problem. I point out that relevant evidence ought to be before the court, ought to be admitted, and excluding it does violence to justice. I also point out the procedural problems which arise in connection with this matter as defence counsel will need to examine at length in order to ascertain if there was wiretapping before he can learn if it was done illegally or not.

Another problem was referred to by the committee in 1969. There is the distinct possibility that criminals will place evidence beyond the reach of the court by involving such evidence in an illegal wiretap. The spectre of such an event should cause us to pause, because the cause of justice would not be served and the person who had committed a serious crime might not be brought to justice. In this connection I wish simply to emphasize that there is included in the bill a five-year penalty for wiretapping.

How can anyone argue with the basic proposition put forward in the amendment, which reads:

> Where in any proceedings the judge is of the opinion that any private communication or any other evidence that is inadmissible pursuant to subsection (1) is relevant and that to exclude it as evidence may result in justice not being done in the matter to which the proceedings relate, he may notwithstanding subsection (1), admit such private communication or evidence as evidence in such proceedings.

Ten provincial Attorneys General have joined in the plea that this rule of exclusion which the committee introduced should not be part of our law. Unanimously, the provincial Attorneys General asked that this not be made part of our law. The Attorney General for British Columbia raised in this letter the very question I was discussing a moment ago, to the consternation of the hon. member for Yukon (Mr. Nielsen). He asked, how far must the Crown now prove in each case that none of its evidence was indirectly obtained following an illegal wiretap or, for that matter, how far must it go in every case involving evidence obtained by wiretap? Ten provincial Attorneys General recognize what would happen to the due process of law and to the procedure in our courts under our system of justice if we introduced this exclusion relating to indirect evidence into our jurisprudence at this time.

If I had in other circumstances sought to move forward a provision in our criminal law involving the administration of criminal justice which is in the hands of the provincial Attorneys General, against the wishes of those Attorneys General, without doubt hon. members opposite would have raised a tremendous shout of indignation because the federal government was ignoring the united voices of men charged with certain responsibilities in enforcing the criminal law across the country. Yet they do not do so with regard to the introduction into the Canadian system of law of a rule which has not been all that welcome in the American system.

I wish to refer hon. members to a few words written in the "California Law Review" by Professor D. Barrett of the University of California. He said in part:

> Law enforcement is not a game in which liberty triumphs whenever the policeman is defeated. Liberty demands that both official and private lawlessness shall be curbed. And in any specific instance it is hard to say that, put to the choice between permitting the consummation of the defendant's illegal scheme and the policeman's illegal scheme, the court must of necessity favour the defendant. So to say is to abandon any presumption of official regularity and to assume that the policeman's action always involves a greater social evil than the defendant's. It should be noted that the exclusion of the evidence usually results in the defendant's completely escaping punishment for his act, while the admission of the evidence does not constitute a judicial approval of the officer's conduct, and that officer is still, at least in theory, subject to some form of civil or criminal liability.

And it is more than theory here. The article refers to the obtaining of illegal evidence in the United States. I point out that this bill provides for a penalty of up to five years' imprisonment for the person convicted of illegal wiretapping. The defendant might frequently go free if the rule were to apply. Of course, it might apply rarely. But even in those two or three cases per year, do we really want to allow the person who has engaged in criminal activity, and who may be convicted of a serious crime on the strength of proper evidence put before the court, to go free because certain evidence is excluded?

Mr. Nielsen: But he may be innocent.

Mr. Lang: My hon. friend opposite says he may be innocent. In that case, all relevant evidence should be before the court and his innocence should not be decided on the basis of the absence of relevant evidence which ought to be before the court.

In practice and in fact we know that certain serious crimes are the special object of police electronic intrusion, the importation and handling of drugs being typical examples. Do we really want the person who has imported and trafficked in heroin to escape conviction because of the operation of a technical rule of evidence which is not related to the offence and not related to the issue of innocence or guilt which the court must decide? That is the wrong way to go about this business.

It is important for the courts to have before them relevant evidence. I therefore urge hon. members to forego what seems to be a hardening and partisan approach to what has been a relatively non-partisan analysis of the law. Let them look at the propositions I have put before the House, which have been put before the House and the community by persons more eloquent than me, in defence of the long-standing Canadian and British rule that relevant evidence ought to be before the court.

● (2050)

We ought not to risk a rule which might bog us down in procedural difficulties. We ought not to allow a rule which might keep from a court evidence which is relevant and whose absence might prevent justice from being done. Those are the words of my amendment, and I commend them to hon. members. I earnestly seek their support so that the bill might be the kind of proud thing it ought to be in introducing the prohibition of electronic intrusion, rather than an occasion of procedural difficulty and an occasion of the courts failing to do justice because evidence which should have been before them could not be considered.

Mr. Ron Atkey (St. Paul's): Tonight we have the spectacle of the Minister of Justice (Mr. Lang) coming into this House in an attempt to overthrow a vote of the Standing Committee on Justice and Legal Affairs which was carried by 11 to 5. This was a vote on an amendment, incor-