

*Protection of Privacy*

We have had to balance, and we will have to balance in this debate, the importance of the protection of society and the importance of operating our police forces in an efficient manner with the very important, fundamental, human rights that all of us regard as sacred. We are not just talking about the use of electronic devices as this use may apply to some third party; we sometimes forget that we are talking about use of these devices in many cases as they apply to each of us. I think all of us agree with the principle that our police forces should be given all legitimate help. But I do not believe that any reasonable member of the House or of any other place, and I dare to say any member of a police force in this country, would take the position that there ought not to be some recognition of those rights before evidence is used against a person in a courtroom.

I read with great interest the speech of the hon. member for Sarnia-Lambton (Mr. Cullen) who spoke on Friday afternoon. In the course of his speech he said it is immoral to wiretap. Then he outlined a number of other ways in which immorality could exist in police work—for example, the policeman who must hit someone, the policeman who must use a billy, as he put it. Then, in defending the Minister of Justice (Mr. Lang) in this matter, he went on to say this, as reported at page 8099 of *Hansard*:

—if our experience shows that attorneys general across the country report that this particular section is being abused, it will be a very simple matter to bring in an amendment to have the law changed.

I think that is exactly the same as advocating that we ought to change the burden of proof in the majority of criminal cases, that we ought to put the burden upon the accused person; that a person who is caught in the talons of the law ought to prove himself innocent. There would be an unfairness with respect to the shifting of the burden. I think there would be an unfairness with respect to the preservation of individual rights and the right to privacy of any citizen, which is a very fundamental right, indeed I would dare say an inalienable right, if we were to reverse the principle that is inherent in our legal system and not couple it with the amendment put forward by the right hon. member for Prince Albert (Mr. Diefenbaker).

With great respect to the hon. member for Sarnia-Lambton, with whose judgment as a lawyer I agree most of the time, I think he has turned his principles around in an effort to support a Minister of Justice who seems determined to bull this bill through the House in its present form without those protections to which I have referred. I, for one, am not prepared to support a Minister of Justice who does not include those protections in the bill.

It is easy for us to think of examples. The minister gave some examples in his speech on Friday of situations where it would be useful, where it could be helpful, where it might be expedient in a particular case, to have access to the emergency provisions, access to that faceless agent in some particular case at some future time. I suppose I could think of other examples where these emergency provisions might be useful. But if we adopt the argument of the Minister of Justice and say that in all cases involving the prosecution of criminals, persons who are innocent until they are proven guilty, the ends will always justify the means, we are getting dangerously close to doing something we have always avoided under the criminal law of

[Mr. Baker.]

this country. With some few exceptions, the public has always been entitled to the protection of reasonable doubt. As far as this bill is concerned, the public ought to be entitled to the protection that would be built into the bill if the amendment of the right hon. member for Prince Albert were accepted. I urge the members of the House to accept the amendment for this reason.

A lot has been said during this debate about the maintenance of "law and order". One part of law and order is the protection offered by the courts. The hon. member for St. Paul's (Mr. Atkey) referred to the difficulties of prolongation, but as I understand it no such mechanism has received sanction as being part of our criminal processes. I think it will be a sad day for this country when we decide that in the name of so-called law and order we must deny the basic meaning of that very important phrase. However, in some of the speeches of the Minister of Justice, and I regret to say in some of the speeches of members who support him, we are coming very close to doing exactly that.

● (1510)

We are moving into a new area of deep, untested waters in terms of the administration of criminal justice in this country. When we take that kind of step it is my respectful submission to you, Mr. Speaker, and through you to my colleagues in this House, that we ought to tread lightly, and ought not to move with the full force of the law until we see how this operates. We ought not to do, as the hon. member for Sarnia-Lambton suggests: Try it and if we do not like it, get rid of it, because in the process of trying it there could be abuses that even that hon. member could not comprehend at this time.

I have had experience on both sides of the counsel table. I have worked with the police in the prosecution of cases, and I have also defended those who have been charged. I would rather our attitude be that the rights of citizens in our society be preserved as long as we can preserve them, while at the same time maintaining law and order. Surely, that is not unreasonable when, as the right hon. member for Prince Albert suggests, there are 600 judges in this country—actually there are 900—who could make that order authorizing a wiretap within the law. I cannot conceive of any emergency situation in which a police force acting reasonably and within the present laws would find its hands tied unless that police force intended to act improperly. I do not think we should demean the names of the police forces of this country by suggesting that they would act in such fashion. I also think we should preserve the principle that has run through our British law that an individual is innocent before the law until proven guilty. Merely because somebody is being investigated does not mean we should cast aside this principle which protects the individual even though he may be charged. We would be doing this in terms of invasion of privacy if the bill passes unamended.

We are being asked in this bill to take a great step in respect of investigation. By adopting this bill we are giving a licence to the police forces of this country to do what they could not do before while holding up their heads. We would be saying that which was once immoral is now moral and legal. When we take such a step I do not think it is unreasonable for us at the same time to ask