

available evidence, the interception of communication, would be inadmissible. What really matters, Mr. Speaker, is to throw the light on a case, to find the truth about what happened and to determine who is innocent and who is guilty. If a situation were created such that this prime duty of justice is impeded by various technicalities enabling a criminal to go scot-free, then justice would be unable to play its role.

With regard to electronic eavesdropping, I recognize that, in the past, too often it was practised without any restriction whatever and that, as a rule, to be accepted as proof, any communication should have been intercepted legally. The act states specifically in which circumstances electronic eavesdropping is allowed, and it is imperative that policemen respect the act. I would therefore ask all my colleagues to avoid creating a situation that would favour the criminals, as is the case in the U.S.A.

For all those reasons, Mr. Speaker, I believe it is imperative not to adopt the American rule whereby proofs obtained illegally are excluded but rather to allow the court, as suggested by the Minister of Justice, to decide on its admissibility because it is pertinent and thus allow justice to be done.

The Minister of Justice quoted a decision made by the distinguished Justice Cordozo about forty years ago. I believe that this quote should be repeated since it shows clearly what would be the result of passing even part of the exclusion rule implemented in the United States. Justice Cordozo said about this case:

[English]

The criminal is to go free because the constable has blundered. . . . A room is searched against the law, and the body of a murdered man is found. . . . The privacy of the home has been infringed, and the murderer goes free.

[Translation]

The solution to the problem of illegal wiretapping should not benefit the criminal. The sanction should concern the person guilty of illegal wiretapping. This approach of the government is consistent with our traditions and we should maintain it because of the significant protection which this bill gives the citizens by defining specific conditions for wiretapping.

[English]

Mr. John Gilbert (Broadview): Mr. Speaker, I think it would be fair to say that the members of the New Democratic Party oppose the motion of the minister, the amendment of the hon. member for St. Paul's (Mr. Atkey) and the subamendment of the minister. I have found in this debate—I have said this before—that although the minister is very competent, he is very rigid. He seems to think that if there is agreement, we are all acting impartially; but if there is disagreement with the minister, we are acting in a partisan way. That just is not so.

If you review what has happened with regard to this particular section of the bill, you will see that on second reading there was a clear indication by members of the Progressive Conservative Party and the New Democratic Party that we opposed this particular clause. The bill went to committee. There the hon. member for St. Paul's was instrumental in bringing forward an amendment which was accepted on a vote of 11 to 5. That does not seem to

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satisfy the minister. He is now attempting to do indirectly what he could not do directly in the committee. If he had had his way in the committee, all evidence, whether direct or indirect, legal or illegal, would be admissible in court.

We feel this is a question of principle. The amendment in committee was very clear and should be accepted. If we accept the amendment moved by the hon. member for St. Paul's in committee, we would be following the American law and we would probably be accepting the direction in which the English courts are going on this principle. I recall reading a publication by Professor Stanley Beck in regard to wiretapping. He said that one of the most salutary directions you can give the police is that any evidence, whether direct or indirect, obtained illegally shall not be admissible. I think this is the basic principle on which we should operate.

• (1610)

This was the thrust of the amendment of the hon. member for St. Paul's. It is rather unfortunate that the hon. member for St. Paul's brought forth an amendment to the motion of the Minister of Justice (Mr. Lang), because he has clouded the issue. However, I can appreciate the reason he did so; he is attempting to get certain members within his party to accept his amendment rather than accept the motion of the minister. What the hon. member is really doing is opening the door and confusing the issue. What the minister is doing in his subamendment is turning full circle and going right back to the original position that he took in the bill. The members of the New Democratic Party oppose this, and we oppose it very strenuously.

In his argument the minister said that one of the reasons he opposed the amendment that passed in the committee was that it would cause delays in the courts. Just from my own experience in court I would say I think the minister is probably proceeding on a wrong assumption. I think he is overstating the case in regard to delay. There are delays regarding confessions in court, because we have a voir dire to determine whether a statement will be admissible on a voluntary basis. If there is any evidence that the statement was obtained by force or threat or promise, then the statement is not admissible.

I do not see the same type of problem in regard to wiretaps. What I see happening is that Crown counsel will present the authorization for the wiretap at the commencement of the trial, and at that time defence counsel would have to raise any objection he had to its validity. Both from your own experience, Mr. Speaker, and from mine we know that once the authorization is tendered it is the same as tendering a by-law in a case or tendering a certificate of analysis in a narcotics case. I just do not see any real delay there.

I think we should be in the forefront in regard to protecting the liberties and privacy of all Canadians. I do not think we should get ourselves into any worse position than our friends in the States and the possible trend that will occur in England. As the hon. member for Windsor-Walkerville (Mr. MacGuigan) said, and said very strongly and persuasively, administration of the law does not stop at the court door. It starts when a person is apprehended for the commission of an offence and ends when that