changes to the legislation. I told him I believed that the Youth Criminal Justice Act valued young people in its philosophy and principles, and it was important that young offenders' voices be considered when the government deliberated changes to the law that would directly impact them.

I am here today to let that young man's voice be heard, and to provide you with some pause related to the research and evidence on some of the proposed amendments to the Youth Criminal Justice Act.

I had the privilege of participating in one of the national round tables hosted by the Minister of Justice in the summer of 2008. At that time, I expressed my sincere appreciation for the thoughtful work that had gone into the creation of the Youth Criminal Justice Act. This legislation, unlike its predecessor, showed young people across Canada that they were important, that they were to be seen as valued and contributing members of society, and that we as a country believe in the potential of all our young people. I think we took the lessons learned with the problems with the Young Offenders Act and tried to create a piece of legislation that would be progressive.

I am afraid that in the proposed amendments, with the introduction of deterrence and denunciation to the principles of sentencing, we are headed back to that time when we had the dubious honour of being the country with the highest youth incarceration rate in the world.

I am saddened by the thought of more young people being held in custody, when our research evidence shows that incarceration does little to reduce offending patterns of young people and in most cases increases the likelihood that a young person will reoffend upon release. I believe the impact of such policies will be felt most by our most vulnerable members in our communities: the poor, the disenfranchised, and our first nations youth. I am worried that the message we will be sending to young people, with such principles as deterrence and denunciation, will tell them they are "throwaways"—discarded because we couldn't take the time to apply evidence-based research and practice.

I was very critical of the Young Offenders Act for its lack of priority placed on the principle section. When we created the Declaration of Principle in the Youth Criminal Justice Act, we were clear: we created a sequential approach to youth justice, where we were going further and further into the system, so that we started with the diversion of young people for minor offences, giving tools to the police to be able to move forward, with more severe and serious interventions as we dealt with more serious young offenders.

The final layer in section 38 sets out the purpose and principles of sentencing that underscore the long-term protection of society—just sanctions that hold young persons accountable and promote reintegration and rehabilitation.

The most successful parts of the legislation are in the area of extrajudicial measures and extrajudicial sanctions. Young people and professionals alike applaud that area. A recent meta-analysis of 29 studies in the United States that included over 7,000 juvenile offenders over a 35-year period conclusively showed that the more that justice processing happens to juveniles, the greater the likelihood of recidivism. Our best response is what we're doing right now—diverting minor offenders out of the system.

I also think it's great that the RCMP has developed a national strategy in terms of providing their officers with tools to be able to use evidence-based practice to screen offenders when they come before them to see about their suitability to be referred to an extrajudicial program.

When I was consulting with the police over my report on extrajudicial measures, they did express concern to me about the lack of record keeping in terms of the number of times young people have been placed with an extrajudicial measure, and they really would like to...and will applaud your recommendation before us about keeping track of those records. I'm concerned about that because the young people who are being diverted out of the system are not in the system and shouldn't have a record at this point. But it's the least of my concerns with the proposed amendment, to be perfectly honest.

The importance of protecting rights under the Youth Criminal Justice Act is also underscored in the preamble to the declaration in terms of underscoring the UN Convention on the Rights of the Child. It draws attention to us as well about the value of diversion from criminal proceedings, looking at extrajudicial solutions, and ensuring that we look for social and educational interventions. We must remind ourselves of the Beijing Rules, which also guide our choices under the UN convention; they talk to us about using juvenile detention in an institution as a measure of last resort.

One of the problematic areas with regard to this CRC is the reservation that we've had under section 37, which allows us to house young offenders in adult institutions. In the province that I come from...I want to applaud the number of young people who have been removed from that institution. But when we had empty beds, they had to fill them, of course, because it's cost effective, and they've chosen, on a ratio of 5:1, to put adults in those cottages within sight of young offenders. That not only is in violation of the UN Convention on the Rights of the Child, but it also reduces the programming that young offenders are allowed to participate in.

I want to applaud the government's insistence on the proposed changes that youth under the age of 18 who were given a custodial sentence will serve it in a youth facility, and I want to draw your attention to subsection 93(1), which also talks about the fact that we can keep young people in youth facilities until they're 20. Both of these sections are definitely in keeping with the philosophy and principles of the YCJA, and we should really underscore that.

However, I don't like section 92, which talks about the ability to make an application to the courts if it's in the best interest of the young person and the long-term protection of society to transfer that young person to an adult facility. I very much believe if we didn't have that provision we might have prevented the death of one of our New Brunswick youth, Ashley Smith, who took her life in one of our adult correctional facilities.

A University of Pennsylvania criminologist was quoted in the media in the 1990s referring to young offenders as “super predators”. John DiIulio predicted that the crime wave of the 1990s was going to be much more serious, and super predator became the common term for referring to young offenders, with a flurry of very punitive policies in the United States around dealing with young offenders. More recently, he's expressed his regrets for the characterization of young people in an article he published in *The New York Times*, which I was pleased to see, where he acknowledges that his predictions about the growing threat of youth crime did not come to pass.

I'm worried that the government, with its proposed amendments, is falling into the trap of what happened in the United States in an effort to do something because we believe Canadians want something to happen, and that we gain our knowledge from the few sensational cases that draw utter disgust from the public. Moral panics, as we have seen through history, are transitory and will subside over time. This is not to diminish the pain and the anguish that is caused to the victims and the families of those who have had a horrendous incident happen to them. On the contrary, I really strongly believe in the value of making sure that we match our interventions for those young people who come before us in such a way that we know that we're basing it on evidence and that we're doing the best possible thing for our young people and for the victims and the families of those young people who have come before our courts.

● (1540)

We know from our research evidence that providing too high a dose of correctional intervention to low- or moderate-risk offenders will actually increase the propensity for crime. We must ensure that we continue to promote this evidence-based practice and the idea that we think about the proliferation of news stories and take them into account. That's the dose the public is getting about what we do with our young people.

The United Nations Convention on the Rights of the Child is very clear on the idea of privacy, and that we need to be thinking about not publishing names in newspapers. I'm nervous about the idea of lifting the ban on that, because I see that as in direct violation of the UN Convention on the Rights of the Child.

I'm also concerned about media attention and recent marathons on the A&E entertainment network on *Beyond Scared Straight*. They're publicizing a show that talks about a program that we know from academic literature doesn't work. The public is going to see that as something that is cost-effective and perhaps would help in terms of reducing crime by young people, but we know that—

● (1545)

The Chair: Unfortunately, I'm going to have to cut you off there. You're over your time already.

Prof. Susan Reid: Okay.

The Chair: You can certainly get some of the additional points out when you're asked questions.

Prof. Susan Reid: That's fine. Thank you.

The Chair: We'll go to Mr. Wamback.

Welcome back to our committee. You have ten minutes.

Mr. Joseph Wamback (Co-founder and Chair, Canadian Crime Victim Foundation): Thank you very much, Mr. Chair and members of the committee. It's my honour to be here. My objective today is to be brief.

My concerns are the same as all Canadian families: healthy, safe communities where we can grow and prosper without intimidation and fear and where we provide early identification and support for those who are predisposed to violent behaviour, and also where we can protect the most treasured of Canadian values, our birthright, our most basic human right, which is the right to life. Today's debate is not about kids who are making dumb mistakes, and any attempt to suggest that today's debate is so masks the truth. This is not about the great majority of young Canadians who find themselves before a court.

Modifications, as anticipated by Bill C-4, should not be confused with social problems or social policy. I believe these are mandatory changes to a criminal law measure that is probably the most understood legislation in the history of Canada. The debate is about the most serious violent young offenders in Canada, who represent a small minority of all those who become involved with the justice system, a small minority that has created a storm of discussion, fear, and debate, which has confused most Canadians. This debate should not be limited to the sanitized world of academics, and it must include all Canadians, especially those who have lived with violent crime by young offenders, who have witnessed the body bags, and who have lived with the aftermath and consequences of murder, community intimidation, and the life-altering effects of gang culture and violence.

This debate is about trust.

Over the last 11 years I have met with police officers, crowns, and judges who are really the quarterbacks of our judicial system. They have expressed their frustration at the limitations of the current legislation that has no provision for dealing with the worst of the worst.

This debate is about trust, by providing our judiciary the tools and latitude necessary to make the right decisions for the safety of all young Canadians while maintaining our values and principles of judicial independence.

This debate is about trust in our judiciary to provide protection for our children, while at the same time providing future opportunities for both the offender as well as the victims. My expert advisors tell me it takes a minimum of three years of intensive clinical intervention to give hope for success in the treatment and habilitation of violent young people. Longer sentences allow social engineers and psychologists the time necessary to provide the clinical intervention to assist in the successful rehabilitation and reintroduction of the violent young offender back into society, while at the same time reducing recidivism and keeping violent repeat offenders off the streets.This does not happen in the existing system where sentences for extreme violence are discounted and plea bargained away and, most importantly, where counselling is not mandatory within this system.

Currently, we're doing nothing more than babysitting, and we're not doing a very good job at that. The existing IRCS program—intensive rehabilitative custodial sentence—that provides $100,000 per year for violent young murderers is a massive waste of money and a failure, because nothing is mandatory for warrant expiry. There are numerous examples that I can tell you, which we have been personally involved with, where somebody who has graduated from the IRCS program, within two weeks of release, has murdered another child.

On the statistics debate, I ask you not to rely on the current StatsCan statistics in your decision-making process. I ask you please to take the time to read the Macdonald Laurier Institute report, an excerpt of which I have provided both in English and in French for everybody on this committee. I encourage you to read the full report and to continue this debate about the revisions before you without the distraction of misleading statistics. The question we've all been asking is whether the Youth Criminal Justice Act, in its current form, is an effective tool for reducing crime. We did have, statistically, the highest incarceration rate in the world. But in so many cases, one individual was counted four times in that statistical database.

● (1550)

The average length of sentence in Canada was 30 days, compared with the average length in the United States, which was measured in years. Again, that's a statistical anomaly that has been used by many proponents trying to make the YCJA or the YOA different from what it was, to justify their reasons.

The simple answer to that question is breaches, which were separate indictable offences under the Young Offenders Act. Forty-seven percent of the statistical database under the YOA were breaches: breach of recognizance, breach of bail, breach of probation. When the Youth Criminal Justice Act eliminated breaches as an indictable offence, why did the crime rate not drop by 40% to 50%? It didn't. It dropped by about 32% to 35%. That's telling me that youth crime was going up, not down.

In the last 11 years, I've travelled across Canada and I've spoken to thousands of victims, as well as victimizers, and their families. Without exception, everybody wanted change—positive change—to protect their families. In 1999, I created a petition, which you have before you in both English and French, while my son lay comatose in the hospital from a violent attack by 14 young people. At the time, in 1999, there was nothing Machiavellian or hidden in its content, nor is there today. Items one to nine you have before you. That petition has been signed by 1,300,000 Canadians. I believe it has the distinction of being one of the largest petitions in the history of this country.

The issues today are as valid as they were 12 years ago. As a matter of fact, I believe they almost parallel what is in Bill C-4, with the exception of things that I believe we need in addition, which are mandatory counselling, mandatory intervention at an early age, to try to help our young people.

I hear so much about identification of serious violent offenders and pre-trial custody and bail. The people who hurt my son had 56 prior charges. The young man who killed, stabbed, Joey Tanner had 29 previous convictions for violent offences. Joshua Hunt, Nicholas Chow—and the names could go on and on. These crimes, these murders, were committed by individuals with a violent history, and the system is not doing anything to help them and it is not doing anything to protect innocent kids. It deals with the length of sentence. It deals with the ability of our institutions to be able to provide effective rehabilitation efforts, if that is possible, and it deals with the requirement to protect innocent children from those who are extremely violent.

Most of the victims of young offenders are themselves young people. I believe the number is around 90%. Lozanne and I have spoken directly to over 30,000 teenagers in the last few years. The message they give us is consistent from large cities to small communities: Why won't anybody help us? Why is it okay to hurt another person? Why do bullies and victimizers get all the help? Why does no one listen? I don't have answers for them. I'm hoping this government, or whatever government follows, will have those answers.

Ninety percent of youth crime today is unreported and, according to expert advisers on my board of directors, results in massive psychological trauma. The cost to Canada and our society is immeasurable—dropping out of school, family breakdown, unresolved anger and frustration, and ultimately revenge and becoming involved in the judicial process.

We support the clauses in Bill C-4. I hope and I'm prepared to answer any of your questions, as is my wife.

● (1555)

I promised you today to be brief, and I do apologize for becoming emotional.

It's been 11 years, and we see today—just last week—that what happened to our son has happened time and time again in our country. It has happened, not because of a stupid mistake, not because of a minor crime, but because we as a society are unable to deal with violent and repeat offenders.

I'm hoping that everybody in this committee looks at this for what it really is. It is not a partisan political issue; it is about protecting the rights of Canadians and our families.

Thank you.

The Chair: Thank you very much for that testimony.

We'll move now to Mr. Gordon Penner.

You have 10 minutes.

Mr. Gordon Penner (As an Individual): Hi. Thanks for having me. I don't have a huge report like the other two. I haven't been in the business that long. But I will relay my personal story, and hopefully this will shed some light on where I'm coming from.

In 2006, my son Jesse, 20 years old, a Douglas College student, was murdered by a ten-time convicted young offender. Most of his offences were for violence. He was released to a family that was described in court as the mother having her issues and the father being indifferent. And lo and behold, no one came forward with information that we found on Google—the 18-year-old brother, who was a cocaine addict at the time, was also out on bail for murder, for a home invasion in Burnaby that he did with his cousin. They released this boy to the custody of that dysfunctional family.

When I read the sections under pre-sentencing detention in the Young Offenders Act, I believe the language is already there. Why wasn't it carried out?

I probably have more questions than I have answers, but I can tell you it's been a nightmare for us because nobody seems to want to talk to us about these issues. We find that very disconcerting, that nobody wants to talk about a mistake that happened through the system.

If these kids were being assessed and evaluated properly, then they probably would be detained as well; therefore I don't think we would have to start naming kids who are on the border, who might fall through those cracks.

This boy who killed our son...it was random. As a matter of fact, 90% of the people at this house party didn't even know this kid. I don't know that naming them is going to do anything. On the issue of privacy and not naming these kids, I don't think that naming them is going to be the answer. I know one thing: privacy under the youth policy is being used to stymie my family. I cannot get my provincial government to discuss these issues with me. They've told me that he was a young offender and they won't discuss his issues or his family's issues.

If we can't find out why this boy was released, and nobody will talk to us, and the laws that are in place are not carried out, how would I think this new bill would do anything to help us? You're talking to a skeptic, at best. We've been dragged through this quagmire. It's a nightmare. We've had no assistance whatsoever getting through this mess. It's been quite an experience for us to go through the system and see all the things where the system broke down and dropped my family on its head. I think that's a sad state of affairs and a black eye to the criminal justice system.

In order for me to be able to speak with my provincial government, I would have to hire a lawyer. I would like to know why I have to be able to afford justice.

This boy has a medical history, by the way, and I couldn't find that out until I went to his detention review hearing. He was hit in the head by a vehicle when he was 8 years old and he has major frontal lobe damage. He was hit again by a vehicle when he was 10 years old and had a second frontal lobe damage.

He had 10 serious convictions by the time he was 16. He was kicked out of school at the age of 11, for violence. He was refused entry into an outreach program because of his violence; he was 13 at the time. I don't know what he did between ages 11 and 13 as far as education goes, but you can't help but think that he would be on the radar. I'm sure that most children in this country who aren't in school at that age are on the radar. At 13, he was found in possession of a stolen car. At 14, he had arson, times two, without regard to human life. He broke a liquor store clerk's hand with a baseball bat. He smashed a kid on the neck with a two-by-four-sized tree branch, at a sky train station, to rob him.

Now, do you think there might have been a few hints of escalation there?

● (1600)

My family and I have sat and had very many cheerful discussions about these issues. As far as we can see, the language is there that could deal with these kids.

It seems that there's a lot of confusion right across the country on how this whole system works. There seems to be a lot of issues on interpretation by different jurisdictions. The victims are just the meat in the sandwich.

That's about all I can really say at this point.

Thank you.

The Chair: Thank you.

We'll open the floor to questions now.

We'll begin with Mr. Murphy for seven minutes.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

I want to thank the witnesses for giving us their testimony.

First, I want to say to Mr. Penner and his family, to the Wambacks and their family, on behalf of the Liberals and probably all committee members, we understand—we can see it in your faces—that this is extremely painful for you. You have lived the nightmare of victimization. We understand that, and we feel for you on that.

What we're trying to do here is improve the law with respect to youth criminal justice. Over many hearings, listening to many witnesses, we seem to be grappling with the fact that the act itself just prescribes what the offences are and what the penalties will be. It doesn't at all address—that's not the way we do laws, and it's wrong—what kind of treatment, what kind of success or benchmarking there is on the treatment or rehabilitation or counselling that these people, the very worst offenders, should receive when incarcerated or when under supervision. That's an obvious gap that goes a long way to explaining how the law itself, whatever we do with it, is not going to answer the question. I think we all know that.

I am very interested, Mr. Wamback, in what you said about three years and how the experts you have consulted say that's sort of a benchmark or a period at which clinical intervention works. We heard evidence just this week from another victim of this type of crime, who also mentioned the three-year period. Whether it's incarcerated clinical intervention or supervised clinical intervention, I'm interested in what your experts told you about that. If you had further material, we could probably get the clerk to receive it from you.

Just briefly, because I do want to get back to my St. Thomas friend on other issues, could you tell me what you meant by that?

● (1605)

Mr. Joseph Wamback: The information was given to me by my directors, who are professors of psychology, and a dean of psychology, at Canadian universities. They also have their own private practice. We've discussed ad nauseam the issues relative to young people, crime, predisposition to violence, and criminal behaviour.

The comment has always come back that in their estimation and in their experience—and these are people who have been in that particular area of medical practice for decades—it takes a minimum of at least three years of intensive clinical intervention, which means at least once or twice a week, to be able to change the predisposition or be able to change the behaviour of that individual.

Mr. Brian Murphy: Do you think incarcerated youths, the few who are, are receiving this type of clinical intervention?

Mr. Joseph Wamback: Absolutely not. That's one of the things we identified back in 1999 and continue to try to identify today to anybody who will listen to us. By housing individuals in youth facilities without making clinical intervention or programs or rehabilitation programs mandatory, we are not achieving any objective. It is not mandatory.

We speak to prison guards, to jail guards, to workers within youth custodial environments who have told us time and time again that they get the finger and they're told to shove it when they ask a particular individual to attend their counselling classes. There is nothing they can do; absolutely nothing. There is no mandatory requirement for completion on warrant prior to warrant expiry.

I think it would be a massive step forward in releasing individuals back into our community to give them—and society—at least a greater chance of reintegration without recurring recidivism.

Recidivism under young offenders is an almost impossible benchmark to try to ascertain, because no statistics are kept. All we do is we look at 56 prior convictions, 29 prior convictions, 40 prior convictions. We don't know. But it doesn't take a rocket scientist to figure out that if we cannot change those individuals and rehabilitate—or, let's face it, habilitate—those individuals, we are not solving any problems; we're just making things worse.

Mr. Brian Murphy: This might be a good time to segue to you, Professor Reid. I lived for a year at Holy Cross House when I was going to law school, so I have a fond spot for St. Thomas and the good work that former conservative MP Dennis Cochrane is doing there as chancellor.

In any event, there may be some common ground in the idea of clinical work towards rehabilitation, whether through diversion or incarceration, and whether mandatory or not—and those are good questions—in that I think we recognize that it could work.

Getting away from the mandatory aspect, what are your thoughts on the type of treatment and the length of treatment? What is required to turn someone around? I heard that evidence from a victim's group, about turning a young person around if it's possible. It sounds to me, Mr. Penner, as though there's a whole public health or a mental health issue as well. With your set of circumstances it may be awful—it is awful—but it may be quite different from the hopeful rehabilitative goal that I think you espouse.

Prof. Susan Reid: Thank you very much.

I think you have hit it on the head in terms of the common ground that we do share. Let's be clear: our youth facilities are there for punishment. They're not there for treatment, and being held in a custodial facility does nothing more than punish young people. We know that young people with highly complex needs require a different kind of treatment and that our young offender facilities are full of people with mental health needs for whom treatment is not mandatory. I would argue that there aren't services even if they want to access them. That's an issue as well.

We have a number of programs in our community facilities, and if we had sufficient resources tied to intensive mental health treatment over a period of about three years, we would be better served. Some people do need to be in a closed facility for a period of time. But let's not kid ourselves into thinking that being in a closed facility is for treatment. It's for punishment. I agree with the three-year term. In fact, that's why we had three years in the original Young Offender's Act.

● (1610)

The Chair: Thank you.

We'll move to Mr. Lemay for seven minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

And thank you to the witnesses for being here today.

What I have to say is directed at parents and to Mr. Penner, a father. I appreciate what it took for you to come here today to describe what you went though, what society did and, above all, what it did not do to help parents and victims who have gone through the same thing you have.

I can tell you that I argued many a case in youth court, and I met a number of parents such as yourself. The problem I have, and I say this in all honesty, is that everything you just mentioned is in the current act. Everything you are asking for is already in the current act. It would not have to be amended or revised. Everything is already there, I can assure you, in sections 38, 39 and 40 of the current act. I have read them and argued cases relying on them. It is all there.

The question we need to ask instead is why were you, the parents of these children, not informed. There is a problem somewhere. I am being completely sincere. When you read the specific sentences set out in sections 37, 38, 39, 40, 41 and 42, everything is clearly laid out. It's all there. What really concerns me, what is so unfortunate here, is that the courts do not seem to be using them.

I cannot speak for British Columbia or for any other province besides Quebec, but I can tell you that the crime rate has gone down. Yes, violent crimes are still committed, of course. And yes, we still have street gangs, as Mr. Petit will probably tell you in a few minutes. Yes, that is true. Nevertheless, everything is already in the current act. I hate the fact that you cannot access the information you want. And I say that with all sincerity.

Do we need to amend the act? Do we need to include parents? Do we need to notify you and keep you informed, as set out in the current Criminal Code? The Criminal Code contains specific provisions that allow victims—such as yourself—to appear before the court and tell your stories.

I won't take up any more time with that. I will get to my question. This is for Mr. Wamback and obviously Mr. Penner. I would ask that you keep your answers brief, and you can have the rest of my time.

Why do we need to change the legislation to address your concerns when everything is already there? What is missing? What should be in there?

I had clients who delighted in going before the juvenile court under the Young Offenders Act. They would have loved to have their names posted everywhere because they would have come off looking all thuggish or tough. I am not convinced that amending the Criminal Code to make their names public would be such a good idea.

Mr. Chair, I am not sure how much time I have left, but I will give it to Mr. Penner and Mr. Wamback, because I want to hear what they have to say in response.

[*English*]

Mr. Joseph Wamback: Thank you very much, Mr. Lemay.

Your experience that everything we're asking for is within the legislation...I find that I'm incredulous, and I'm pleased that you did find that, because all of the lawyers, legislators, and advisors we have spoken to are telling us that it is not, and it is our own personal experience that it is not. I'm not a lawyer, so I'm not going to debate with you; I'm an engineer. But we do not have the concept of deterrence and denunciation in the existing legislation. I believe that deterrence and denunciation, meaning that "you do that and this will happen", and societal denunciation, meaning that we as a society find that particular act or that particular offence so offensive that we need to provide a sanction against that....

One of the major problems we have with the Youth Criminal Justice Act is that, in my very, very humble opinion, it is too lengthy...it takes three and four years to bring a violent young offender before a court. In that three- or four-year period, witnesses lose their memories, testimony is lost, intimidation mounts, witnesses disappear, and the sanctions ultimately mean virtually nothing.

As far as publication bans for names are concerned, we do that currently in aboriginal sentencing circles. As far as kids on the street today are concerned, when somebody commits an act of violence, I can guarantee you that everybody in that community at that age level knows exactly who that is. The people who don't know are the police and the parents of those children.

The boys who hurt my child had 56 prior charges as young offenders, including violent charges. Had we known about that in the community, perhaps we could have taken steps to protect ourselves or our children.

There's a young man in London whose name is Almeida and whose five-and-a-half-year-old daughter was abducted, raped, bludgeoned, and murdered by an 18-year-old who had just finished a warrant expiry for sexually abusing young children. He was moved into the community, nobody knew who he was, and his acts of violence were shrouded in secrecy. The police didn't even know who he was and where he went, yet he committed an act that took another child's life.

When somebody goes out and commits an act of extreme violence—including rape—in our communities, they come back to our schools. The teachers and the parents don't know who they are, but the kids do. They come back with a bigger batch of courage than they had before they left and they're heroes among their communities.

Publication of names also deals with the embarrassment, the embarrassment of the community and the family for individuals who perpetrate acts of such violence against humanity, and I think it's absolutely vital and very important.

● (1615)

The Chair: Thank you.

We'll move to Mr. Comartin for seven minutes.

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

Mr. and Mrs. Wamback and Mr. Penner, I echo Mr. Murphy's comments in terms of the pain and suffering you've gone through and the way our criminal justice system has failed you. Because that's the reality: it has failed you.

Mr. Wamback, I guess I want to take issue.... I did this on Monday with other victims of abuse and violence by young offenders. I've studied this. I am a lawyer and have spent a lot of my career, early on in particular, working in this field, and on both sides.

When I first saw this legislation, my initial reaction was to say: "What are we doing? This doesn't help." I assume you've read the Nunn report—

Mr. Joseph Wamback: Yes.

Mr. Joe Comartin: —and Justice Nunn's comments about the need for us to deal with that specific group of the violent offenders, and particularly the repeat violent offenders. This legislation, as far as I can see, really doesn't advance that. I'll make that as an opening comment.

Here is what I would like to ask you. You were talking about the prosecutors and the police who were frustrated with the system. We had three senior prosecutors come before us, from Alberta, Manitoba, and Nova Scotia. These are people who are specifically responsible for prosecuting young offenders. They said there are three areas in this legislation that in fact are going to make it more difficult for them as prosecutors.

I'm talking about Bill C-4 that's before this committee right now. They said that it's going to make it more difficult for them to be able to prosecute young offenders, including maintaining them in pre-trial custody, what they do in terms of holding them after sentencing, and also in applying adult sentences to them. In all three of those areas, this legislation is actually going to make it more difficult for them to use this against that 5% to 10% of all the young offenders.

So my question is, have you looked at it? Do you have any impression about...? I'm sorry, I should finish. They were before us on two different occasions. In between, they actually sent this proposed amendment. To this point, the government has refused to even talk to them. I shouldn't say "refused", but simply "not talked to them". It appears that they're not going to move these amendments to this legislation, in spite of the fact that it's so clear that this would be the one major step forward in terms of dealing with that 5% to 10% of those violent offenders.

So, number one, do you know about the amendments, and two, if you do, do you have any comments?

● (1620)

Mr. Joseph Wamback: Yes, I do. I'll approach them individually, as the pre-trial custody issue is certainly to be used in a discretionary manner. It is not going to place in pre-trial custody somebody who has committed minor offences and whose offences are non-violent. Where an individual who has committed murder is not held in pre-trial custody, I think it's an absolute travesty and a mistake that could cost other lives. We've seen it happen before. We've seen it happen in so many cases that we believe in, and I would support with my life, pre-trial custody for extremely violent individuals.

On your second point, this isn't mandated or mandatory. This legislation is only expanding the options that are available for both the crown and the judges to make decisions and maintain their judicial independence from the government. I'm not a lawyer, but I don't understand how a crown is going to say that seeking an adult sentence is going to create additional problems for him. An adult sentence under the current Canadian Criminal Code can actually mean less time in a custodial environment.

Mr. Joe Comartin: Bill C-4 limits, both in terms of placing people...even when there hasn't been a murder. We're not talking about moving them into the adult sentencing category. But with a violent offender, it's going to be more limited if this bill goes through than it is now. Use of adult sentences is going to be more limited than under current legislation. That's the effect of Bill C-4, and that's what those prosecutors told us. They're the ones who work in the field. I know this area fairly well, but they are the experts. They're the ones who do it on a daily basis. That's what they're telling us. So Bill C-4 is going to make their jobs tougher in those two areas, as well as in pre-trial custody.

Mr. Joseph Wamback: I don't have the advantage of seeing the documentation you've obviously seen. I believe we have to provide the judges and the prosecutors in our communities across this country with greater latitude to exercise discretion and be able to ensure that extremely violent and repeat offenders are dealt with effectively to provide for a rehabilitative program in a custodial environment, or to keep them off the street so they don't hurt other people.

Mr. Joe Comartin: I think I can say for everybody here that we all agree that's really the motive. It's just that Bill C-4 doesn't do it.

Professor Reid, I have just a quick question. The whole issue of record-keeping is bothering me. I've had mixed responses to...sorry, for extrajudicial processes. I didn't understand the point you made about your discussions with police officers. Are they saying they can do it, or are they saying it's going to be even more difficult for them to be able to do that?

Prof. Susan Reid: They agree with the proposed amendment to be able to keep track of records. The officers welcome the opportunity to keep track of them. For example, if a young person received a caution in New Brunswick, in Saint John, and then moved to Fredericton, they would be able say, “Okay, you've already had a caution.”

My comment is that this is pre-conviction, and the whole purpose of an extrajudicial sanction is to do something outside of the system. The title of the report I wrote for the Department of Public Safety in New Brunswick is called “125 Warnings”. It comes from a comment by probation officers that if it's the right solution for the young person for a minor offence, and taking Johnny back to his home or giving him a warning is the best solution, it doesn't matter if it happens once or 125 times.

The Chair: I have to interrupt you there.

Members, you'll have noticed the bells are ringing, which means we have votes in approximately half an hour. I need to seek consent to continue with the questions for another 10 or 15 minutes.

Some hon. members: Agreed.

The Chair: Your time is up....

Mr. Comartin.

● (1625)

Mr. Joe Comartin: Mr. Chair, what are you proposing to do in the second hour?

The Chair: Unfortunately, if we're going to votes, unless we get consent to continue to sit after 5:30, we're done.

Mr. Brian Murphy: Will we come back after the votes?

The Chair: Yes, we will come back after the votes and we can decide what to do at that time.

Mr. Woodworth, you have seven minutes.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much, Mr. Chair.

Thank you to all of the witnesses. In a system like ours it isn't necessary that we agree on everything, but it is necessary that we listen to each other, and I'm grateful that all of you are here to give your evidence.

I want to begin by saying, Mr. Wamback, that you apologized for being a bit emotional, and of course that's a totally unnecessary apology. In fact, I take the emotion that you feel after 11 years of what I imagine must be a bit of a frustrating observation of this problem to be proof of the urgency, proof of the need to do something different, and we need to do something different immediately. So not only do I not require an apology, but I thank you for that.

I also want to say that I believe you are completely right in saying that the focus ought to be on violent repeat offenders. Indeed, that's what this Bill C-4 is intended to deal with—violent repeat offenders. It's very targeted and focused on that.

I want to reassure you that whatever the faults of the statistics are—and I don't want to try to disagree with you about your concerns regarding the statistics—the statistic I have is that in 2009, and this is from the enhanced universal crime report survey—47,271 youth were accused of violent crime. Whether that's going up or down is completely irrelevant to me. That number is too high, and it's further evidence of the need to act immediately.

I'm guessing, but I'll just ask you to confirm something for me. Am I right in saying that your 11 years of experience and observation on this probably suggest to you that things are getting worse, not better?

Mr. Joseph Wamback: Let me give you a small anecdotal answer. When my son was almost murdered almost 12 years ago, he made national headlines. He was in every paper across this country. They made a movie about the assault and the rehabilitation of my son. Today, young people are being kicked to death and being stabbed on virtually a daily basis, and it doesn't even make the back page of our newspaper. To me, that means we're becoming desensitized, and it's happening so often that people don't care anymore. The only people who care are people like Mr. Penner and families who are involved in it, who are dragged into this system.

Mr. Stephen Woodworth: What that means to me as a legislator is that this is an urgent problem that can't wait and that we need to take action. Something like Bill C-4, which is targeted at violent repeat offenders, is a highly necessary step, even if it's not the whole way.

If I may, Ms. Reid, I'd like to address some questions to you. You may surmise from my comments that I probably don't find myself in agreement with everything you've said. I hope you won't mind if I'm a bit probing, because I'd like to understand the extent of your knowledge on this.

Were you aware that in 2009 there were 47,271 Canadian youth accused of violent crime?

Prof. Susan Reid: Absolutely I was.

Mr. Stephen Woodworth: You were aware of that, okay.

I was intrigued by your use of the phrase "evidence-based decision-making", or something equivalent. You'll forgive me, but I have to say that when I hear that phrase, I usually find out it means not that there isn't evidence but that the evidence that exists just isn't acceptable to the person who used that phrase. So I want to ask you, are you familiar with the Nunn commission?

Prof. Susan Reid: Absolutely.

Mr. Stephen Woodworth: All right. So you're aware, of course, that Commissioner Nunn heard evidence on this subject?

Prof. Susan Reid: I'm talking about evidence-based practice, but yes, I am.

Mr. Stephen Woodworth: Well, I'm talking about evidence-based recommendations and evidence-based legislation. I'm told that Justice Nunn heard from 47 witnesses in coming to his recommendations. Were you aware of that?

● (1630)

Prof. Susan Reid: Absolutely.

Mr. Stephen Woodworth: We also had evidence the other day, by the way, from the reeve of a rural municipality in Saskatchewan who said that the evidence his council has gathered includes, for example, the observation that there is a hesitance to place custodial sentences upon young repeat offenders. Are you aware of evidence like that from Canadians across the country?

Prof. Susan Reid: Am I aware that there's a hesitancy?

Mr. Stephen Woodworth: I mean a hesitance by courts to place custodial sentences upon repeat young offenders. Are you aware that Canadians across the country are accumulating evidence of such observations?

Prof. Susan Reid: I'm not sure that kind of a comment is what I would call evidence.

Mr. Stephen Woodworth: All right, but you can understand that as a legislator I have to call it evidence, and I have to listen to the observations that Canadians across the country are making. Is that understandable to you?

Prof. Susan Reid: Absolutely, that's understandable.

Mr. Stephen Woodworth: So, for example, when I hear that the residents of this municipality in Saskatchewan have observed a tendency to grant repeated escalating periods of probation or community-based sentencing resulting in the immediate return of young offenders to dysfunctional situations, you would agree with me that I can't simply discount that.

Prof. Susan Reid: No, but I don't see that as evidence in respect of procedure.

Mr. Stephen Woodworth: That's right, and that's my point. When we talk about evidence-based decision-making, it sometimes comes down to a question of what evidence we want to accept and what evidence we don't want to accept. But as a legislator, I can't simply ignore the evidence of the 47 witnesses whom Justice Nunn heard when he came to his recommendations, nor can I ignore the evidence of Canadians across the country who see repeated problems in the implementation of our youth criminal justice system. Therefore, when we come to what are focused and targeted procedural improvements proposed in Bill C-4, I need to rely on that evidence. That's simply the point I wanted to make in our conversation, and I appreciate your letting me make it.

Do I have any more time?

The Chair: No, you don't.

Before we allow our witnesses to leave, I want to raise this with Mr. Wamback. Mr. Comartin had suggested that three attorneys general of the provinces in Canada had raised concerns about the legislation. I wanted to let you know that those were technical amendments. They had identified a couple of items within the legislation that seemed to produce a result contrary to what was intended. Those attorneys general support the general direction of this bill, so I wanted to make sure that this was clear. Certainly, I don't recall those attorneys general speaking out against this bill, but they did want to raise those technical amendments. I would expect there would be some amendments coming forward to address them.

Mr. Joseph Wamback: Mr. Chair, your comments to me now make sense.

Thank you.

The Chair: Thank you.

We will suspend until the votes are done.

Thank you.

● (Pause) ●

● (1710)

The Chair: I reconvene the meeting. We're continuing our review of Bill C-4, An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts.

We have three witnesses with us. First of all, representing UNICEF Canada, we have Marvin Bernstein, chief advisor, advocacy. Welcome. We also have, representing the Association of Families of Persons Assassinated or Disappeared, Bruno Serre, board member and also group leader of family meetings. Finally, by video conference from the beautiful city of Victoria, we have as individuals, Manjit Virk and Suman Virk.

To all of our witnesses, I want to apologize for the delay in getting to you. Unfortunately, we had some unexpected votes, so we had to suspend the meeting for some 20 or 25 minutes.

Your opportunity to provide testimony today is going to be limited. I'm going to provide each of you with five minutes to present. Unfortunately, we will not have time for questions, due to the vote.

Why don't we begin with Mr. Bernstein? You've got five minutes.

Mr. Marvin Bernstein (Chief Advisor, Advocacy, UNICEF Canada): Thank you.

I'll just indicate that there is a full submission not yet translated that will be coming to the committee. There are some summary notes provided that I believe have been translated. There is a UNICEF Canada position statement that was just formulated last night. There isn't enough time to go through it in my opening remarks, but that can be transmitted to the committee.

I appreciate the opportunity to be here, even in an abbreviated capacity. I did want to indicate that I have 28 years of child welfare experience in the province of Ontario, in various capacities. That's outlined in the summary notes. I recently spent five years as the provincial children's advocate in the province of Saskatchewan, as an independent officer of the legislature. I then came back to Ontario and have been appointed as the chief advisor, advocacy, with an emphasis on our Canadian children, and that position started roughly six months ago.

I did want to indicate that I participated in the round table discussions in Regina, Saskatchewan, in 2008, with the Minister of Justice, Minister Nicholson, and the provincial minister, Don Morgan. I'm very pleased, finally, to see the round table discussions' roll-up. That's very consistent with the tenor of the comments made in the province of Saskatchewan.

I also wanted to reinforce the point and to follow up on comments made by Kathy Vandergrift. She testified before this committee on June 10, 2010. At that point she referenced a Senate committee report, “Children: The Silenced Citizens”. She said there was some indication by Justice Canada that there is an assessment of compliance with international treaties such as the Convention on the Rights of the Child. I've read through the transcript, and there seems to be some indication on the part of this committee, or some members of this committee, that efforts would be made to retrieve that assessment, or to determine whether or not it existed, and then to provide a copy not only to the committee but to Ms. Vandergrift. When I communicated with her this past weekend, she said she hadn't received any further notification from the committee as to the status of that child impact assessment report.

I raise this because our position—and this will appear in the detailed brief—is that the proposed amendments to Bill C-4, for the most part, would be incompatible and contrary to the principles set out in the Convention on the Rights of the Child; would be inconsistent with recommendations Canada made in the concluding observations by the Committee on the Rights of the Child in 2003; would be inconsistent with facets of general comment 10, which speaks to the issue of juvenile justice. The concluding observations also relate to the best interests of children, and there are concerns in our submission with respect to the proposed amendments in Bill C-4.

● (1715)

So I would certainly urge this committee to make further efforts to secure that report, if it exists, and to determine whether or not there is compliance with Canada's international obligations, having ratified the Convention on the Rights of the Child. If there is an opportunity to provide that report to UNICEF Canada, I would appreciate an opportunity to respond, having considered the report as to whether or not Bill C-4 would be consistent with the human rights obligations that are set out in the Convention on the Rights of the Child.

The Chair: Thank you. Unfortunately, I'm going to have to call it there. You're out of time.

Mr. Marvin Bernstein: Thank you.

The Chair: We move to Monsieur Bruno Serre. You have *cinq minutes*.

[*Translation*]

Mr. Bruno Serre (Board Member and Group Leader of family meetings, Association of Families of Persons Assassinated or Disappeared): Good afternoon, and thank you for having me.

My name is Bruno Serre. My daughter Brigitte was killed on January 25, 2006. I have been on the AFPAD board of directors for three-and-a-half years. I am here for personal reasons, but I share the views of many of the victims who have gone through what I have.

My daughter was murdered by two 18-year-olds, Sébastien Simon and Tommy Gagné. They stabbed her 72 times with a knife and punched her and kicked her in the head repeatedly. On that January 25 night, she had no hope of escape. Sébastien Simon had quite the record, he had a history of violent behaviour and had gone through a number of youth centres beginning at a young age. He has no conscience or scruples. He showed no remorse. Later that same night, after committing their crime, Sébastien Simon, Tommy Gagné and their accomplices went to a motel with a bunch of prostitutes. The next day, Sébastien Simon got tattoos on his forearms that said *Born to kill* and *Born to die*. He had turned 18 just a few months earlier.

I support Bill C-4 because I think we need to do a better job of controlling young offenders so we don't have tragedies like mine happening again. It is imperative to protect the public from repeat young offenders with a history of violent behaviour.

This bill would serve as a useful tool for judges and police officers. It would make it possible to apply extrajudicial measures, which would give society the ability to check up on individuals whose records showed a progression towards violent behaviour. Furthermore, placing a young person whose behaviour had endangered others in detention would be a good thing and, in my view, a deterrent.

Youth who commit serious crimes, such as murder, attempted murder, manslaughter and sexual assault, should be sentenced as adults. Releasing their names to the public would be another way to protect society.

We need to take steps to prevent crime, not just react to it. The association I belong to represents victims' families in Quebec. Many of the victims I meet say we need to impose tougher measures on violent young offenders.

I accompanied the family of young Francesca Saint-Pierre to court. She was a 14-year-old who was beaten to death by a 15-year-old. He was sentenced to seven years, so four years of detention without parole and three years in a detention home. Seven years for premeditated murder. Imagine how her family reacted to that sentence.

Francesca had complained about the young offender in question when they both lived in the same centre. Had he been in detention, this tragedy would probably never have happened. We have an obligation to protect the public from young people with a history of violent behaviour and no respect for human life. Unfortunately, there are more and more of them, and their violence knows no bounds. Bill C-4 may help to deter some of them. One thing is for sure, once in detention, they will have time to think about the consequences of their actions. These are measures victims' families have long been waiting for.

I do not think the status quo is the answer. We have to give prosecutors, judges and police officers tools to ensure that young offenders receive sentences commensurate with the severity of their crimes, not just a slap on the wrist. We have to send a clear message. We have to protect society against youth who are violent repeat offenders.

Thank you.

● (1720)

[*English*]

The Chair: *Merci*.

Now we'll move to Victoria.

Mr. and Mrs. Virk, you have five minutes.

Mr. Manjit Virk (As an Individual): Our story is similar to Bruno's story. Our daughter, in 1997, was killed by her peers and it made national and international headlines. That crime, especially in Victoria, a beautiful city...it was never heard of.

We as victims have suffered over 10 years of a legal ordeal and a quagmire, and we've felt that the system was too lenient for the criminals, especially when Kelly Ellard, who killed our daughter, got appeal after appeal. She exhausted all of her chances of appeal with the taxpayers' money and put our life on hold.

But we are glad that now the government is thinking of giving some attention to the victims as well, not only to the offenders, and I share my sentiments with Bruno that the law has to treat them like adults. If they are doing adult crimes, they have to be treated like adults. Also, when their names are published, people will know who they are so these young people cannot hide behind the law, because their slate will be clean no more.

We are involved with crime prevention in Victoria now. We go to different schools and communities and speak to the young people face to face, pleading with them to try to live a healthy, wholesome life, free from bullying and violence. It has an impact on people. I have also written a book that tells our story. We have developed a DVD, which focuses on young people, their violence and bullying, telling our story. So these are the tools that are very powerful, and I think it's making a difference in young people's lives.

We hope that we'll continue to do that and encourage our young people to inculcate good habits and live a wholesome life, rather than squandering their life on drugs, loneliness, alcohol, and bullying. In Victoria and in British Columbia there is enough awareness of bullying and violence now in the school system, and we are doing our part.

Now to my wife....

Mrs. Suman Virk (As an Individual): As victims of crime, we have found that there has not been enough emphasis on the crimes that are being committed by these young people and the impact on the general public. A lot of children were looking up to the two individuals who took our daughter's life. They have glorified violence by the video games and rap music, so we have to get to what is causing our children to be losing control.

Definitely, I think if we have legislation that addresses this problem, maybe our children will think twice about harming one another. I think we have to speak up, because that's what causes kids to bully. It's because everybody keeps their secret. So definitely I think if a child commits a serious crime, society has the right to know who they are so they can protect themselves. Keeping their identity hidden is not helping the child or anyone else. I think that should be mandatory for all youth who commit serious crimes.

What we've learned is that most of these children don't change. What they do as teenagers they continue through the rest of their lives, so definitely early intervention is the key, starting with programs for youth counselling. We see more and more people with depression and other mental health issues. That should also be addressed for our youth, not just locking them up somewhere, but also giving them the mental help and attention they need.

There's a big spectrum here, but since we're discussing the legal system, I think we do need harsher penalties. If I had it my way, I'd have the legal system go a lot faster, too, because, as my husband said, we have to go through three different trials for one crime. To us that makes no sense, so I hope that can also be addressed.

Thank you.

● (1725)

The Chair: Thank you to all of our witnesses.

Mr. Serre and Mr. and Mrs. Virk, thank you for sharing your stories. We encourage you to continue to do so.

Here in Ottawa we're doing our very best to try to address some of the crime challenges we have in Canada, and your testimony is very helpful as we move forward with this Bill C-4.

Thank you to all of you.

The meeting is adjourned.

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