

Speaking Notes Senate Testimony ...Barry Stuart

Thank you for this opportunity....aspire to respect time granted by not commenting on some of the many changes that are constructive or that will not make a significant difference, but on the changes that are profoundly counter productive to building safe communities. My focus will be on the **cumulative impact of mandatory minimum sentences, restrictions on use of conditional sentences and parole.**

Examine the primary impact of these changes:

From 10,000 feet... to appreciate the big picture ...the shifts these changes will precipitate throughout both the Justice System and the community

From the ground level in communities... to appreciate how these changes will impact the relationships between the justice system and communities

End my presentation by suggesting five recommendations and leave you with one urgent hope.

I hope to further focus my contribution by clarifying what I am seeking.

1. Not seeking more investment in Justice ...I believe we already invest too much in the Justice system .Our funding challenge arises from failing to wisely invest existing funds. All justice agencies have a collective responsibility to reduce public investment in our processes and to prudently use what public funds we are given.
2. Not opposed to severe jail sentences for serious offences, but opposed to excessive reliance on punishment and prison sentences.
3. Seek our justice system to do what it can do best [run trials, investigate and prosecute the crimes that challenge the security of our nation, public confidence in our institutions and the safety of our communities [corruption, white collar and organized crime, gangs, multi jurisdictional crimes, terrorism and serious environmental offences] and leave to communities and community justice partnerships what they can do best.

Observations From 10,000 feet ... the Good News ...clear that the enormous public investment driven by Bill C-10 demonstrates a Parliamentary recognition of the vital importance to our democracy of safe communities ...

The Bad News ...derives from where this investment lands ... at back end of justice system in building more prisons and from repeating the folly of continuing to bet the family farm on the widely debunked myth that punishment can make any community safe. ...The magnitude of the additional public investment in prisons will turn a good intention into a disaster.

From 10,000 feet looking into the future, the magnitude of the additional enormous public investment in prisons and excessive reliance on punishment will generate the following shifts

1. Remove the flexibility within justice responses to crime to adapt to changing times as excessive public investments **in prisons lock in the pattern** of public justice funding for many decades
2. In a era of shrinking public funds the grossly current lack of adequate funding **for victims and community justice initiatives will be reduced and most cases extinguished by successive rounds of austerity measures to maintain the burgeoning costs of crowded prisons....** new, **even highly successful innovations making significant differences** for victims and creating space for communities to assume responsibilities for creating safe communities have always been the first and easy targets for cut backs by line departments struggling to maintain their work force and budgets.
3. More funding on prisons increases current funding imbalance that pays **too much attention on offenders and too little on victims...too much attention on broken laws and not enough attention on broken relationships ...too much focus on punishing and too little on healing**
4. Increase drain of public investment urgently needed to address the **underlying causes of crime...the increasing and, [as experience in other jurisdictions has unequivocally demonstrated] uncontrollable escalating justice budgets driven by a focus on punishment and prisons drains public investment away from** public investments in education, health and economic development ...these are the investments that make for a safe community by making the community members, smart, caring, and involved in the hard moral work of forging constructive connections within the community... connections that build social capital , that produce a village that shares responsibility for children at risk .
5. What we have always known and been told by every study and numerous Royal Commissions and will in the future be told again that it is not evil professionals but the evil systemic deficiencies within justice processes that draws into the justice system net and ultimately into prison **intolerably disproportionate numbers of people that are poor, uneducated, mentally challenged, emotionally abused and members of visible minorities... particularly the abhorrent inexcusable increasing number of First Nation children in State care ,in youth jails and who drop out of school and into substance abuse , into our jails as young adults [46% of the aboriginal youth who drop out of school find their way to jail] and as adults into our prisons. Far too many take their own lives or die violently.**

After years of making the same mistakes that create the same inexcusable parades of the same sectors of society that march into our prisons...we can no longer as individuals or a society hide behind our ignorance wrapped up in tragically misplaced good intentions [particularly now with the hindsight of learning the lessons of Mission Schools] ... it is no longer possible to blame our inexcusable outcomes on systemic deficiencies ...we can no longer divert our personal responsibility for the evils produced by what we are doing in Justice and what Bill C -10 will increase from any one of us unto the systems we work in ...Responsibility now clearly falls upon all of us ...from the citizen who knows better but fails to become engaged... to every professional working in the justice system ...from the arresting police officer to the correction officer who sends on their watch more dangerous people back into communities than arrived at their work site ...and it is very clear that responsibility carries clearly onto the members of our Parliament and Senate for laws and public expenditures that have sustained the calamitous folly of a system driven by punishment and sustained by failing to rely on the best evidence and experience we can muster

EXAMINING THE IMPACT OF BILL C-10 FROM THE GROUND LEVEL IN THE COMMUNITY

Start with a question ...what is the most effective element in making communities safe?

I did not know the answer when I joined the bench in 1978. When I started, amazing teams of justice officials, representing all agencies were dedicated to make our 14 Yukon communities safe. We worked into the evenings and on weekends and collaborated in ways that caused other jurisdictions to marvel ...

We did not know the answer to that question. What is the most effective element in making communities safe ...we thought it was a dedicated coordinated team of public officials ...no not us

All studies and my later personal experience clearly revealed that the most effective element in making communities safe is the community ...

The greater the level of community engagement the safer the community will be.

Without community involvement ...their streets can never be safe. ...

Without communities taking up responsibility for difficult decisions there is no community ...similarly without families taking up responsibility for their family there is no family.

At every stage in the justice system community involvement is crucial

Preventing crime ...informal constructive social connections within communities have since ancient times been the most important element in preventing crime

Solving crime ...not as movies and TV dramas suggest that smart detectives solve all crimes ... even the most brilliant but honest detective will attest that the most effective resource in solving crime is the community ...in fact without the community particularly without a community that trusts and respects Justice officials very few crimes would be reported to or resolved by the Justice system.

Reducing pre trial detention...until the community became actively involved, I and all other Judges had very few reliable options other than detention for many crimes ... detention is sadly not just the last but the only apparently reasonable option from the perspective of the bench.

Particularly in dealing with young offenders when the community is engaged the alternatives to detention are compelling and safe. Most important, engaging families and community at that early point begins a very different journey for the youth.... a journey that leads away from denying responsibility to one that fosters accountability and increases the prospects of rehabilitation.

Diverting cases out of the justice process. . When a single justice official, be it a police officer, prosecutor or Judge is called upon to decide what cases should be diverted out of the Justice system very few important cases are diverted ...

Alone, most Justice officials know very little about the community even less about the accused other than the bad info stemming from the crime and criminal record. From the perspective and knowledge of the single justice official making the decision there is very little professional personal risk in keeping the case within the system and potentially a huge personal risk in diverting the case to the community.... because if the justice system fails no fault will attach to the individual ...the failure will be absorbed as just another systemic failure ...if however the community fails to successfully handle the case the professional will wear the blame for diverting the case to the communityjust one of the many examples of how the community is held to a much more exacting standard for their work than the Justice system!

When the justice system engages a committee of justice and community members in making the diversion system, the risks are shared and the quality and quantity of information to make decisions is enormously enhanced resulting in not just vastly increasing the flow of cases to community justice initiatives but as well to forging partnerships between justice agencies and communities built on mutual trust and respect.

Sentencing ...community based processes dramatically out perform all courts in developing and implementing sentences that change behavior and redress the underlying causes of crime ...the evidence over the past 20 years of innovative community initiatives and of meaningful partnerships between justice agencies dramatically shouts out the need for much greater community engagement.

Addressing the needs of victims ... cannot ignore any more how much we have ignored the needs of victims ...the timing and nature of victims' needs stretch far beyond the resources and skills of the present Justice system...We not only need to create a separate process for victims...a system that operates on harm reduction and operates regardless of whether the crime is reported to or processed through the Justice system.

Rehabilitate offenders ...without community involvement the investment in substance abuse treatment in counseling and in all state provided treatment programs produces limited returns. I spent as a judge an embarrassingly large amount of taxpayer funds in sending offenders off to treatment centers and treatment professionals. Most offenders did the hard work in treatment to unearth and tackle the causes of their addictions, anger or other sources of their aberrant behavior. However if they returned to their communities without community support, all their courageous work in tackling their personal demons and challenges was lost in relapses ...if nothing in their personal environment changed very little in their personal life changed for very long! What a huge difference in the returns on these investments occurred when the community was intimately involved in designing and implementing the plan, and especially in standing with the offender through all parts of the transition made possible by treatment.

Constructive re-entry of inmates into communities ...without engaging communities and families, the process of re-entry is unlikely to be successful. The failure to engage communities at this stage significantly contributes to the intolerably high rates of recidivism.

Numerous community based justice initiatives all over the world have out performed state only justice approaches on numerous fronts.

Much lower recidivist rates ...

Higher levels of success in completing community sentences and probation orders,

Rehabilitation [healing from damage of emotional and substance abuse]

Rebuilding lives of victims and offenders and reconnecting them to their families and communities

Reducing the exorbitant costs of justice .The cumulative impact of community engagement at all these stages of the Justice process enormously reduces the costs in dollars and in lives emanating from an excessive reliance on the State and professionals

I believe any one working on the line in Justice knows that achieving safe communities requires less dependence on professional justice systems and much more investment in community engagement ...community engagement is a necessary precondition to safe communities ...

The view from the street is best understood by the many stories of what happens on the street ...there are many that offer realistic hope and clear guidance for a new future for safe communities. Here are two

1. *Another lesson from Jessie Scarf, a First Nation Elder from Kwanlin Dun, Yukon*

In an early peacemaking circle used to sentence a young man with a long record for prior offences, the prosecutor had properly tendered his criminal record as one of his reasons for opposing a community circle. As with all other documents, a criminal record is circulated around the circle. I noticed when the record came to Jessie; she examined it very carefully and held onto the record. Others I could see wanted the record, but I did nothing. I had learned that Jessie had a very good reason for everything she said and did in the circle. I knew we were all about to hear another sea changing intervention from Jessie. The talking piece finally reached Jessie. Holding up the record Jessie said

'I agree with the prosecutor, this is a serious record of failures...I counted 19 times this young man has been dealt with by the downtown justice courts... you know that means 19 times they had a chance to change this young man... we all know not just the bad things he has done but know the struggles he has had and know the good things he is capable of doing ...what would be so bad if after you Justice people have failed 19 times to let us

have a go to see if we could make a difference ...cause as you say you have failed to do so many times...’.

This prosecutor, as many other justice officials who have worked closely with communities develop respect for the courage and wisdom of the communities that assume responsibility for what happens in their community.

Jessie’s remarks galvanized everyone to work collaboratively on a plan. The circle produced a consensus outcome that avoided another and longer jail sentence. The comprehensive plan included provisions for accountability to the community and victim and addressed the underlying causes of his crimes.

Yes, the offender completed all his conditions, yes, his life changed, and yes he committed a year later another crime, not a violent crime. The community re engaged him. As Jessie often said...

‘Our young people did not become bad over night and will not find the good trail in one day or the new skill to walk on the good trail...our work is never finished ...we never can give up we just continue trying ...there are no disposable people, no one we can simply leave behind’

I know for at least another 10 years there were no other relapses. Communities can perform miracles but not in every case. In more cases than a fully resourced Justice system acting alone, communities do much better in changing the lives of offenders and victims and in making their community safe.

This community Justice program over the next 3 years handled 150 cases [average record of adult offenders involved was 18 prior convictions]. In these cases the prosecutors initial total sentence submissions amounted to slightly over 100 years. After extensive dialogues in each case among all parties including justice officials the total consensus based sentencing plans relied in total on less than 3 years of jail time. The serious nature and frequency of their future crimes was dramatically less than their previous criminal activity. After five years a review of all offenders revealed almost 80% remained crime free. Government reduced funding support several times and has never adequately funded the program to engage even close to its full potential’*They fund us just enough for us to open a door but not enough to be successful ...they fund us to fail’* [Rose Rowlands an early Program Director] Imagine the savings in justice, and social service costs this community justice process saved!

2. John Edzerza Kwanlin Dun members Yukon...the unforeseen benefits of community engagement

In one of the very first peacemaking circles in the Kwanlin Dun Community Justice program led by Rose Rowlands the room was over flowing with community

members and justice officials .The community circle was hearing a case involving a young man who had committed a very serious assault .He had a record for violence and a widespread community reputation for violence. The circle was not progressing very well .The offender kept his head down and said very little, often passing the talking piece. From amidst a large standing crowd at the back of the room a loud booming voice asked the circle keeper if he could speak .The keeper asked him to join the circle and explained how the talking piece worked. When the talking piece arrived at his place he spoke directly to the offender...

' I have been listening for some time back there and watching you ...seeing how you avoid participating ...I know what you are thinking because I once did what you did ...I was not in a circle but in court ... this is not a court... this is your community. You are thinking like you think in court ... you are thinking how can I get out of here as soon as I can... do I have the right Judge to let me off easy ... do I have the right lawyer to speak for me and when will the prosecutor shut up about how bad I am ... wake up ...you are sitting in a circle with people who have known you all your life, will be a part of the rest of your life ... people who care for you and will help you if you reach out to them ...to day is the day you have a chance to begin a new journey with these people ... have a chance here to get help ... you know you need it ...I needed it and never got it'

He then continued to talk about what changed his life from being the widely feared tough guy even a bully... about how he still carried shame from that part of his life ...admitting he still had to make several personal apologies to people he had harmed in his past by fighting. This intervention changed the focus in the circle from **whether** the sentence should be less than 2 years to what would make the person accountable, victim interests served, community safe and address causes of violence by young men in the community.

The new comer to the circle was John Edzera who at that time had not become actively involved in his community. John became actively engaged in the support group formed by the circle for this young man.

Most in the circle came thinking a significant jail sentence was necessary. The final sentence was adjourned to give the support group and the young man a chance to prove the young man could walk the talk of promises made to the circle. He did. Over 5 months he proved he could change. Then came the peer pressure to lead his family and friends in a show down with a long standing rival group over a festering conflict that had reached a boiling point .The young man in the past had been the leader of one faction. He relented to the persistent pressure and armed set off to the show down. John heard about the show down just as the fight was to begin .He immediately attended. In front of all combatants, John spelled out the choices they had ...

'Fight and go to jail ...or find another way and honour your families and communities ...we need you not in jail but in the fight to make our community a better place to be'

John spoke directly to the young man... *'You can go home to your wife and new child or see them through prison bars for many years to come ...what is the lesson you want to teach your son... what is the model you want to be as a father ... do you want to see your son standing here in the future with a bat, knife or gun in his hand to do what you mistakenly see as the right and courageous thing to do ...or do you want him to do what I, your family and all who in the circle who are beginning to believe in who you can be want you to do ... we all want to believe you have the courage to see how wrong violence is and how right it is to go home and attend to your essential responsibilities... to be present every day in a good way for your family...if you could ask your son what do you think he would say ..you know what your wife would say ...you are making a choice not just for you but for all of the people in your family...'*

John walked home with the young man. The fight never happened ...John years later related how the young man remained true to this commitment to his family and community. But this story does not end there and is more about John and other people who engage in community based Justice programs. In my work in communities I constantly encounter community members who believe they cannot make a difference because they do not have the education, the experience, the time to make a difference ...so they remain spectators and lose faith in the justice system ...a Justice system that because the community is not involved is forced or foolishly takes on responsibilities they are not trained or equipped to handle, responsibilities the community is much more capable of handling.

But many like John once they do engage, acutely understand that they can make a difference and that if they fail to become involved a significant difference will not happen. Many others through their involvement in community justice become involved not only in Justice issues but also in many other community issues. John became actively involved in the community circle process and went on to become the second First Nation Minister of Justice .The first aboriginal Justice Minister in the Yukon was 'Mugsie' Margaret Commodore, who before becoming a politician was one of the pioneering local Justices of the Peace ...a vital role that many local people played in the Yukon to incorporate the voice of the community in the Justice process.

I was not smart enough to realize at the outset of using community justice processes that the most important outcome was the creation of a safe place for communities to engage in the difficult conversations about community challenges or that the circle could create effective participatory skills essential for a healthy participatory democracy.

SUMMARY... The primary observation from 10,000 feet and from the street level is clear ...meaningful involvement of all sectors of the community is a precondition to safe communities ...the justice system must create space for and support community involvement...the community voice must be respected to achieve any sustainable improvement in building safe communities.

A second observation flowing from both levels and from my personal experience and the experience of many justice colleagues is that the Justice system without community involvement can often be as hard on those working in the system as it is on those being processed through the system. Conversely, community engagement builds the trust that makes the work of justice officials more successful and more personally rewarding.

RECOMMENDATIONS

Rec'd # 1...Remove all mandatory minimum sentencing provisions, or in very least create exemptions from mandatory sentences and reductions in use of conditional sentences for all matters handled by balanced community justice committees and First Nation Justice systems...

Thus if an offender accepts full responsibility for crime and the community or First Nation accepts responsibility for an offender the focus should not be on how many years in prison are appropriate but rather what measures will render the offender accountable, change his behavior, compensate his victims, serve needs of victims and community and redress the underlying causes of crime. Let the community-based process determine how much if any jail time or other sentencing tools of the court are needed in a holistic plan built on accountability, healing and compensation to victims and the community.

This creates the ability for communities to turn crime into an opportunity to rebuild relationships, and assume responsibility for their community. This can be a much better way for Parliament to ensure safe communities and to reflect a true community voice in the process rather than imposing a standard brand minimum sentence for every offence. Imagine if hospitals were mandated not only to handle every signal case but also to impose for certain serious matters the same remedy for every case regardless of the specific suitability of the remedy!

Rec'd # 2 INCREASE SUPPORT FOR VICTIMS

Give full voice to victims in court and community sentencing process... focus needs to be on healing ... healing broken lives not only on enforcing broken laws

Create totally separate system for victims regardless of whether offender is before the courts or found guilty.

Rec'd # 3...PAY FOR AND REWARD SUCCESS.

We know what works and what does not but each year we increase funding for many things that do not work and reduce funding for what does work ...no one can seriously question the need to adequately fund First Nations and balanced community based Justice committees willing to assume

responsibility. We can, as many other jurisdictions are, question the prudence of investing heavily in punishment and prisons.

We would be much better served in our justice process, if we applied successful business practices to many parts of the Justice system than to persist in relying on the failed policies and practices of our justice system. Accordingly if we are to be faced with Private prisons then let us pay only for success. Private prisons if used should be paid based on number of years their graduates remain crime free and a bonus for their ability to get and keep employment. These private prisons can be run by community groups such as John Howard Society, farm co-ops or any number of community based groups or corporations. They can be as small as 2 or 3 inmates or as large as a few hundred inmates.

All the innovations driven by business practices such as social enterprises and social equity funding emerging in other jurisdictions that engage business practices are reducing dependence on government.

Community justice committees can earn their way from the public savings over time that derive from their involvement. From their work that reduces government costs on a per capita basis, half of this savings should be allocated to the community justice committee, the remainder to government.

Rec'd #4 ...**BEST EVIDENCE TEST** ...cannot afford to indulge political ideas that fail best evidence tests ...more exacting best evidence tests seem to be applied in purchasing military planes than in assessing justice investments.

REC'D #5 AND FINAL HOPE. That the Senate will carry out the work my mother on my first introduction as a child to Parliament said they would ...appointed to decide not on politics but on best evidence, Senators, she assured me do the good work necessary to found political ideas on facts and not just ideology.

In not doing so the Senate will perpetuate the classic government ***wooden headedness*** that the celebrated historian Barbara Tuchman revealed in her famous book the March of Folly. Tracing history from the Trojan Horse to the war in Vietnam, she sets out the all too familiar characteristics of the march of folly that have persistently plagued governments that fail to base key decisions on best evidence:

1. The same decision has been made before and produced disastrous results
2. Every one with extensive experience is strongly opposed and ignored
3. The up side benefits of the decision are minimal and the down side risks enormous
4. There are feasible alternatives
5. Facts are ignored and long standing assumptions and beliefs are not questioned
6. The government making the decision has become powerful and too arrogant to listen to criticism

My final hope is that Senators might read Tuchman's March Of Folly and make their own assessment of whether Bill C -10 is taking us on a March of Folly?

Thank you