

IT'S THE JUDGES WHO ARE FAILING THE JUDICIARY

May 2, 2007

OTTAWA – Wednesday, March 28, 2007: I am one of four persons waiting to speak to the Standing Committee on Justice and Human Rights concerning the judicial appointment process.

The others are Edward Ratushny, professor of law at the University of Ottawa; Mr. Tony Cannavino and Mr. David Griffin of the Canadian Police Association; and Mr. William Trudell of the Canadian Council of Criminal Defence Lawyers.

Each of us will have 10 minutes to make a case for or against the inclusion of police representatives on Judicial Advisory Committees.

The following is an abridgement of my extemporaneous testimony.

What makes me uncomfortable about being here is that judges generally never speak at all after they leave the bench. They close ranks, and they don't admit that there are problems in the criminal justice system.

I worked for 26 years in the provincial court of British Columbia at 222 Main St. It is a criminal court with 20 judges and it deals exclusively with criminal cases. What I experienced in 26 years was a steady diet of people appearing before me, one after another, an endless conveyor belt bringing criminals of every kind and lawyers of every kind. As far as I'm concerned, there are and always will be criminals among us. There are and always will be violent people who are either sociopathic or psychopathic, and some who are simply swindlers.

In my time as a judge I encountered police officers, both as witnesses and informally in our public coffee shop, at retirement functions and the occasional funeral.

In the first two years I was a judge, an RCMP officer was gunned down at the detachment in Richmond, leaving a pregnant wife and two small children. I understood then and forever after that police are an absolute in the criminal justice system. I say right out front that they are more important than judges and they are more important than prosecutors. Nobody dials up 9-1-1 and asks to speak to a prosecutor or a judge.

Upon retiring, I wrote a letter expressing my respect for the police force of Vancouver, particularly constables on patrol and officers having special street duties. They are the real police. To use the vernacular, they do the grunt work. I said: At times they are foot soldiers in a dirty and dangerous war against violence, property crime and predatory drug trafficking. These men and women – working in a world of harsh reality, are the back-bone of the criminal justice system. And more than that, they are the only ones who risk injury and even death each time they go to work.

I'm mindful of Sir Robert Peel's maxim when he created the first civilian police: The police are the public, and the public are the police. That bond ought to be kept firmly established in our communities.

To deny police officers the right to be represented on judicial advisory committees is an absolute denial of Peel's admonition. It's an absolute denial of the fact that we want them, and that we want them to protect us.

I really do believe police officers can be very functional and advantageous members on judicial advisory committees. In British Columbia there are at least five judges who are former police officers. It may surprise you, or it may not, that the judge in the Pickton case is a former police officer. So if police officers can rise to become judges, why can't they become members of judicial advisory committees?

On March 6, I went to Eric Hamber secondary school. The students were in a planning course, planning their future. I explained to them what peace, order and good government is all about. I explained my opinion, which was that of a black sheep among judges, that sentencing was not adequate.

They understood what peace, order and good government meant when I discussed the concept with them in simple terms; that it is a constitutional issue that reflects on the judiciary, the judiciary being recognized as an institution and branch of government. And that as a branch of government, the judiciary has to recognize, sooner or later, that when we have rampant crime, as we do in the city I come from, it's time for judges to do something to deal with the fact that we are losing peace and order in our communities.

How does that bear on what you're going to do? When I go back to Vancouver, I'm going to tell them I was at this session, and I'm going to explain to them what took place. I'm going to tell them that I left with you copies of their essays that are reflections on commentaries that I've written that deal with law and order, and with the importance of police.

I suggest to you that the function of the judiciary in criminal justice is very important, and these young men and women recognize it. I said to them that my generation dropped the ball, and things aren't in very good shape when they go out and about in public in terms of whether they are going to be safe.

When you take the time and examine what this next generation has to say, I think you'll realize that they are out there and they expect parliamentarians to do something.

During the subsequent questioning by committee members, one of them said "I think we may be wasting our time discussing the judicial appointment process, because the very presumption, by the government's enunciated policy of change, is that there's something wrong with the judiciary. But I'm not hearing that from the retired judge."

In response I said: There has been a generational shift in judges. It has nothing to do with the appointment process; it's a matter of attitude. Judges who endured the Depression and who fought the war, they knew what to do when they were dealing with vicious criminals. They would sentence on a global basis to 35, 37, or 40 years. Now, courts of appeal across this country will limit global sentences to probably 20 years at the most; and when you take into account early parole and double credit for time spent in custody awaiting trial and sentencing, it means that the price of crime is pretty low. Criminals continue to become serial criminals in property matters simply because there is no punishment. Crime pays.

What I'm saying is that today's boomer judges just don't get it. They will not protect the public through the sentencing process, and many of them will openly say that anything but jail comes first. Look at the use of conditional sentences, judge-shopping, manipulation of the process, and rubber-stamping of plea bargaining. And with sentencing guidelines, appellate courts have literally told Parliament that maximum sentences will not be imposed.

That's what's wrong with the judiciary.

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