● (2120)

Mr. Woolliams: Mr. Speaker, will the hon. member permit a question? Would the hon. gentleman, who was a distinguished dean before coming to this House, not agree that the judge who grants leave to wiretap should also be given the right to extend or abridge the time? Would this not be better than having the Minister of Justice (Mr. Basford) abruptly suggesting or requiring that notice be repealed?

Mr. MacGuigan: Mr. Speaker, I am pleased to be able to agree with the hon. member for Calgary North despite what I said earlier. I have considerable respect for his legal ability, and the action he proposes might be successfully embarked upon. Perhaps it would be better not to restrict notice to the judge who gave the original order, but that would be one way of solving the problem.

Another way would be to allow any judge broader powers for deferring notice. Now he must require that notice be given, except when the investigation is still continuing. Perhaps his power should be broadened so that the police can receive authorization not to give notice even over a long period of years. That might provide the protection they need. I fear that if we do not enact provisions which will provide the police with effective legal procedures for wiretapping, either they will not use wire-tapping, in which case there may be more criminal activity or, worse, they will resort to illegal wiretapping.

My second area of concern is with respect to the specification of crimes. I am prepared to listen to the government's case in committee, but I have in mind that the present law is the result of a motion moved by a government member in 1973. As I recall the vote, the motion carried 206 to 26 in favour of the existing law. However, as the minister said this afternoon, we must keep the law under constant surveillance to see that it adequately meets the needs of the times. If necessary we could bring in another amendment which would add more specific offences, rather than proceed with what is proposed at present, but if there is a case to be made for total coverage, I am prepared to listen.

I am especially concerned about government proposals with respect to derivative evidence. If the present law banned such evidence I would not feel quite as I do; but the present law does not ban the use of derivative evidence. As a result of a government motion, which carried 115 to 114 on December 4, 1973, we gave a judge power, in cases where the judge thought it was in the interest of justice, to allow derivative evidence to be presented in court. This was a reasonable compromise among the various positions. Some wanted any form of illegally obtained evidence to be available in court, even the direct evidence of the wiretap. On the other hand some would have extended the ban both to direct evidence and to all other evidence obtained from so-called indirect or derivative evidence.

In 1973, when the law was put in its present form by parliament, we gave the judge power to admit secondary evidence. Although there was a general rule against the admission of derivative evidence, we gave the judge power to make exceptions to that rule. Really, we did not give him much guidance in the legislation, and the matter was left to his complete discretion. It was in the sole discretion of the judge when such evidence was to be admitted as evidence. I voted in favour of the proposal at the time because I was concerned about the alternative.

It had been drawn to our attention, I believe by the NDP attorney general of British Columbia, that if we suppressed all such derivative evidence we would not be able to deal with a case in which the original, illegal wiretap had been undertaken, not by the police, but by some criminal group. If one criminal group listened to the conversations of another and the wiretap fell into the hands of the police, the police would not be able to use the wiretap taken by the criminals. That would have restricted investigatory procedures. Also, if the police were wiretapping for one crime, say a lesser crime, and in the course of the wiretap discovered evidence of a much more serious crime, like murder, the police would not be able to use such evidence. It would seem that the police would not have the legal authorization to do so. It was argued that if there were such a discrepancy as between two crimes, the police should be allowed to use evidence so gathered. For these reasons we gave the judge discretion.

I might say that my bias is strongly in favour of keeping that discretion with the judge. As the minister said this afternoon, one of the lynch pins of this legislation is judicial supervision. I think he was probably talking about judicial supervision with respect to wiretap authorization, but we should go further, since throughout the bill judicial supervision is an important aspect of our present way of controlling police action.

The minister suggested that one reason for changing the law is that the present rule produces delays at trial and exclusion of evidence. I am not particularly concerned about the exclusion of evidence. Delays at trial are a problem, but I do not think that they should weigh very heavily in the balance against the result if we gave the police carte blanche.

If the police are not wiretapping illegally, there is no need to amend the legislation. If they are wiretapping illegally, then we in this House want to know why. We do not want to give them any protection or encouragement in that regard, or allow them to use evidence obtained in that manner.

We have set out rules which allow the police to obtain evidence by electronic means. They are adequate, perhaps generous, for law enforcement purposes. If we were to allow the police, in cases when they do not follow laid-down procedures and obtain evidence illegally, still to get the fruits of those illegal procedures, we would make a very serious mistake. The matter at stake is not a small one.

The existing legislation provides for judicial discretion, and explicitly says that when there has been a mere mistake in procedure in obtaining authorization, such as when the police think they have obtained valid authority but have not, such a mistake is not to count against the police. That is not the kind of illegal wiretapping about which we are thinking. We are thinking about the case when the police decide not to apply for an authorization, by-pass the law and spurn the law and this House. We do not want to allow the police to act in that way.