

*Criminal Code*

It is not unusual, Mr. Speaker, for people whom I have met socially or otherwise not to understand the real principles of jurisprudence, the underlying principle of which in criminal law is that a man is innocent until proven guilty. The onus throughout is on the crown to prove beyond reasonable doubt—I emphasize the word “reasonable”—the guilt of the accused. Nor according to the law of the land, must it be mentioned to the jury that the accused has not testified, although courts of appeal may take cognizance of that fact. I just mention that to show how one is very much alone and has the worry of determining whether or not the accused person should give evidence at his own trial.

Over the years the great counsel of Great Britain, the United States and Canada—and we have produced them—have advised very strongly against calling the accused because, although the accused on trial may be as innocent of murder as anyone now in the House of Commons, the twisting of a phrase elicited by the art of cross-examination conducted by a highly skilled or intellectual counsel may result in the accused being convicted.

You have only to read the trial of the Seddon case, in which Marshall Hall, Q.C., of Great Britain begged Mr. Seddon not to go on the stand to give evidence, to appreciate the situation to which I refer. There is no doubt that the reason was the possibility to which I have alluded.

I am not one of those members of parliament who, as in the Truscott case, would upset the jury's verdict, the decision of the court of appeal of Ontario and the decision in respect of leave to appeal to the Supreme Court of Canada on the basis of a 20 or 30 minute interview. I am not one of those members of parliament. I have not their capabilities or their wisdom. Counsel who defended Truscott, had to decide whether or not to call him as a witness. May I just ask this question: If he had called him, thus making him subject to cross-examination by a very skilled agent of the Attorney General, might a phrase have been twisted against him?

The modern trend in Great Britain and even in Canada seems to be that in some cases the accused should be called. As I say, courts of appeal take cognizance of this fact. When the crown has completed its case against the accused the decision whether to call the accused rests on counsel for the defence. In making that decision counsel is

very much alone. My heart is with the advocates of complete abolition. As a defence counsel this is natural. Defence counsel, just as prosecutors for the crown acquire a crown mentality, develop some kind of built-in defence mechanism as a result of their training and experience.

Though I am not convinced at the moment that complete abolition is the answer, I am glad to have had the opportunity to state my case. I, as I am sure any lawyer would, would defend a person charged with capital or non-capital murder and as in the past I would use every resource and ability at my command. However, I must measure up to my responsibility in this debate as a member of parliament. This is a separate and distinct responsibility that I share with the rest of you. We are responsible for and ought to assure the safety of society and the rule of law. This is most important. Otherwise I shall vote as my conscience and therefore my head dictates.

This is not a subject on which to play politics. The responsibility, I suggest, is as great as that devolving on the western leaders who instigated the Nuremberg trials. In my mind as a lawyer I do not think there was any justification for the action taken by the bar of international justice. However, that action was taken because of the deliberate and planned barbaric slaughter of millions of good-hearted human beings and the culprits were executed. As a lawyer I ask, was it right to put Eichmann and the nazi leaders on trial? Perhaps that is a legal question.

● (5:30 p.m.)

One thing has occurred to me, and I am very serious about this. I am convinced that today in Canada there are those living in our society, unfortunately, who have all the capacity displayed by the nazis. My own experience and personal knowledge prompt me to ask this question about the many who have been murdered. What about the women and children who have been abused and misused, first by rape and then by slaughter? It may be—this is the emotional side of the argument—your neighbour. Still worse, when you cope with your own conscience you must consider that it could be your child, your wife or you yourself.

Then there are those who may still live in our society and plot the destruction of Canada by selling secrets to our enemies. The western world spends billions of dollars