

famous case these days, the tapes which go with that information.

We are faced—if I might begin my comments on the bill more along the lines of law than of journalism—with the age-old need to try to combine both truth and justice. While we can easily admit that sometimes justice is seen to be done and yet truth has not been achieved, and sometimes vice versa, none the less I cannot imagine how our legal and judicial system would work well unless we knew we were making every possible effort to bring forth not only justice but all the truth that we can obtain.

We have had many centuries of experience with law, and over the years some very fine minds have developed reasonably good systems which are intended to provide reasonable security and protection of the rights of individuals who are brought before the courts. I am thinking of a particular rule which is hardly ever challenged and is often held up as an example of how the law should work and how justice should be obtained; that is, the rule on hearsay. As a general rule we do not accept the idea that one individual may report on or give evidence as to what somebody else has said, except under very rare circumstances. Yet this bill in some measure is analogous to the concept of creating a class of individuals in Canada who would be entitled and privileged to use hearsay.

This would be in direct contradiction of the laws we have had for centuries. It would also create, as has been mentioned earlier, a special class of citizens of some 2,000 to 3,000 journalists in Canada. These people whom the bill refers to as journalists—I might add, in passing, that I am somewhat concerned about the definition—would be given the absolute privilege of refusing to disclose their sources of information and the documentation related thereto.

The bill, in clause 2, defines a journalist as an employee or self-employed person working in a newsroom in the news service or on the editorial staff. I mention only in passing that there seems to me to be some difficulty with that definition of a journalist. While I realize that a later clause of the bill includes the electronics media, there are a number of people in newsrooms, particularly in the printed press and television newsrooms, who would not qualify under that definition as journalists. If such legislation as this were passed by parliament, we would want to ensure that the definition of “journalist” be much more sharply defined than the one contained in the bill.

I would like to deal for a moment with the absolute privilege which the hon. member for Timiskaming wishes to assign to journalists. Speaking again as a lawyer, let me point out that the privilege which exists between my client and me, as a lawyer, is not for my benefit but for my client's, and it is entirely a matter of his choice whether he wishes to avail himself of that benefit. That privilege exists basically so that he will not be concerned, if he discloses information to me so that I can act on his behalf, that I in turn can be compelled by a judge to give up that information and therefore perhaps prejudice his defence.

● (1750)

That situation is quite similar to what is proposed in this bill with respect to the privilege granted to journalists. This privilege would provide a combination of non-disclosure of sources with an absolute guarantee to any-

body who can qualify as a journalist that he need not be compelled in any way to disclose even the facts surrounding his undertaking to give that promise of non-disclosure.

I am concerned that the bill as currently drafted might cause a great deal more injustice than the benefits it would purportedly bring to the public by reason of there being additional access to information. There are many examples of this, but they involve essentially a situation where a journalist—admitting that such an individual can be adequately—defined is party to information relevant to either an ongoing or a recently committed crime. For reasons of his own, and without interest whatsoever in terms of the public welfare, such a journalist could prevent this information reaching the police, the court or the judge in time, for example, to stop the commission of a crime.

Again I say that should this legislation proceed, or should this concept proceed into eventual legislation in Canada, as it has begun to in the United States, then I would be most concerned that we define the word “journalist” more accurately and more extensively and, additionally, that we move very carefully to limit this privilege so that it will not interfere with the normal course of justice and with the protection of the public. There is very clearly a signal and a very real danger, as the bill is currently drafted, that a journalist could become party to a crime and, as such, could not be compelled to give testimony, nor would he have to stand trial as a party or associate to that crime.

The theory of the bill creates some contradictions which I feel might not very easily be accepted by most journalists. The hon. member for York West (Mr. Fleming) has already commented that while on some occasions in his functions as a journalist he had given his word of non-disclosure, if necessary he had been prepared to show the courage of his conviction and accept a jail sentence. That may or may not be a particularly attractive way to resolve the problem, but it does raise the contradiction involved, that is, that the question which underlies this proposed bill is, as I said earlier, that of being able to give the public access to more detailed information while at the same time depriving the community and the courts of the same right. In effect, it would deprive the courts of the right to obtain information it may need in the interests of justice.

Again I would say that if a bill of this nature is brought forward for expected passage in this House, it must be clearly understood that its terms should provide the judge with the final capacity in law to determine which is in the public interest and which is in the interest of the journalist and the people from whom he has obtained his information. Right now this bill permits contradiction. There are cases where one can very easily foresee the possibility that the public benefit would be lost, that the injury caused would be greater than the benefit of having this right or privilege of journalists.

I am also concerned with what the bill would do to journalists. This point has been raised before but I think it can well and safely be raised again: I think it is an extremely important one. I have never yet met a man known in journalism as a competent and able reporter and found him to be in support of a bill of this nature. It has been my experience that those who most strongly look for