

*Protection of Privacy*

have weighed the question of privacy against some criminal activity and the urgency to investigate that activity.

It would be well for all members of the House to read John M. Carroll's book "The Third Listener". Mr. John M. Carroll is an associate professor of computer sciences at the University of Western Ontario, London, Canada, so this is a book written by a Canadian. I should like to quote from page 14 in order to preface what I intend to say, which I think is really what was being said by the right hon. member for Prince Albert (Mr. Diefenbaker) and the hon. member for St. Paul's (Mr. Atkey). This is a very succinct paragraph in which he refers to bugging somebody's telephone with an electronic device, taping somebody's conversation from either a telephone or a radio, or perhaps just in someone's office. The book is, as I said, *The Third Listener*, and the third listener may be a number of people or one person. In this paragraph the author asks this question:

● (1450)

Why does The Third Listener want to know what you're saying, where you're going, whom you're talking to? You'll find out when he blackmails you, or sues you, or arrests you, or ruins your business, or has you fired, or simply steals your secrets to gratify an ugly lust for prying.

That is the criterion when we are talking about privacy, and I think he has put it very well. Let me also refer to a paragraph at page 46 of this book before I go into the matter with which I am specifically concerned. A question has been raised as to the difficulty of obtaining a court order, and the author deals with this beginning at page 45 as follows:

HOT WIRES, COLD LEADS. Even when there's no great hurry, getting a court order is a bother, involving a showing of probable cause to believe that the wiretap or bug will produce information about a crime. And, although law enforcers will argue this point by the hour, the fact is that very few taps or bugs produce firm evidence or hot leads. For police officers to go to court time after time for wiretap permission and then never turn up any valuable information is embarrassing after a while. It's far easier for them to pool their own money and buy their own private equipment,—

The writer suggests that this is what we are about to stop. What the committee members, the hon. member for St. Paul's and the right hon. member for Prince Albert have tried to do is weigh very carefully the balance between the rule of law to protect our privacy and the rule of law which grants the police the right, under certain circumstances, to wiretap, providing a certain formula is followed and certain criteria are established.

Let me say a few words about Motion No. 2. I gave this some thought last evening but was not prepared at that time to debate it. I should like to be even better prepared than I am at the moment as a complex legal problem is involved which I wish to discuss. What the hon. member for St. Paul's is endeavouring to do is to say, if we are going to give the right to violate the civil right of privacy we should only give that right in respect of a serious indictable offence. The hon. member is, therefore, seeking to change the definition. I should like to put this on record because it is an important but technical matter. I refer to page 2 of the bill, which deals with Section 178.1, where it reads:

"offence" means an offence created by an Act of the Parliament of Canada for which an offender may be prosecuted by indictment

[Mr. Woolliams.]

and includes any such offence that is alleged or suspected or that there are reasonable grounds to believe may be committed;

That is the definition in the bill, so we know it means any offence created by an act of parliament. This would include the Criminal Code of Canada, the Excise Tax Act, the Income Tax Act or various other acts; in fact, any act of parliament in which there is an offence set out. Thus the definition of "offence" in this bill is wide enough that wiretapping under these circumstances covers all Federal laws. The hon. member for St. Paul's feels that is going too far, and I agree with him.

Let me discuss very briefly one other point. It is very difficult to set out all the offences the hon. member would like to cover, especially when we are considering this section by section. Let me refer to a few problems another member mentioned last evening in the same context. I hope that after examining a few of the problems I intend to raise the Minister of Justice (Mr. Lang) will accept the principle of the amendment and turn this matter over to the legal officers of the Department of Justice. They have great experience in drafting legislation. I do not think any one of us, as a member, has the expertise to draft this type of legislation. Perhaps those officers could make sure that the amended bill has that degree of purity that no loopholes are left which you could drive a truck through.

Let me deal with the crime of murder as I think this is one section in the Code that will cause us some trouble. This involves a very difficult legal problem. I would refer to page 180 of the Criminal Code, Section 218 under the heading "Punishment for Capital Murder". It reads:

(1) Every one who commits capital murder is guilty of an indictable offence and shall be sentenced to death.

(2) Every one who commits non-capital murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

(3) Notwithstanding subsection (1), a person who appears to the court to have been under the age of eighteen years at the time he committed a capital murder shall not be sentenced to death upon conviction therefor but shall be sentenced to imprisonment for life.

This is one of the crimes listed in the amendment by the hon. member for St. Paul's. Let me refer in this context to two sections of the code. As hon. members are aware Section 212 was Section 201 and Section 202 is now Section 213. This makes it very difficult when one does his research because he must change the numbers.

We are aware that under Sections 212 and 213, to which I will refer, the rule of law is that whatever the charge of murder, capital or non-capital, within that charge there is always the offence of manslaughter, but when a charge is laid under Section 213 it is much more difficult for a jury to bring in a verdict of manslaughter than under old Section 201, and I will deal with that in a moment.

As I see the amendment, and this is just an example, what the hon. member for St. Paul's had in mind, evidence legally obtained by wiretap, and accepted on a charge laid under either one of these sections, might result in a conviction for manslaughter. In view of the present provisions of the bill it may turn out that such evidence would be excluded before the court of appeal.

My concern is that in the event of a verdict of manslaughter, which carries a life sentence, the evidence would certainly be accepted, and there are other offences