It seems to me that we should not seek to change or adjust the law because we don't like the ultimate effect its application had in a particular case. I think it is a very bad principle to legislate because of only one case, especially one in which the majority of the Supreme Court says that the terms of the existing law are most appropriate.

It has been said by my good friend Senator Langlois that it leads to the destruction of the jury system, and he refers to Mr. Diefenbaker and others as having made similar remarks. I would say that all lawyers specializing in the defence of criminal cases would agree. As far as I am concerned, I went before a jury on a criminal case only once, and I lost. I suppose I could be prejudiced because of that particular incident, but I doubt it.

Senator Langlois: I never did.

Senator Flynn: I have never acted on behalf of the Crown, and therefore I am certainly not prejudiced in its favour.

It has frequently been argued that the Supreme Court decision in the *Morgentaler* case weakened our jury system. We should take a look at this, and the Department of Justice should have a close look at all the problems relating to the jury system and not limit itself to solving a problem in one particular case by removing the right of the appeal court to apply the law, when only a question of law is involved.

I am not taking sides on the question of abortion. I do not care about what happens to Dr. Morgentaler. I am concerned with the ultimate consequences of this amendment, if nothing else is done. I do not say that it is bad in itself. I say we are going in the wrong direction. I would have gone in the opposite direction in trying to cure this particular problem.

A journalist, after the *Morgentaler* case was heard, put it this way: Should a jury always have the last word? Remember, juries don't always acquit. Sometimes, they convict. Sometimes they too can make mistakes. Should a court of appeal be powerless to do anything about it? Does a reversal of a jury verdict tend to destroy the jury system?

These are some of the questions people have been asking since the decision of the Supreme Court of Canada. I would say that the role of the jury, its usefulness, its possible reform, its continued existence or its abolition is probably one of the most discussed subjects of judicial procedure. Generally speaking, however, people favour the retention of the jury system. I want to make it clear that I also am in favour of the jury system, but like any other human institution it has to be checked.

In Quebec, a couple of years ago, two out of every three people felt that the jury could be relied upon for a correct judgment. In the United States only 50 per cent of the people had that kind of confidence in "12 good men and women and true."

You will recall that juries originated with England's early Norman kings. The system was set up for political reasons: the distrust of a judiciary that was dependent upon government, and the desire to democratize the administration of justice. For centuries juries resisted enormous pressures by kings, parliaments and judiciaries. They brought in verdicts against the demands of each of these and all of them together.

[Senator Flynn.]

The system survives today not only because of tradition, but also because of its inherent qualities. The jury system provides a vehicle which permits the average citizen to come to grips with the legal system and see that justice is done. It forces lawyers and judges to make the law intelligible to laymen, and it gives the common man the opportunity to assess the demeanour as well as the testimony of witnesses in coming to a verdict.

● (1430)

In North America the concept of the jury is still very much linked with the fundamental principles of democracy, liberty and justice; yet the need for a jury to protect against the outrages of an uncontrolled monarchy or other similar forms of government no longer exists.

The great French magistrate, Casamayor, once wrote: "Why are criminals judged by laymen, while those guilty of less serious infractions are judged by specialists in the law?" It is a strange paradox, one which should force us to reflect upon the effectiveness of juries.

The jury system provides many safeguards for our basic liberties, safeguards of which I would not want to see us deprived. But the jury system, like any other human institution, is not infallible. It is argued by the proponents of the *Morgentaler* amendment that the decision of a jury to acquit should not be allowed to be reversed by a court of appeal. The reasoning is that juries, unlike courts of appeal, reflect the popular feelings of the times; that they give expression to changing and living jurisdiction as influenced by feeling contemporary peers rather than remote and aloof authorities.

So far as that argument is concerned, may I just mention that if we expect and want juries to give expression to popular feelings, we should bear in mind that popular feelings vary from one day to the next and from one region to another. If that were the only argument in its favour, I doubt that the jury would be retained. These same people would likely favour the contemporary tendency away from strict interpretation of the law; they would favour interpretations of the law being adapted to popular tendencies and moral convictions in matters where there is no obvious consensus.

This, of course, is the case so far as abortion is concerned, but I am not discussing that and I am not expressing any opinion on it. But I do suggest, if we have to accept these arguments, that it is a very risky business.

I would ask you to recall some of the American trials of not so long ago, where if the accused were black or Indian he was guilty, and if the victim were black or Indian his white assailant was invariably acquitted, even though there was no evidence to support a rational decision to acquit.

Those juries, too, were reflecting the popular feelings of the times and places in which they lived. Those juries, too, were giving expression to changing and living jurisdiction as influenced by feeling contemporary peers rather than remote and aloof authorities. Do not be too quick to reason that such things could not happen in contemporary, enlightened Canada. I will not try to give you any other