after all that the man was found sane. It was said that after his 26 ounces of whiskey he did not react too badly. It took only three people to hold him down on the floor, but that was not outrageous. This is a fact. This fellow was sent to jail, and then he got a lawyer. However, that was too late. By that time the psychiatrist was not a person in authority. The question of admissibility of evidence did not apply to him, and anything the accused said, whether he was drunk when he said it, or under drugs or under the belief that he needed to tell somebody his problems and get them off his chest, it became evidence.

Worse than that, the defence was ordered to get its own psychiatrist. A Crown witness listened in, wrote a letter to the Crown, and the psychiatrist for the Crown admitted that he based his opinion on whether the man was sane or not on all correspondence. The statement was admitted. With this kind of law the police get more powerful every day. We are living in a different kind of world today. I am not criticizing the police, but the minister says crime is increasing so we have to get tougher and tougher. On the other hand, every once and a while some innocent person gets caught in the web and all this is used against him.

I dealt with a case today in which a fellow was charged with a marijuana offence. His case was thrown out by a magistrate. Then the Crown rushed to a judge to get an order for indictment. The judge asked where the accused was, and the Crown's lawyer said, "I do not want him here because he will interfere with my case". The lawyer for the Crown went to his office and got the minister or his agent—I do not know whether the minister did it personally—to lay a preferred indictment. I did not know we had a double jeopardy clause at work in this country. That is an abdominable process and a bad procedure.

When Mr. Turner first introduced this legislation some years ago, speaking to the Canadian Bar Association he said he thought it was enough just to have the minister sign a wiretapping authorization. Well, we got that changed. The first bill died on the order paper when the 1972 election was called by the government, and when the bill was presented to the short parliament by the minority government, my two good friends, Mr. Ron Atkey, and the hon. member for Fundy-Royal, carried on the fight and managed to get the privacy section amended as it now reads. Now we see the government once again coming forward to amend a good law for which the opposition so ably and intelligently fought. With all its weaknesses it is better than the government is doing now. I do not think all these things should be wrapped up in one bill. I honestly do not know how I am going to vote, but I cannot at this stage or in committee endorse these changes.

This bill should be severed so that this question can be decided by a vote of the House on second reading, so that we are not asked to vote against some legislation we approve of and some of which we emphatically disapprove. I say here that where a statute gives the authority to invade in any way the privacy of an individual and its provisions are not carried out properly, such evidence should be declared inadmissible, not to help the crook but to make sure that the all-powerful state does not erode the freedom and liberty of the little person who must battle for his freedom and liberty against all the odds in favour of the state, armed with money and brains.

● (1650)

To substantiate my argument may I quote from a few authorities to assist the House to see that we are not making a mountain out of a molehill.

Let us consider the approach of Mr. Justice Judson. In giving one of the majority judgments in the Wray case he wrote:

> In my opinion, there is no justification for recognizing the existence of this discretion in these circumstances. This type of evidence has been admissible for almost 200 years. There is no judicial discretion permitting the exclusion of relevant evidence, in this case, highly relevant evidence, on the ground of unfairness to the accused.

He held that if this law is to be changed it must be changed by parliament. We are writing in that some magistrates and judges have that discretion, yet here is a judge of the Supreme Court of Canada saying, "The evidence is there; I cannot do anything about it. I am going to have to put it in."

Mr. Basford: That is not what he says at all.

Mr. Woolliams: I just quoted right from the book. If the minister wants to change the law books, that is fine with me.

Let me contrast that statement with the words of Mr. Justice Brandeis, one of the most fair minded judges who has ever graced the bench of the Supreme Court of the United States. In his famous dissent in the case of Olmstead versus the United States he said:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself, it invites anarchy. To declare that in the administration of the criminal law, the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

In other words, I do not think evidence illegally obtained should be admitted, because if you allow the police to break the law they will do so.

I do not mean to suggest by referring to an American decision that I am advocating the strict exclusionary doctrine that has developed in that country. In the United States, generally speaking, evidence is not admissible in a court of law that is illegally obtained. The application of this strict rule has led to scandalous abuse. There must be a balance, and I should like to see that balance in our jurisprudence.

Nevertheless, there is a large constituency in and out of our profession which adheres to the belief that the Ontario court of appeal in the Wray case was right—that Privy Council decisions touching the same concerns were right—that Their Lordships Cartwright, Spence and Hall, dissenting in Wray, were right, and that the court must consider factors other than just