

Protection of Privacy

some balance. In the case of organized crime, and because of the rising crime rate, we should use every tool at our disposal. People say that if wiretapping is immoral, surely the underworld is immoral and we should be fighting fire with fire. These arguments can be very persuasive.

But there is another proposition that is vital to any civilized society and it is this: the rule of law is founded on the proposition that governments can protect their people without acting unfairly and immorally in any respect. We cannot have a lawful society unless we have respect for the law, respect for those who enforce the law, and respect for the means by which they enforce the law. I have never heard anyone suggest that wiretapping is anything but a dirty business. It is immoral, and to justify it you had better show some results. The sacrifice we are making of our privacy must be justified by the conviction rate. However, the statistics do not support that position.

I ask you, then, to consider the situation. If you examine the statistics and the studies that have been carried out with regard to the use of wiretapping, I think you will come to the conclusion that it should not be used or certainly should be severely limited, as the hon. member for St. Paul's (Mr. Atkey) is attempting to do in this amendment. We heard some evidence from the former attorney general of the United States when the committee was dealing with this bill. I do not think there are many people who are as eminent in terms not only of fighting crime but also in understanding the importance of maintaining this balance between civil liberty and crime detection. Incidentally, he was one of the most successful attorneys general in terms of attacking the crime rate in the United States. This is what he said in committee:

I would be particularly disturbed with the bill that you have before you because I do not find in it any limitation as to the types of crimes in connection with which it can be used. Our first bill in 1961, as I recall, had only about six areas in which wiretapping could be used, and they were obviously serious crimes and they were obviously also crimes in which some reasonable argument of the effectiveness could be made.

Mr. Clark was concerned, I think the members of our party are concerned, and I am hopeful that the proposed amendment will be successful in the House.

Mr. J. A. Jerome (Sudbury): Mr. Speaker, having had the honour of chairing the Committee on Justice and Legal Affairs in its very interesting proceedings on this important bill and having had to operate under the restraint that is placed upon a chairman and yet being very interested in the subject matter at hand having been a defence counsel, this is a welcome opportunity for me, now that we are out of committee stage, to try to contribute to the debate.

I was pleased to hear the hon. member for St. Paul's (Mr. Atkey) say that there is ready agreement on the need for the bill and for a basic prohibition against wiretapping. While the agreement on the second important ingredient was not unanimous, it was clear fairly early in the proceedings that there would be amendments at the report stage. It is always unfortunate, of course, that amendments colour the views of members who propose subsequent amendments at a later stage. However, we must try to pick an order of discussion as best we can.

[Mr. Leggatt.]

Certainly, an important set of amendments in the early stages of the discussion was a series of amendments to eliminate the possibility of police doing any wiretapping at all. That is the second important area of agreement which, as I said, was not unanimous, but it became clear, after agreement on the need for general prohibition, that a total ban, including the police, would not enjoy the support of the majority of members of the House. So, we were early aware that all members of the House wanted a prohibition on wiretapping and that a vast majority of members wanted to ensure that the police would be left with the power to use that electronic weapon in their fight against crime, be it organized or other. The difficulty, of course, brings us to the third area, which is the conditions, restrictions or safeguards under which the police would be entitled to use that power.

The amendment that is before us at present is one of a series of amendments that are designed to cut down on the conditions and restrict the powers of the police in their use of this electronic device. I opposed this kind of amendment. As was mentioned in the speech of the hon. member for St. Paul's, I cast the deciding vote against this type of amendment, although it has been altered somewhat since. I am still opposed to amendments such as the one put forward here for several reasons, the first being that it is a categorical rather than descriptive or generic kind of definition. I am troubled by that because, as this kind of amendment was put forward in the committee, although the proposer of the amendment has tried to be exhaustive in his categories, it was apparent that one or two important categories were not included. I am always fearful of a categorical type of section such as this one listing specific offences because that can cause problems for the police in their day to day work and may not include all the offences. Some came to light in the committee and, I submit, as the bill is put on the statute books it will become increasingly clear that other areas may be left out, with all the best intentions.

That is the basic objection that I have to this kind of categorical definition section. The definition section now in the bill is one which describes in a generic way serious indictable offences, and that is as it should be. I think, for example, that there is nothing in the present amendment that would permit the use of wiretapping by police if they were looking at a professional auto thief, unless they were able to say he was connected with organized crime or he showed a pattern of offences. I will have more to say on the pattern of offences in a moment. It is a difficult term to understand. However, there are problems about gambling, prostitution, a person living off the avails of prostitution and supported wholly by it, problems of customs smuggling or counterfeiting, problems that we see today in the construction industry where there is an investigation by the provincial government of Ontario involving what may not amount to extortion but might involve dishonesty, corruption and breach of trust by a person who holds an office that is not a public office and therefore would not be covered by the definition section. There are problems of mortgage inspectors with private companies who do not hold public office, who might receive some kind of payment which would not amount to extortion, would not amount to bribery but would amount to dishonesty or straight theft. There are these categories