

*Administration of Justice*

pret them in the way that both he and I would like to see them interpreted.

As I have already stated, it would be a desirable first step in dealing with the question to have the committee consider whether the Code should stipulate as an essential ingredient in all prosecutions, or more serious ones at least, that the accused must be protected by counsel unless he positively asserts his right not to retain counsel.

• (5:30 p.m.)

I should like to deal with a number of questions which I find difficult and which I am sure the committee will want to consider in this particular connection. An initial and difficult question is, of course, as to what degree of seriousness in an offence should be a prerequisite to the right to legal aid. The hon. Member has made his choice in this regard. To follow the terms of his motion, he has said "for the provision of legal aid in all criminal cases in which imprisonment is a possible outcome". All offences? Should persons be entitled to legal aid for all offences or only those which, as this motion suggests, might lead to a possible sentence or involve the accused in the loss of his liberty?

An argument which I am sure would immediately be raised from the prosecution side is that requiring legal representation in even the most minor offences would unduly delay and burden the administration of justice, and by such delay work a prejudice to the rights of persons awaiting trial. In this connection we may note the Minister's announcement that the committee will have the assistance of consultants, experts in special fields related to the committee's study. I am sure the experience, for example, of people on the prosecution side such as police officers will be very valuable in assisting the committee in determining questions such as these, namely what offences should entitle a person to legal representation through the agency of the state?

Another question would be as to the point in time at which the prosecution action should be stayed so that an indigent person may secure representation. As hon. Members with legal training know, the real outcome of a criminal trial may be predetermined by events occurring during police investigation, such as statements or actions of the accused or tests he has undergone without knowing he was under no obligation to take them. In the case of a well-to-do person who is accustomed to dealing with a solicitor, his first

reaction when faced with this kind of inquiry is to seek the counsel of his lawyer. In respect of an indigent person who does not have this recourse ordinarily, there is not the same means or opportunity available and so this problem arises for him. These actions during investigation may be highly prejudicial to the accused who acts in ignorance of his rights. In all justice may I say that there may be no impropriety on the part of the police, either.

Perhaps in this connection I might cite, by way of example, a recent decision by Mr. Justice Haines of the Supreme Court of Ontario in the case of *Regina v. O'Connor*, which is reported in the April 9 edition of *Ontario Reports* for 1965, page 360. This was a case in which the facts closely resembled the situation I described, where an accused had been apprehended for an offence under the Criminal Code and had been submitted to a series of tests before he was permitted to communicate with his solicitor. In the course of that judgment, Mr. Justice Haines made the following observations which I think are relevant to this particular point:

It is the lawyer who through his background of experience and training is able to search out, sort and select those facts which bear legal relevance and weight, and to perform that myriad of tasks, routines and presentations which the man on the street standing charged with an offence cannot possibly hope to comprehend and to marshal in his own defence against the so-called strong arm of the law. It is the early participation of counsel both in fact development and fact presentation which lends some semblance of reality to the concept of the balance existing between the accused and the otherwise irresistible forces of the state. To waylay counsel in this crucial and vital stage of fact development, as the police in this instance would seem to have desired to do, is tantamount to waylaying the cornerstone of our concept of criminal justice so painstakingly assembled through almost countless generations.

May I point out, as Mr. Justice Haines has pointed out in that case, it is essential at the earliest possible moment for the accused person or the person who is under investigation by the forces of the law, to have representation. I should like to suggest that one of the questions to which the committee will have to give serious consideration is at what point legal aid counsel is to be provided to the indigent person. This, of course, offers very obvious difficulties from the standpoint of law enforcement. Of course, all police inquiries do not immediately lead to a charge, or even to a charge against that particular person. None the less, the problem does arise.

Mr. Justice Haines has also made—