

Protection of Privacy

now before us. I can tell him that there is not much support for it on my side of the House. Indeed, having looked at it briefly it appears that the amendment moves the bill back to the position which it occupied before it went to committee after being read the second time. Hon. members will recall that when the bill was read the second time, in May, section 176.16 provided that direct evidence legally obtained would be excluded, but indirect evidence illegally obtained would be admitted in evidence at the subsequent trial. That is the effect of the minister's amendment.

When the bill was before the committee, the minister arranged for an amendment to be moved respecting legally obtained evidence. It was defeated resoundingly. That amendment had been proposed by a supporter of the minister's party and was based on the memorandum which the minister himself had prepared and circulated among members of the committee. Following that resounding defeat in committee, an amendment moved in my name carried by a vote of 5 to 11. It enjoyed the support of members of all parties present.

The minister, despite all our attempts to accommodate his difficulties with regard to motion No. 13—difficulties associated with defects in form and procedural irregularities—has come back to the House and, after all the fancy footwork he has done, has attempted to restore the bill to its original form. Indeed, without being technical, I suggest that the minister has gone back further; his position, as reflected in the bill, is further back than that reflected in the bill originally. I should like to explain myself. His position has receded with respect to direct evidence illegally obtained; in other words, with respect to the tape itself, the operation of which might be illegal. I gather that from reading the amendment. With regard to any direct evidence, the tape itself which is illegally obtained may be brought forward if the court, in the subsequent proceedings, finds it to be relevant. If the evidence was illegally obtained as a result of a technical defect or irregularity, then that direct evidence, although illegally obtained, can be brought into the subsequent trial.

Hon. members should realize that this provision was not in the original bill which the committee in its wisdom saw fit to amend. The minister, by fancy footwork—as I am sure hon. members realize—has amended an amendment of an amendment and has tried to do indirectly that which he was unable to achieve directly in committee. I am, therefore, most reluctant to support this attempt of the minister in trying to do that which he failed to do at an earlier time.

● (1600)

[*Translation*]

Mr. Francis Fox (Argenteuil-Deux-Montagnes): Mr. Speaker, I absolutely want to participate in this debate because of all the practical impacts which the motions of the hon. member for St. Paul's (Mr. Atkey) and of the Minister of National Health and Welfare (Mr. Lalonde) might have on the administration of justice and on detection and prevention of crime.

The bill we are dealing with today is naturally very important in many aspects and first because in our society, as demonstrated by recent events, no-one is safe from

[Mr. Atkey.]

wiretapping. The bill clearly states by whom and under what circumstances wiretapping is possible. It is also important because it is an admission that at an age when crime has no frontiers and enjoys all technical facilities, it is essential that we allow to those whose foremost mission is to prevent crime and protect society the use of devices that will enable them to discharge their responsibilities efficiently and legally. Finally, this bill is important because it is an attempt to determine what has always been a problem in the field of criminal legislation—fair balance between the right of the individual not to have his privacy violated without justification and his right to be protected as he should be while not allowing crime to remain unpunished or allowing criminals to benefit from their destructive actions with impunity.

I would like to enlarge on this last aspect and speak on the amendment from the standpoint of admissibility or inadmissibility of illegally obtained evidence. Traditionally our criminal law, derived in this connection from the British rules on evidence, recognized that evidence obtained illegally were not admissible for this reason alone, that the role of a court was to ferret out the truth, shed as much light as possible on truth so as to come to a conclusion with a full knowledge of the facts. In Canada, that has been the stand taken by the Supreme Court.

On the contrary, American jurisprudence puts forward the rule whereby evidence obtained by unlawful means is inadmissible. Such a rule, known as the rule of exclusion, was approved mainly because it was looked upon as a reliable deterrent against the use of unlawful means on the part of police forces: to recognize the admissibility of unlawfully obtained evidence is, in a way, to support a breach of the law by people who should be the first to have respect for it. That is what the American Supreme Court stated in the case *Mapp v. Ohio*, in 1961.

That American position, even though sternly criticized throughout the years, remained the same. I very humbly point out, Mr. Speaker, that the mistake here is precisely the wish to correct a situation that is deplorable, I admit it, by changing some rules concerning evidence. This bill already provides a penalty for the unlawful use of bugging devices, namely imprisonment or a \$5,000 fine. There will never be any effective penalty against that offence. The Americans excluded the evidence, but the outcome was not the one they hoped for: to prevent unlawful evidence from being actually obtained. People acting in such a way should be punished. To have the underworld benefit from it, as was suggested by several members of the Progressive Conservative party, and which was indeed experienced by the Americans, is not a desirable thing, Mr. Speaker.

It was precisely in order to correct such a situation that the Minister of Justice (Mr. Lang) moved an amendment allowing the judge to decide, considering all circumstances, whether unlawfully obtained evidence should nevertheless be admissible. For it must be recognized, the fact that evidence can be considered illegal can be the result of a simple technical error, and moreover, that is what the hon. member for St. Paul's has finally admitted last night.

The opposite would penalize society and put the courts in an extremely difficult position, in the case where, for example, a serious crime has been committed, the only