requirement that he be notified of the surveillance after the fact.

Another point of concern to me is that the proposed legislation is expanded to include all indictable offences. It includes not only serious crimes but also impaired driving, simple possession of marijuana and even theft of a newspaper. This does not seem to be consistent, to me, or according to the intent and spirit of the ligislation. Surely police authorities do not require electronic surveillance for all indictable offences. Another observation that could be made is that the notification requirement serves as a deterrent to needless bugging, in that the police should only bug where it is absolutely necessary.

The sections dealing with special crime inquiries to be established by the provinces provide a timely clarification of a constitutional issue. The effectiveness of these commissions of inquiry has already been demonstrated and a statutory definition of their powers is appropriate at this time. I have only a minor criticism of this part of the bill. If the commissions of inquiry established by the provinces are to exercise all the powers of a court, then I see no reason to withhold from them the power to cite for contempt. Requiring the citation to be brought by a judge of the superior court simply creates an unnecessary administrative step in the procedure. The commission is to be entrusted with the power to carry out a judicial inquiry, and with the protection of the legal rights of persons being investigated. I think it would be more consistent and expedient to allow the commission to issue contempt citations in connection with its other activities.

Unfortunately, my criticisms of the dangerous offender provisions of the bill are not so minor. It has been recognized for many years that the present sections dealing with preventive or indeterminate sentences have not been successful. The Ouimet report, in 1969, advocated an extensive revision of this part of the Criminal Code since it has been most frequently applied to essentially harmless people who have committed a series of minor property offences.

Similarly, studies of psychiatric services in penitentiaries, carried out by the Solicitor General (Mr. Allmand), have revealed that dangerous sexual offenders have frequently been wrongly classified. The abolition of this concept is certainly a step in the right direction, as is the serious personal injury offence restriction that is proposed in Bill C-83. However, the existing law allows for an indeterminate sentence to be given only when a person has been previously convicted of an indictable offence on at least three separate occasions and who has been persistently leading a criminal life.

● (1500)

Under the amendments proposed, the requirement for three previous convictions would be replaced by "patterns of behaviour" indicating that the offender is not likely to be subject to restraint. The person could therefore be liable, on his first offence, to prolonged detention perhaps exceeding the maximum term for the crime for which he has been convicted; and the prolonged detention would be ordered on the basis of past behaviour which has not necessarily involved the contravention of any law.

We are dealing here with a departure from the traditional ambit of the criminal law, which punishes or detains only on the basis of proven infringements of clearly defined rules. I think this departure is a potentially dangerous one, requiring scrupulous examination.

[Mr. Robinson.]

The classification of certain offenders on the basis of their potential for dangerous behaviour would be made on the strength of evidence of psychiatrists, criminologists or psychologists. This approach seems to presuppose that practitioners in these disciplines can assess an individual's potential for violent behaviour according to a set of technical and objective criteria. Unfortunately, the behavioural sciences have not reached this stage of accuracy. An error, on the side of "*caution*", in the original assessment of the offender's potential for violence can create a serious injustice; and the error could be repeated, and the injustice compounded, during the periodic reviews that have been provided for. There is also the possibility that a "dangerous offender" could be released within three years, and, regardless of the accuracy of the assessment of his potential for violence, would thereby serve a much shorter sentence than would have been imposed if he had not been deemed a dangerous offender.

C. S. Lewis, writing in "1953 Res Judicatae," warned of the dangers of the "humanitarian theory of punishment", which

> removes sentences from the hands of jurists whom the public conscience is entitled to criticize and places them in the hands of technical experts whose special sciences do not even employ such categories as rights or injustice . . . the first result of the Humanitarian theory is, therefore, to substitute for a definite sentence (reflecting to some extent the community's moral judgment on the degree of ill-dessert involved) an indefinite sentence terminable only by the word of those experts . . .

My objections to the dangerous offender sections should not be construed as an objection to the preventive approach to crime, or to the protection of society from known criminals. But the same result can be achieved by the traditional sentencing methods, without incurring the risks of error and injustice.

The past behaviour of a convicted offender can certainly be used in the judge's determination of the appropriate sentence to be handed down. The repeal of statutory remission of sentence, proposed in this bill, would ensure that any person who demonstrated "unrestrained violent tendencies" would not be released before the sentence was actually served.

The last point I wish to raise has to do with custody and release. The proposed changes to the Parole Act and the laws governing the correctional institutions will provide a much needed improvement in the release of convicted offenders. The increase in the number of National Parole Board members will, as the minister has stated, permit a more thorough review of individual cases for parole. The inclusion of members of the community on the board reflects the legitimate interests of local concerns in the release of inmates. I would like to see this approach carried further in the amendments, and have some assurance that the parole decision will be based, at least in part, on the recommendations of people who are in daily contact with the prisoner, since it is these people who are in daily contact with the prisoner, and since it is these people who are in the best position to assess the individual's chances for a successful return to society.