

Protection of Privacy

disposition among members of the various parties to agree with the value position which I have enunciated, and the real question is to attempt to determine which of the positions that is or could be before the House through amendment is the one which is best adapted, not only to the assertion of this basic value judgment but also to the variant situations which may arise.

The hon. member for St. Paul's (Mr. Atkey) has presented, through his amendment, one of those variant situations and I believe it is very useful to the House that he has done so. This is the amendment in which he proposes that evidence be not necessarily excluded if there was a mere irregularity in the obtaining of the authorization by the police. In a case where the police had proceeded on the basis of what they thought was a valid authorization, it would indeed be excessive to prevent evidence which is obtained in that way from being used subsequently.

However, there are several other situations in which I think a strong case can be made for admitting the evidence. One of those was raised by the New Democratic Attorney General for British Columbia, Mr. Macdonald, in the letter which he sent to the Minister of Justice (Mr. Lang). He raised such questions, for example, as:

Does the amendment barring evidence indirectly obtained, unless the interception is "lawful", bar evidence of an offence, e.g. murder, obtained during an interception lawfully authorized for an entirely different crime?

I will not go on to the larger problem which he raised as the second problem in his letter, but the first is an indication of another type of problem which can arise. There is a third type of variant situation where the interception which takes place might be by criminal elements themselves and yet the police might stumble across this evidence or obtain it in the course of another investigation. I am referring to the evidence which was obtained by wiretapping, not illegally by the police, but illegally by some third party. In such a case is it reasonable to penalize the police by preventing them from using this evidence?

What we are doing, in effect, in a provision which excludes tainted evidence from being used is saying to the police that if they do not follow the law there will be no percentage, no advantage for them in using such evidence. But in the case where illegal wiretapping has not been carried out by the police but by criminal elements in our society, it seems to me that such a penalty would not be appropriate.

I had suggested last night that I had in mind the presentation of an amendment which, if I were to present it, would take care of this last situation where interception has been by criminal elements. But I have decided not to present it, at least at this time, because I understand that the Minister of Justice would like to test the House on a broader subamendment to the amendment of the hon. member for St. Paul's which is before us, and as a procedural matter I would not want to stand in the way of the House expressing its opinion on that broader question.

While I may subsequently return to my amendment, I would not want to prevent the expression by the House on the broader and very important question which might be posed to us. Therefore, while expressing my concern about the intermediate situations, one of which is dealt with in the amendment placed before us by the hon. member for

[Mr. MacGuigan.]

St. Paul's and while stressing the fact that there are other intermediate situations of which I think it would be useful to take account, I have decided not to present any amendment at this time.

Mr. R. Gordon L. Fairweather (Fundy-Royal): Mr. Speaker, I hope that the amendment moved by my colleague, the hon. member for St. Paul's (Mr. Atkey), is acceptable to the minister. We tried very hard to come up with a series of qualifications which would meet all the cases; for instance, that indirect evidence must be relevant, that it is not inadmissible by reason only of a defect in form or irregularity in procedure and, lastly, that to exclude it as evidence may result in justice not being done. Surely these three tests should meet any alarms expressed by the minister and by the hon. member for Windsor-Walkerville (Mr. MacGuigan). I think we have had, in the last couple of days, some evidence of a more forthcoming attitude on the part of the minister toward some of the suggestions we have made to improve the bill. I hope very much that the House can accept the amendment moved by the hon. member for St. Paul's and that we can go on to discuss other sections of the bill.

I sense a straining on the part of the hon. member for Windsor-Walkerville. Listening to him was rather like listening to somebody appearing in a court of law with a rather bad case. I think that if he were in another forum in which he has distinguished himself, such as law school or the Canadian Civil Liberties Association, he really would not promote this argument. I hope that the law reform committee, when it deals with the law of evidence, which in my humble opinion is one of the most outdated sections of our law—speaking personally, not for my party—will abolish the indirect evidence rule once and for all, not only in wiretapping but in any other form. I think that most lawyers, or at least the lawyers I am in contact with, would agree.

● (1530)

In the committee there was a more than two to one majority on this issue. I thought that we were sort of bellwethers in the wiretapping matter for a reform in the law that has been marked down for generations. Perhaps I am over simplifying the matter, because I think we lawyers of the British legal tradition have paid a great deal too much attention to what I consider an illiberal and outmoded concept of law, namely, that you can have the fruits of illegality. It is high time that Canada faced this issue.

I eagerly anticipate a decision of the crusading law reform commission on this subject, and I am sure this was the motive that appealed to the substantial majority made up—as the hon. member for St. Paul's said—of all parties who voted on this issue in the Standing Committee on Justice and Legal Affairs. So I hope very much that the majority that was present and made a deliberate and considered recommendation for a reform in the law will not be overturned by a backward attempt to reverse the decision that I thought was made in good faith by a committee where partisanship played a very small part, if indeed any part.

Mr. Speaker: Is the minister rising on a point of order?