

*Criminal Code*

pending the report of the McDonald commission, and I think we would be well advised to consider what the United States government recently did through the executive order that was made by the President of the United States in the month of January. Concerning that executive order, let me quote an article published in the newspaper *Le Figaro* of January 29: What is true is that for the first time in the history of the greatest and oldest trade in the world, members of the United States CIA will come from now on under the jurisdiction of the courts. Even when ordered by the President, any surveillance against an individual suspected of spying shall be authorized first under a warrant signed by seven federal judges.

Mr. Speaker, I think that our system happens to be based on the independence of the judiciary which must control law enforcement by the executive, and I think that our tendency to entrust both powers with the government is quite dangerous. Let us not forget what happened last year before the parliamentary committee dealing with the immigration bill, when the deputy minister refused to let cases of rejected applicants be referred to the Supreme Court, under the pretext that Supreme Court judges might be national security risks.

So, Mr. Speaker, for all those reasons, and after due consideration and given the fact that we do not have yet our police forces under proper control, I have decided to oppose this legislation.

[English]

**Mr. Douglas Roche (Edmonton-Strathcona):** Mr. Speaker, I should like to commend the hon. member for Matane (Mr. De Bané) for the very sincere way in which he has expressed the civil liberties concerns felt by many members in this House with respect to this bill.

At this time it is not necessary to review all the aspects of the bill. I only want to focus in this brief contribution on the one aspect that provides, for me, the most serious problem, and that is the lack of a judicial warrant for mail opening investigations of national security cases. I am going to be asking the government when this bill gets to the committee either to amend it appropriately or to drop the clause that provides for the legality of mail opening in national security cases. Unless they are willing to do for national security cases what they are willing to do for drug cases, namely, to secure an order of a court and ensure that before anyone's civil liberties are interfered with the court is going to be the ultimate protector of that individual, not a politician or minister or government.

I am going to leave aside the politics of the bill. I am not even going to discuss the motive or why this bill has come before us now. I have several suspicions. I am not going to bother with the question that we are legalizing *ex post facto*, or with what has been going on and the prematurity of the bill, or discuss the legislation before the McDonald commission makes its report. I am going to accept without argument the rationale advanced by the Solicitor General (Mr. Blais) and seconded by the Postmaster General (Mr. Lamontagne) that we need this legislation to catch drug offenders.

[Mr. De Bané.]

I am rather with the hon. member for New Westminster (Mr. Leggatt) who expressed some doubt that this new law—if it gets that far—will be an important element in catching drug offenders but I am willing to give the government the benefit of the doubt.

I think all of us want to do whatever we can to end the horrifying spectacle of drug abuse, the trafficking, the ultimate violation of one's human rights by making one a drug addict. Let us go along with that. We remember that the bill provides, for one who is suspected of trafficking in drugs and using the mails to further this process, that when a police investigator wants to have access to that person's mail he makes application, gets an affidavit, secures the information, puts it before a court which is concerned about the authenticity, then it goes to the Solicitor General for his approval. Finally, when the Solicitor General approves it, it is presented to a judge or a superior court in the relative area.

● (2102)

That meets the criteria established by my colleague the hon. member for Perth-Wilmot (Mr. Jarvis) in offering support by our party for this bill. He said that it met the criteria of the specific circumstances of mail opening with adequate safeguards. That is to say, it would be put beyond politics. As far as our institutional system allows, a court will take the responsibility upon a recommendation by the Solicitor General. My colleague for Perth-Wilmot said this will give the adequate safeguards we want.

When we turn to the question of national security and the police seeking a warrant for the acquiring of evidence in such cases, we see that the application started by the director general of the security service becomes then a sworn statement. This sworn statement is presented to the Solicitor General who, once satisfied, issues a warrant for the opening of the mail. We know this follows in the case of the Official Secrets Act. We know that it follows the same precedent set by the wiretapping legislation that drew the distinction between wiretapping to obtain evidence for criminal offences in which a court order would have to be acquired; but in wiretapping for national security cases the Solicitor General's warrant by itself is enough.

Here I come to the reason for this brief contribution. I bring to the subject a non-legal mind and I would like to speak for the laymen of our country who find it hard to understand why in cases of drugs and the suspicion of one trafficking in drugs, in order to open that person's mail a court order is required. Whereas in the case of a person suspected of undermining the national security of our country, which is a far graver offence, the opening of mail belonging to a person in this category can be done solely on the approval of the Solicitor General. That is something which I do not understand.

The Solicitor General asked us to consider the authority he will be given to examine under Section 16(2) of the Official Secrets Act. I read Section 16(2)(c) of the Official Secrets Act: