HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

PROCEEDINGS

No. 1

THURSDAY, JUNE 15, 1967

INCLUDING

Appendix A: Main Estimates 1967-68, Department of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

26904—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Scott (Danforth),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

FRIDAY, May 19, 1967.

Resolved,—That the following Members do compose the Standing Committee on Justice and Legal Affairs:

Messrs.

Addison,	Grafftey,	Otto,
Aiken,	Guay,	Pugh,
Cameron (High Park),	Honey,	Ryan,
Cantin,	Latulippe,	Scott (Danforth),
Choquette,	MacEwan,	Tolmie,
Forest,	Mandziuk,	Wahn,
Gilbert,	McQuaid,	Whelan,
Goyer,	Nielsen,	Woolliams—(24).

THURSDAY, May 25, 1967.

Ordered,—That, saving always the powers of the Committee of Supply in relation to the voting of public monies, the items listed in the Main Estimates for 1967-68, relating to the Department of Justice be withdrawn from the Committee of Supply and referred to the Standing Committee on Justice and Legal Affairs.

Attest

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

26904—1¼

REPORT TO THE HOUSE

THURSDAY, June 15, 1967

FIRST REPORT

Your Committee recommends that its quorum be reduced from 13 to 8 members.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, June 6, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (High Park), Choquette, Goyer, Guay, Honey, Latulippe, MacEwan, McQuaid, Ryan, Tolmie (11).

At 10.30 a.m. there being no quorum, the meeting was postponed.

THURSDAY, June 8, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Goyer, Honey, Latulippe, Pugh, Ryan, Tolmie, Wahn (11).

At 10.30 a.m. there being no quorum, the meeting was postponed.

TUESDAY, June 13, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (*High Park*), Cantin, Gilbert, Guay, Honey, Tolmie (7).

At 10.20 a.m., there being no quorum, the meeting was postponed.

THURSDAY, June 15, 1967.

The Standing Committee on Justice and Legal Affairs met this day at 11.10 a.m. for the purpose of organization.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Grafftey, Guay, Honey, Latulippe, MacEwan, Otto, Ryan (14).

The Clerk attending and having called for nominations, it was moved by Mr. Ryan, seconded by Mr. Honey, that Mr. Cameron take the Chair of this Committee as Chairman.

On motion of Mr. MacEwan, seconded by Mr. Forest,

Agreed,—That nominations be closed.

There being no other nominations, the Clerk declared Mr. Cameron duly elected Chairman, and invited him to assume the Chair.

Mr. Cameron thanked the Committee for the honour bestowed upon him and then invited nominations for Vice-Chairman.

Mr. Guay moved, seconded by Mr. Choquette,

That Mr. Forest be Vice-Chairman of the Committee.

There being no nother nominations, the Chairman declared Mr. Forest duly elected Vice-Chairman.

Mr. Forest thanked the Committee for his re-election as Vice-Chairman.

On motion of Mr. Choquette, seconded by Mr. Ryan,

Resolved,—That the Committee print from day to day 750 copies in English and 350 copies in French of its proceedings.

On motion of Mr. Forest, seconded by Mr. Gilbert,

Resolved,—That the items listed in the Main Estimates for 1967-68 relating to the Department of Justice be printed as an appendix to today's Minutes of Proceedings (*see Appendix A*).

On motion of Mr. Ryan, seconded by Mr. MacEwan,

Resolved,—That the Chairman, Vice-Chairman, and three members appointed by the Chairman do compose the Subcommittee on Agenda and Procedure.

On motion of Mr. Honey, seconded by Mr. Aiken,

Resolved,—That the Chairman seek leave of the House to reduce the quorum from 13 to 8.

Agreed,—That the Minister of Justice be heard at the next meeting.

At 11.20 a.m., there being no further business, the meeting was adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

APPENDIX A

JUSTICE

MAIN ESTIMATES, 1967-68

JUSTICE

No. of Vote	Service	1967-68	1966-67	Change	
				Increase	Decrease
		$	$	$	$
(S)	Minister of Justice—Salary and Motor Car Allowance (Details, page 249)	17,000	17,000		
1	Administration, including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board of Judges who die while in office and authority to make recoverable advances for the administration of justice on behalf of the governments of the Northwest Territories and the Yukon Territory (Details, page 249)	3,983,100	2,724,350	1,258,750	
(S)	Judges' Salaries, Allowances and Pensions (Details, page 253)	9,513,700	9,011,700	502,000	
		13,496,800	11,736,050	1,760,750	
	SUMMARY				
	To be voted	**3,983,100**	2,724,350	1,258,750	
	Authorized by Statute	**9,530,700**	9,028,700	502,000	
		13,513,800	**11,753,050**	**1,760,750**	

Positions (man-years)		Details of Services	Amount	
1967–68	1966–67		1967–68	1966–67
			$	$
		Approximate value of major services not included in these Estimates		
		Accommodation (Provided by the Department of Public Works)	628,900	531,300
		Accounting and cheque issue services (Comptroller of the Treasury)	284,700	39,000
		Contributions to Superannuation Account (Treasury Board)	188,100	101,300
		Contributions to Canada Pension Plan Account and Quebec Pension Plan Account (Treasury Board)	28,400	23,200
		Employee surgical-medical insurance premiums (Treasury Board)	29,300	12,700
		Employee compensation payments (Department of Labour)	700	3,200
		Carrying of franked mail (Post Office Department)	29,000	2,600
			1,189,100	713,300
		Statutory—Minister of Justice—Salary and Motor Car Allowance		
		Salary (1)	15,000	15,000
		Motor Car Allowance (2)	2,000	2,000
			17,000	**17,000**
		Vote 1—Administration including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board, of Judges who die while in office, and authority to make recoverable advances for the administration of justice on behalf of the Governments of the Northwest Territories and the Yukon Territory		
		DEPARTMENTAL ADMINISTRATION INCLUDING GRANTS AND CONTRIBUTIONS AS DETAILED IN THE ESTIMATES AND AUTHORITY TO MAKE RECOVERABLE ADVANCES FOR THE ADMINISTRATION OF JUSTICE ON BEHALF OF THE GOVERNMENTS OF THE NORTHWEST TERRITORIES AND THE YUKON TERRITORY		
		Salaried positions:		
		Executive, Scientific and Professional:		
1	1	Deputy Minister ($27,000)		
2	2	Associate Deputy Minister ($24,840)		
1		Assistant Deputy Minister ($24,840)		
2	2	Assistant Deputy Minister ($22,680)		
	1	Senior Officer 3 ($20,500–$24,750)		
1		Senior Officer 2 ($18,500–$22,750)		
9	7	Senior Advisory Council ($18,500–$22,000)		
1		Senior Officer 1 ($16,500–$20,500)		
80		($16,000–$18,000)		
9	35	($14,000–$16,000)		
6	8	($12,000–$14,000)		
9	3	($10,000–$12,000)		
24	5	($8,000–$10,000)		
1	13	($6,000–$8,000)		

Positions (man-years)		Details of Services		Amount	
1967–68	1966–67			1967–68	1966–67
				$	$
		Vote 1 (Continued)			
		DEPARTMENTAL ADMINISTRATION (Continued)			
		Salaried positions: (Continued)			
		Administrative and Foreign Service:			
1		($18,000–$20,000)			
	4	($12,000–$14,000)			
1	1	($10,000–$12,000)			
6	2	($8,000–$10,000			
2	10	($6,000–$8,000)			
		Technical, Operational and Service:			
3		($8,000–$10,000)			
3	4	($6,000–$8,000)			
	2	($4,000–$6,000)			
		Administrative Support:			
2		($8,000–$10,000)			
19	19	($6,000–$8,000)			
145	78	($4,000–$6,000)			
13	48	(Under $4,000)			
341	245				
(341)	(245)	Salaries (including $155,500 allotted during 1966–67 from the Finance Contingencies Vote for increases in rates of pay)	(1)	2,966,000	1,820,500
		Allowances	(2)	30,000	30,700
		Professional and Special Services	(4)	50,000	50,000
		Legal Fees, Court Costs and Payments for the Maintenance of Prisoners and Juvenile Delinquents	(4)	200,000	170,000
		Travelling and Other Expenses of Judges for Visiting Custodial Institutions	(5)	3,000	3,000
		Other Travelling Expenses	(5)	75,000	60,000
		Travelling Expenses of Chief Justices Attending Annual Conference of Chief Justices	(5)	6,000	6,000
		Freight, Express and Cartage	(6)	1,500	1,100
		Postage	(7)	3,000	3,000
		Telephones and Telegrams	(8)	47,000	34,000
		Publication of Departmental Reports and Other Material	(9)	3,000	3,000
		Office Stationery, Supplies, Equipment and Furnishings	(11)	74,000	39,000
		Law Books, Books of Reference for the Library and Binding of Same	(11)	16,500	11,900
		Materials and Supplies	(12)	500	500
		Repairs and Upkeep of Equipment	(17)	500	500
		Municipal or Public Utility Services	(19)	12,000	12,000
		Contribution to the Conference of Commissioners on Uniformity of Legislation in Canada	(20)	200	200
		Grant to the Canadian Corrections Association to assist in defraying the expenses of the Fifth International Criminological Congress held in Montreal in 1965	(20)	.....	31,000
		Transportation Expenses of Prisoners and Escorts and Discharged Inmates	(22)	.....	33,000
		Sundries	(22)	9,500	9,500
				3,497,700	2,318,900
		Less—Amounts recoverable from Northwest Territories Territorial Government and Yukon Territorial Government	(34)	454,200	340,000
				3,043,500	1,978,900

Positions (man-years)		Details of Services	Amount	
1967–68	1966–67		1967–68	1966–67
			$	$
		Vote 1 (Continued)		
		DEPARTMENT ADMINISTRATION (Continued)		
		Expenditure		
		1964–65 ... $ 1,616,939		
		1965–66 ... 1,632,919		
		1966–67 (estimated) ... 2,234,000		
		STATUTE REVISION COMMISSION		
		Professional and Special Services ... (4)	100,000	100,000
		Postage ... (7)	200	200
		Telephones and Telegrams ... (8)	600	300
		Publication of Departmental Reports and Other Material ... (9)	40,000	
		Office Stationery, Supplies and Equipment ... (11)	7,200	7,500
		Sundries ... (22)	2,000	2,000
			150,000	110,000
		Expenditure		
		1964–65 ... $ ...		
		1965–66 ... 17,531		
		1966–67 (estimated) ... 25,000		
		SUPREME COURT OF CANADA—ADMINISTRATION		
		Salaried Positions:		
		Executive, Scientific and Professional:		
1		($18,000–$20,000)		
1	1	($16,000–$18,000)		
	1	($14,000–$16,000)		
1	1	($12,000–$14,000)		
4	3	($10,000–$12,000)		
2		($8,000–$10,000)		
	4	($6,000–$8,000)		
		Administrative and Foreign Service:		
2	1	($8,000–$10,000)		
	1	($6,000–$8,000)		
		Administrative Support:		
14	2	($6,000–$8,000)		
10	19	($4,000–$6,000)		
7	9	(Under $4,000)		
42	42			
(42)	(42)	Salaries (including $16,500 allotted during 1966–67 from the Finance Contingencies Vote for increases in rates of pay) ... (1)	362,000	291,500
		Professional and Special Services ... (4)	60,000	
		Travelling Expenses ... (5)	3,000	1,000
		Freight, Express and Cartage ... (6)	600	600
		Postage ... (7)	500	450
		Telephones and Telegrams ... (8)	5,000	3,800
		Office Stationery, Supplies, Equipment and Furnishings ... (11)	25,000	8,000
		Law Books, Books of Reference for Library and Binding of Same ... (11)	40,000	40,000
		Sundries ... (22)	2,000	2,000
			438,100	347,350

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			$	$
		Vote 1 (Continued)		
		SUPREME COURT OF CANADA—ADMINISTRATION (Continued)		
		Expenditure		
		1964-65 $ 282,779		
		1965-66 296,873		
		1966-67 (estimated) 310,850		
		EXCHEQUER COURT OF CANADA—ADMINISTRATION		
		Salaried Positions:		
		Executive, Scientific and Professional:		
1		($16,000-$18,000)		
	1	($14,000-$16,000)		
4		($12,000-$14,000)		
	3	($10,000-$12,000)		
		Administrative and Foreign Service:		
1		($8,000-$10,000)		
	1	($6,000-$8,000)		
		Technical, Operational and Service:		
	1	($6,000-$8,000)		
		Administrative Support:		
1		($8,000-$10,000)		
10	4	($6,000-$8,000)		
7	11	($4,000-$6,000)		
8	8	(Under $4,000)		
32	29			
(32)	(29)	Salaries (including $12,000 allotted during 1966-67 from the Finance Contingencies Vote for increases in rates of pay) (1)	198,000	178,000
		Services of Sheriffs, Outside Reporters, etc. (4)	30,000	30,000
		Court Officials' Travelling Expenses (5)	15,000	12,000
		Postage (7)	500	300
		Telephones and Telegrams (8)	7,000	2,300
		Office Stationery, Supplies, Equipment and Furnishings (11)	50,000	15,000
		Sundries (22)	1,000	500
			301,500	238,100
		Expenditure		
		1964-65 $ 185,195		
		1965-66 197,988		
		1966-67 (estimated) 255,000		
		GRATUITIES TO THE WIDOWS OR SUCH DEPENDENTS AS MAY BE APPROVED BY TREASURY BOARD OF JUDGES WHO DIE WHILE IN OFFICE (21)	50,000	50,000
		Expenditure		
		1964-65 $ 24,500		
		1965-66 30,833		
		1966-67 (estimated) 50,000		
		Total, Vote 1	**3,983,100**	**2,724,350**
		Expenditure		
		1964-65 $ 2,109,413		
		1965-66 2,176,144		
		1966-67 (estimated) 2,874,850		

Positions (man-years)		Details of Services	Amount	
1967–68	1966–67		1967–68	1966–67
			$	$
		Statutory—Judges' Salaries, Allowances and pensions		
		SUPREME COURT OF CANADA—JUDGES' SALARIES (CHAP. 159, R.S., AS AMENDED)		
		Salary of Chief Justice of Canada	35,000	35,000
		Puisne judges, (8 at $30,000)	240,000	240,000
		(1)	275,000	275,000
		Expenditure		
		1964–65 $ 275,000		
		1965–66 275,000		
		1966–67 (estimated) 275,000		
		EXCHEQUER COURT OF CANADA—JUDGES' SALARIES INCLUDING DISTRICT JUDGES IN ADMIRALTY, AND TRAVELLING ALLOWANCES, ETC. (CHAP. 159, R.S., AS AMENDED)		
		President of the Exchequer Court of Canada ($25,000)		
		Puisne Judges (7 at $21,000)		
		District Judges in Admiralty (4 at $1,000, 1 at $800, 1 at $600, 3 at $333.33, 1 Surrogate Judge at $400, 3 District Registrars at $300)		
		Salaries (1)	179,700	179,700
		Travelling Allowances—President and Puisne Judges (5)	8,500	8,500
		Travelling Allowances—Admiralty Judges (5)	500	500
			188,700	188,700
		Expenditure		
		1964–65 $ 178,163		
		1965–66 194,059		
		1966–67 (estimated) 190,000		
		STATUTORY—OTHER COURTS—JUDGES' SALARIES AND TRAVELLING ALLOWANCES (CHAP. 159, R.S. AS AMENDED)		
		Judges' Salaries—Other Courts (1)	7,099,000	6,847,000
		Judges' Travelling Allowances—Other Courts (5)	254,000	254,000
			7,353,000	7,101,000
		(Further Details)		
		Province of Newfoundland	170,500	170,500
		Province of Prince Edward Island	137,500	137,500
		Province of Nova Scotia	320,500	274,500
		Province of New Brunswick	335,500	314,500
		Province of Quebec	1,895,500	1,832,500
		Province of Ontario	2,129,000	2,039,000
		Province of Manitoba	447,500	447,500
		Province of Saskatchewan	588,500	588,500

Positions (man-years)		Details of Services	Amount	
1967–68	1966–67		1967–68	1966–67
			$	$
		Statutory (Continued)		
		Further Details (Continued)		
		Province of Alberta	597,500	581,500
		Province of British Columbia	831,000	815,000
			7,453,000	7,201,000
		Less—Anticipated lapses in salaries	100,000	100,000
			7,353,000	7,101,000
		Expenditure		
		1964–65 $ 6,771,882		
		1965–66 6,996,865		
		1966–67 (estimated) 7,250,000		
		STATUTORY—NORTHWEST TERRITORIES—JUDGE'S SALARY AND TRAVELLING ALLOWANCE (CHAP 159, R.S. AS AMENDED)		
		Salary of Judge (1)	21,000	21,000
		Travelling Allowance (5)	4,000	4,000
			25,000	25,000
		Expenditure		
		1964–65 $ 24,083		
		1965–66 24,965		
		1966–67 (estimated) 25,000		
		STATUTORY—YUKON TERRITORY—JUDGE'S SALARY AND TRAVELLING ALLOWANCE (CHAP. 159, R.S. AS AMENDED)		
		Salary of Judge (1)	21,000	21,000
		Travelling Allowance (5)	1,000	1,000
			22,000	22,000
		Expenditure		
		1964–65 $ 22,063		
		1965–66 22,805		
		1966–67 (estimated) 22,000		
		STATUTORY—PENSIONS UNDER THE JUDGES ACT (CHAP. 159, R.S. AS AMENDED) (21)	1,650,000	1,400,000
		Expenditure		
		1964–65 $ 1,366,577		
		1965–66 1,516,829		
		1966–67 (estimated) 1,575,000		
		Total, Statutory Item	**9,513,700**	**9,011,700**
		Expenditure		
		1964–65 $ 8,637,768		
		1965–66 9,030,523		
		1966–67 (estimated) 9,337,000		

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

Copies and complete sets are available to the public by subscription to the Queen's Printer. Cost varies according to Committees.

Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, JUNE 27, 1967

RESPECTING

Main Estimates 1967-68, Department of Justice

The Hon. Pierre-Elliot Trudeau, Minister.

WITNESS:

From the Department of Justice: Mr. D. H. Christie, Director of the Criminal Law Section.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

26906—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

[1] Mr. Addison,	Mr. Guay,	Mr. Otto,
Mr. Aiken,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Scott (*Danforth*),
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
		Mr. Woolliams—24.

(Quorum 8)

[1] Replaced by Mr. Brown, Tuesday, June 20, 1967.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, June 19, 1967.

Ordered,—That the quorum of the Standing Committee on Justice and Legal Affairs be reduced from 13 to 8 Members.

Ordered,—That the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs.

TUESDAY, June 20, 1967.

Ordered,—That the name of Mr. Brown be substituted for that of Mr. Addison on the Standing Committee on Justice and Legal Affairs.

MONDAY, June 26, 1967.

Ordered,—That the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs.

TUESDAY, June 27, 1967.

Ordered,—That the Minutes of Proceedings and the Evidence taken during the past Session before the Standing Committee on Justice and Legal Affairs in relation to Bill C-192, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs and become part of the records of that Committee when it is considering the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

26906—1½

MINUTES OF PROCEEDINGS

TUESDAY, June 27, 1967.
(2)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Gilbert, Goyer, MacEwan, McQuaid, Ryan, Tolmie (10).

In attendance: *From the Department of Justice*: Hon. P.-E. Trudeau, Minister; Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

The Chairman called Item 1 of the Main Estimates 1967-68 of the Department of Justice and introduced the Minister of Justice who, in turn, introduced the various officials present.

The Minister made a statement, and was questioned by the Committee.

At 1.15 p.m., the questioning continuing, the meeting adjourned until Thursday, June 28, 1967.

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, June 27, 1967.
(2)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (High Park), Choquette, Gilbert, Goyer, MacEwan, McQuaid, Ryan, Tolmie (10).

In attendance: From the Department of Justice: Hon. P.-E. Trudeau, Minister; Mr. D. S. Maxwell, Deputy Minister; Mr. E. B. Bedder, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

The Chairman called Item 1 of the Main Estimates 1967-68 of the Department of Justice and introduced the Minister of Justice who, in turn, introduced the various officials present.

The Minister made a statement, and was questioned by the Committee.

At 1.15 p.m., the questioning continuing, the meeting adjourned until Thursday, June 28, 1967.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, June 27, 1967.

The Chairman: Gentlemen, we have a quorum. Will the meeting please come to order.

I would like to report that Mr. James Brown has replaced Mr. John Addison as a member of the Committee. Unfortunately Mr. Brown is not here this morning and we cannot welcome him to the Committee.

The main estimates of the Department of Justice for the year 1967-68 have been referred to the Committee. You will find them at page 248, with the particulars on page 249 and the succeedings pages.

I will now proceed to call Item 1 of the estimates and we will then proceed to deal with it.

Department of Justice

1. Administration, including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board of Judges who die while in office and authority to make recoverable advances for the administration of justice on behalf of the governments of the Northwest Territories and the Yukon Territory, $3,983,100.

I would like to introduce the Minister of Justice, who of course needs no introduction to the members of the House. He has had a very distinguished scholastic career and now he is carving out for himself a distinguished career as Minister of Justice and Attorney General of Canada.

I am going to invite Mr. Trudeau to make a statement, but before doing so I would ask him to introduce those of his officials from the Department who are with him.

(Translation)

• (11.30 a.m.)

Hon. Pierre Elliot Trudeau (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chairman. I thank you for this nice introduction which will undoubtedly be transmitted to my electors through the reporters present here.

I should like first to introduce to you Mr. Maxwell, my deputy-minister and Mr. Beddoe, who is sitting at the right of Mr. Maxwell. He is the person in my Department who deals with figures better than anybody else; he is also the chief accountant. And, finally I should like to introduce to you Mr. Christie, who handles chiefly the divisions relating to criminal law. He is here because we have been thinking that the members of the Committee might wish to ask us questions in this connection.

First of all, I shall read a statement and, I believe, that the agenda which will follow will lead us to study the estimates.

(English)

This is the first occasion on which a statement has been made concerning the Estimates of the Department of Justice since the proclamation of the Government Organization Act 1966 on October 1 last.

Honourable members will know that the Reorganization Act has operated to transfer to other Ministers various branches of the public service that previously fell under the superintendence of the Minister of Justice. The result, of course, is that the Department of Justice, as established by the original Act of 1868, remains virtually unaltered and the duties and responsibilities of the Minister of Justice and Attorney General of Canada under that Act remain the same.

Although ministerial responsibility for certain branches of the public service has been transferred to other Ministers, responsibility for the institution and conduct of prosecutions under the federal field of jurisdiction remains with the Attorney General of Canada. Thus, although supervision of the R.C.M. Police is now transferred to the Solicitor General, prosecutions resulting from police investigations continue to be the responsibility of the Attorney General of Canada and are conduct-

ed by him and his officers. Similarly, Combines prosecutions continue to be conducted by the Attorney General of Canada. While ministerial function in relation to the Director under the Combines Investigation Act and the Restrictive Trade Practices Commission is now the responsibility of another Minister, the decision to prosecute and the conduct of a prosecution in any particular case continues to be the responsibility of the Attorney General of Canada.

The Minister of Justice and Attorney General of Canada continues to be responsible for providing legal services to the government as set out in the Department of Justice Act. These functions lie principally in four general areas, namely, Advisory, Litigation, Legislation, and Property. The Attorney General of Canada is charged with the duty of advising the government and government departments on matters of law. This involves the giving of legal advice to all government departments and Crown Agencies, such as the CBC and CMHC, on the many day to day problems that arise in those departments and agencies. The Department also conducts civil litigation for and against the Crown, and criminal prosecutions. Although the administration of the Criminal Code is the responsibility of the provinces, there are certain areas of prosecution under other Statutes that come under federal responsibility. The Department prepares all government legislation for Parliament and, as a service to the Northwest Territories and the Yukon Territory, assists them in preparing their ordinances. Finally, the Department conducts property and other legal transactions with members of the public, in the same way that a law department performs these functions for a corporation. There are some related functions. Thus, the Department has the administration of the staffs of the Supreme Court of Canada and the Exchequer Court, and does the administrative work in relation to provincial courts and judges that by the Constitution is the responsibility of the federal government. The Attorney General of Canada is also the Attorney General of the Yukon Territory and the Northwest Territories for the purposes of the Criminal Code, and has responsibility for the constitution, organization, and maintenance of the courts in those territories. Formal documents issued under the Great Seal of Canada are settled and approved in the Department.

It can be readily seen that a large staff of lawyers is required to discharge the responsibilities of the Department and to provide the government with the necessary legal assistance and service that it requires. In this regard, it must be observed—and I am sure it did not escape your notice, Mr. Chairman—that our Estimates for the 1967-68 fiscal year provide for an increase of pesronnel over the previous year. The increase shown in the Estimates is 96 positions but the actual increase is 111 when it is remembered that the Minister's staff is no longer included. In other words, there are in fact 15 members on the Minister's staff which used to be included amongst the number of persons provided for in the Estimates. But now, under a new Treasury Board order, there is a limited sum provided for a Minister's personal staff and the numbers he chooses to hire are up to him, provided they are within the total limits of that sum. Perhaps I should say a word or two about what might appear at first blush to be a rather substantial increase of 111 personnel.

It is the intention of the government to provide an integrated legal service along the lines generally recommended by the Report of the Glassco Commission. With this in mind, the Department of Justice has recently taken over a substantial number of positions from the Department of National Revenue—there are 29, and I will spell this out later—and we are in the course of taking over an additional 15 odd legal positions from the Department of Defence Production and from the Department of Industry, and other departments will follow. You will remember that one of the recommendations of the Glassco Commission was that the Department of Justice become the mother house for all lawyers in the service of the Government, with two exceptions, External Affairs and the Judge Advocate General's office, as a consequence of which the Department of Justice has been taking in lawyers who until now were in the Department of National Revenue and we will continue to do so with various other Departments that have lawyers. It should, of course, be understood that additions made to the establishment of the Department of Justice for this reason should result, hopefully, in an equivalent reduction in the Estimates of other departments. However, it must also be recognized that additional positions are required because of increasing demands that are made by the government for legal services. To mention a few examples, I might make reference to the legal requirements for the Statute Revision Commission, the increased workload

resulting from the new collective bargaining processes now in force within the public service, to increased activity in the constitutional law field and to the new demands that will be imposed as a result of the Canada Pension Plan Appeals and the new work of the Immigration Appeal Board. Viewed in the light of these new demands on the Department, the proposed increase for both professional and support positions is not great.

• (11.40 a.m.)

I should also mention in this connection the establishment of District Offices of the Department. We recently established District Offices in Montreal and Toronto, and I anticipate we will have a District Office with a staff of approximately 10 legal officers in Vancouver on or about August 1 of this year. You realize that in this area too we are, by establishing district offices, cutting down the overall amounts which presumably would be spent by the Department when it hires lawyers in private practice on an ad hoc basis. We assume, and I think the facts have been demonstrating this, that by keeping lawyers permanently on our staff in these big cities, they will be familiar with the dossiers, the law and they will not have to charge the fees that private lawyers do each time they begin a case anew and have to go through the whole works. It should be understood, of course, that the establishment of District Offices enables the Department of Justice to discharge its responsibilities locally in the areas served by these offices without retaining agents, and this is what I have just been explaining. In addition, experience indicates that a more efficient and generally effective legal service is provided to other departments of government when they can obtain legal assistance from permanent officials on the spot.

Of the 111 new positions, 61 of these are legal officer positions and the balance can be classified generally as 50 support positions. Dealing with the 61 new professional positions, 29 were acquired from the Department of National Revenue, 2 were taken over from Citizenship and Immigration, 1 was established to provide service to the Department of Energy, Mines and Resources, 2 were established to provide assistance to the Statute Revision Commission, 1 for both the Departments of Forestry and Secretary of State, 1 to the Treasury Board in the field of collective bargaining, and 1 has been assigned to the Royal Commission on Security. The remaining 24 professional positions will be absorbed in the variety of ways I have indicated, that is, by our District Office in Vancouver and by the new services and obligations that we will be undertaking. Of the 50 support positions that I mentioned, 9 of these were acquired from the Department of National Revenue at the time that integration took place. These support positions are mainly stenographic and clerical.

Mr. Chairman, this is about all I have to say by way of an opening statement. I would be delighted to attempt to answer some of the questions that might be asked. I am thankful that my officials are present, because they are much more experienced in the Department than not only I am but perhaps I ever will be.

The Chairman: Thank you very much, Mr. Trudeau. I am sure members will now take advantage of the opportunity to ask questions. I have Mr. Tolmie, Mr. Gilbert, Mr. Aiken, Mr. Choquette and Mr. Guay in that order on my list.

Mr. Tolmie: Mr. Trudeau, what role does you Department play in examining our Constitution and perhaps making recommendations? Is your Department seized of this as a project?

Mr. Trudeau: The constitutional questions in the past were of course constantly dealt with by the Department in a variety of ways, but the most obvious one was dictating the roles in the process of litigation in which constitutional rights were pleaded by one party or another or wherein we felt there was some constitutional implications. Because of this there have always been constitutional experts in the Department who, as part of their job, would have to research and plead constitutional questions. An obvious example of this is the recent offshore mineral rights case which was pleaded before the Supreme Court in which the pleadings involved very important constitutional problems and problems of international law. Therefore, in that sense the Constitution has always been a concern of the Department.

Mr. Tolmie, perhaps you are referring more specifically to the recent announcement I made of certain people who would be brought in as agents the Department of Justice to assist us more particularly in our constitutional work. This is because everyone knows that the constitutional issue is one which is very much in the forefront today. There have

been proposals made for a number of years by provincial governments; there have been suggestions from the public, the press, and all kinds of organizations for either a revision of the B.N.A. Act or a redrafting of it, or a completely new Constitution, whereas in the past these problems could be dealt with efficiently by government personnel and the personnel of the Department of Justice. For instance, it is not too many years ago that the Fulton-Favreau Formula was largely drafted in the Department of Justice, which was the object of one specific area of constitutional change.

As I said, in the past this was done in the Department, but the situation now is such that we feel it is useful to have people on either a full time or a part-time basis—lawyers of constitutional repute who will be able to address themselves more specifically to such problems on a continuing basis; in other words, not as a result of a pleading in one court of the land or not as a result of some specific initiative such as the Fulton-Favreau Formula initiative but, I repeat, on a continuing basis. For this reason we have felt it important to obtain the assistance of several people, the names of which I have given to the press over the past few weeks and whose job it will be to form a special advisory branch to the Minister on these specific problems. They will be working in co-ordination with the permanent Department and I expect that in future years—and this will probably be reflected in the estimates in future years—the Department of Justice will have people on its staff whose main job is to study constitutional problems, again not on an ad hoc basis but as a permanent one.

The way Federal and Provincial relations have been developing—and this is normal in an industrial state of this magnitude and it is reported that these relations will develop faster, in the future—there will be a constant need for studying constitutional problems, especially in the area of Federal-Provincial relations. There will be a need for establishing our own federal priorities in terms of changing or looking at the Constitution. There will certainly be an intense need of such people until we have resolved the problem of repatriating the Constitution and have a Constitution in Canada for Canadians. This is a very involved problem, as hon. Members know, and it will be one on which specialists will take a great deal of time.

There is also the problem of the Bill of Rights and I will not go into that too deeply. As you know, the Speech from the Throne mentioned that we would be concerned with the problem of establishing a constitutional Bill of Rights, and the Prime Minister has made reference to this. As hon. members know, this is a very tricky one which I would be glad to talk about at length now or at some other time. You know enough about it to realize that a Bill of Rights, which would be binding on all governments in Canada, would involve very great constitutional thought and research. Does that more or less answer your question?

Mr. Tolmie: Yes it does, Mr. Trudeau. I have one other very broad question. This Government is apparently veering toward certain social reforms. In my opinion at least, we have completed certain very realistic social welfare programs. For example I am alluding to reforms in the divorce field, birth control, lotteries, penal reform and perhaps to the question of drug prices. Your Department no doubt is concerned with this and, as I understand it, your Department would be making amendments to the Criminal Code. What progress has been made in these matters and when would we expect to find legislation to implement some of these proposed reforms?

Mr. Trudeau: Mr. Chairman, with the possible exception of drug prices, which the hon. member mentioned, all the other subjects are under most active consideration by the Department of Justice. The truth is that this Committee has made reports on some of those subjects, which have been very helpful to the Department of Justice, and these have been studied along with various other recommendations, such as those issuing from Committees of the Bar and so on. It is fair to say that the Department now is pretty close to the stage where it can recommend to Cabinet a certain number of changes to the Criminal Code. When I say "pretty close" I mean closer than that. In reality, a large part of the work had been done before I came into the Department and one of the first things my officials had me do was to look at the work that had been done and I can only say there are perhaps some minor refinements that I will want to discuss with them. The plan is to put it before Cabinet in the very near future, say within a matter of a few weeks, in order that we can begin the drafting processes and submit it to Parliament at the very outset in the fall when the House reconvenes.

Mr. Tolmie: I must say, sir, that this is very reassuring. I have one more point. We have had a report out on juvenile delinquency now for a number of years. I realize there are constitutional problems which perhaps are impeding its progress, but could you give the Committee any indication as to what is being done about it and what the prospects are for the future?

Mr. Trudeau: For some reason that escapes me, but it has to do with administration and probably with the Constitution—perhaps my officials will fill me in—this has been done by the Department of the Solicitor General. I believe his estimates were up before the House yesterday and I think they finished last night. Mr. Christie now tells me that this bill is in the drafting process and that it is under the jurisdiction of the Department of the Solicitor General as a matter of administrative convenience. It was taken by him when the division of functions took place between Justice, the Solicitor General and the Registrar General.

Mr. Tolmie: Thank you.

Mr. Gilbert: Mr. Chairman, my first question is a supplementary with regard to the constitutional problem.

Mr. Trudeau, am I right in thinking that the task force that is studying the constitutional law today will prepare a White Paper and that the White Paper will be referred to a special Committee of the House of Commons and the Senate for study?

Mr. Trudeau: Mr. Gilbert, a quick answer would be that you are not right in assuming this. I do not know if this is a clever way of putting intentions in my mind, or at least making me reflect on them, but I would welcome a discussion on it with you, sir, or any other members if they wish to delve into the matter. A straight answer would be that this is not a task force and it is not preparing a White Paper. It is not a task force in the usual sense, because I have not asked these people to do a specific job on some specific point and to report to me at some specific time. I have asked these distinguished lawyers and teachers to sit as advisers to me on constitutional questions in general to establish, as I think I stated on some other occasion, priorities in the long range studies that have been going on and will continue to go on in the Government on constitutional matters. Therefore, they will not publish a White Paper which will be then turned over to any Committee of Parliament, but on a continuing basis they will advise the Minister and through me, the Cabinet on constitutional points as they arise.

Mr. Gilbert: What is your objection to having this special advisory branch preparing a White Paper so that it can be studied by a Committee of Parliament?

The Chairman: That is rather a leading question.

Mr. Trudeau: Is it in order?

The Chairman: It probably could be phrased in a different way.

Mr. Trudeau: Mr. Chairman, I would be delighted to discuss this phrased this way or some other way.

The Chairman: I do not think it is quite proper to ask the Minister—

Mr. Gilbert: What objections, if any, are there?

The Chairman: —what objection he has to the preparation of a White Paper. This is now in the formulating stages, he is receiving advice and so on, and when a conclusion is reached consideration may then be given to the preparation of a White Paper. I would not take the Minister's remark to be a specific objection to preparing a White Paper. It may become a relevant question at some future time, after the Minister of Justice and others have come to a conclusion as to what should be contained in the White Paper. That is my answer to it.

Mr. Gilbert: Mr. Chairman, I will rephrase that question. What objections, if any, would the Minister—

The Chairman: They are exactly the same words.

Mr. Gilbert: "If any" qualifies it.

Mr. Tolmie: You could say: What are the Minister's views on the proposed White Paper?

Mr. Gilbert: I would ask the hon. member to phrase his own questions.

Mr. Tolmie: We are looking for an answer and I think he knows the answer.

The Chairman: I think the Minister knows what you have in mind and no doubt he has the answer to it.

• (12.00 noon)

Mr. Trudeau: Mr. Chairman, I bow to your wide experience which I realize is valuable because I think you have helped me to formulate a kind of reply which would be best.

I would not care to state whether or not at some time in the future this government or this Minister, or some other government or some other Minister might not find it useful to have a White Paper on the Constitution. It might be me and it might be someone else, and it might be not as far away as I think it should be at the present time, but to express as candidly as possible my own feelings about it now, when I say we are not working toward a White Paper specifically at the present time, I suppose the reason is tied to the whole attitude I have been taking on the Constitution over the past some years.

I think we must realize that the Constitution is the fundamental law and really the only source of obedience in any country. No law has any binding power except under the Constitution, and if there is one precept which we must constantly repeat to ourselves it is the one which Professor Kelson always used to give to his students: "The Constitution must be obeyed". Really, when you are looking at any system of laws you cannot really explain why anybody should obey any law, pay any income tax or even listen to a police officer if it is not because the Constitution says so.

With this wordy preamble I want to express my feeling that there has been a bit of recklessness on constitutional matters in the land over the past some years. I think well-intentioned people, some of them politicians, have—if I may use this expression—played fast and loose with the Constitution and you hear, you know, the idea about the Constitution being 100 years old and that it cannot suit us anymore. But in listening to these expressions on the Constitution I have come to the conclusion that everybody, or nearly everybody—in the land has some way in which he thinks he can improve the Constitution. I dare say I, myself, have a few constitutional changes in my pocket. The trouble is that there is a very clear lack of consensus throughout the land on how the Constitution should be changed.

It takes no great amount of imagination to realize that if you sit down at the same negotiating table members of one provincial government which, for instance, is seeking to obtain extra territorial powers for itself, members of another provincial government which is seeking to obtain, shall we say, the totality of the direct taxing power for themselves, and the central government which has other feelings on taxing and external affairs, it would be very difficult to negotiate any kind of agreement. It strikes me that we had a very good illustration of this in the very recent past. There was a Fulton-Favreau Formula of amendment devised. It had the agreement of all provinces in Canada and of the federal government, and I dare say that some of the provinces which gave their agreement—I am thinking of some of the western provinces—had shown some reluctance to doing so. But as a matter of compromise everyone gave in and agreed to the Fulton-Favreau Formula, and there it was—a basic constitutional issue.

Then suddenly the government which had accepted it, which had recommended its adoption to the Legislative Assembly and to the people in that particular province, suddenly decided that it did not want it anymore—and for reasons which I respect. I am fighting here the temptation to give my own ideas on the Fulton-Favreau Formula but I am sure it would be out of order, Mr. Chairman. But there it is.

We have this operation which went through all the niceties of joint discussion, agreement and lengthy debate which lasted over two years—I think it began in 1961 or 1962 and continued until 1964 or 1965—and suddenly we do not even have this basic agreement on this point.

If we cannot agree on any mode of amending the Constitution, if we cannot agree on any mode of repatriating the Constitution—and there is no reason to believe that we can because no member of the government which now disagrees has pointed out what it would like to see in its stead and no member of the government side or the opposition has spelt out either what great magic formula it would have to get all the provinces and the federal government in agreement on this—It should be obvious that there is no consensus, to use that hackneyed phrase, on constitutional matters. My feeling is, and I think it is shared by several members of the government, that the time is not now to use the Constitution, as a certain number of people are doing, as a political football. I do not suggest, Mr. Chairman, that this would happen in this Committee, but I have no hesitation in suggesting—and I use the words per-

haps unadvisedly but with glee—that the Constitution has become a political football for a lot of people across the country. To me it appears as a diversionist tactic of governments which find some of their own problems very difficult to solve and which prefer tackling the very big and tough ones which they know cannot be solved because, again, it is a diversionist tactic; it draws attention to the difficult problems which no one government alone can solve and, therefore, permits too many people, in my mind, to say: "Well, you know the first thing we must do is change the Constitution."

After this rather hazardous dissertation Mr. Chairman, I think it follows that if the government were now to say that it was producing a White Paper on the Constitution it would be giving in to what one could almost call the fad of constitutionalism and it would be establishing very high priorities to the whole problem of the Constitution. I should add by way of footnote that if throughout the land, in the provinces, at the level of the central government there were some specific constitutional issues which more or less everyone felt we should tackle now, I would be delighted to give it top priority and to tackle it now—perhaps even produce a White Paper on it, as was done on the Fulton-Favreau Formula. But, Mr. Chairman, this is not the case. One just has to leaf through the press and even, indeed, *Hansard* to see that there are all kinds of priorities being established to the constitutional question. Indeed, one only has to look at the position of the parties themselves or to read the speeches of members of the same party within this Parliament and compare them with the speeches of members of the same party in the provinces, and one realizes that even the parties themselves have not any kind of consensus on what would be done with the Constitution.

Under these circumstances I feel it much wiser to keep repeating that Constitution must be obeyed; that we, as a government, are prepared to look at specific suggestions for change, but that we do not find it advisable now to disrupt the fabric of this country by the kind of debate which would arise if all governments in this country were to sit down and pretend to redraft a new Constitution. I think we should bear in mind the experiences of some South American governments which have known hundreds of constitutions in the past century, and at least one European government—I am thinking of France which has known 17 constitutions in 170 years. I do not think that Canada is a wealthy enough country—wealthy in terms not only of money but of all kinds of human, intellectual and stability resources, to embark upon this kind of constitutional game.

I have just a few words in conclusion, Mr. Chairman. I am sure there will be many questions on this but I want to round out my thought. I think it should be obvious to all hon. members that constitutions have to be made to last. They cannot be made as though they were only temporary or that we were doing something now in order to change it when, in the very near future, new demands will arise. If that were the case there would be a premium on change and there would be an incentive to disobey the Constitution. Every pressure group, and indeed perhaps many political parties, would be advocating change to any Constitution we could hypothetically draft today because they would say: "This is only for now but we need a new Constitution in this area". There would be, as I say, an incentive to change the Constitution and not to consider it as a lasting document.

I think if we embark upon constitutional negotiations now, the experience of the past two years has shown that it would be what is known in labour negotiations as "open-end" negotiations. If all of us here at this table knew now—perhaps it would not be necessary to get greater agreement than this—what exact constitutional changes we would all be prepared to recommend unanimously, if that were it, I would venture to guess that we could change the Constitution tomorrow. But this is not the way the debate has been developing in the country.

People are throwing forward suggestions for change and they are reserving upon themselves the right tomorrow to throw forth new suggestions. The kind of constitutional gimmick that has been drifting across the land in the past year should be an indication of that.

I mean we have heard just about everything, from the need for a unitary state to the building of a kind of common market for Canada, to the establishment of a Confederation based on two nations—and mind you, not only the French Canadians are using this two-nation idea—to a loose federation composed of associate states, to a situation in which at least one province would want particular status—but then, why only one and why not all, because each province would probably want its own particular status. And there is one other gimmick I think I should mention, the confederation of 10 independent

states. These have all been things which have been seriously proposed by serious people over the past very few years. Mr. Chairman, if there is no more consensus of feeling for the kind of country we want to live in, my suggestion is that we should continue living in the kind of country which in the past 100 years has provided us with one of the highest standards of living in the world in a society which has know probably one of the highest degrees of peace and liberty, and this has been done under the present Constitution.

My suggestion is that until we can establish a broader consensus than is apparent to me now, we should not encourage, by white papers or otherwise, a re-opening of the total debate on the total Constitution.

Mr. Gilbert: I will ask you one or two more short questions. Mr. Trudeau, have you and officials of your Department in mind any changes to the provisions of the Criminal Code concerning bail?

Mr. Trudeau: I have received a fair amount of correspondence on it and even some memoranda from other Ministers. It is one of the subjects which is contained in the memorandum to Cabinet to which I referred to a little earlier and which will be ready in the fairly immediate future.

Mr. Gilbert: Is the Minister and the Department proceeding with the same haste in respect of the expungement of criminal records?

The Chairman: I believe that would come under the jurisdiction of the Solicitor General's Act. This Committee is also studying that subject.

Mr. Gilbert: I did not know whether it came under the jurisdiction of the Solicitor General of the Minister of Justice.

Mr. Trudeau: Well it is under the jurisdiction of the Solicitor General actually. It has to do with the reforms concerning the identification of criminals.

Mr. Gilbert: That is fine. I will yield to someone else, although I have other questions.

Mr. Trudeau: I should apologize to Mr. Gilbert for giving such long answers to short questions. Probably this makes him now feel that he is obligated because of courtesy to yield.

The Chairman: It was a very important question and I think it was a very excellent answer.

Mr. Aiken: Mr. Chairman, I would like to follow another subject just for a moment. When Mr. Tolmie was asking his initial question the subject of divorce legislation was raised and from the Minister's answer I came to the conclusion that some preliminary drafting work has been done in connection with divorce legislation. Would I be correct on that?

Mr. Trudeau: We have just received recently the report of the Roebuck Committee. We in the Department are studying it fervently now. This, too, is something which is promised for the fall. I would not care to say that we have begun drafting any legislation now for the simple reason that the Cabinet itself has not given final instructions that I am to deal with that but it is a topic to which the Cabinet has given very high priority. So, in that sense, I think we can expect it to be introduced early in the fall also.

Mr. Aiken: I assume that this report will be made public tonight, but I am not sure our Chairman has better knowledge of this than I have.

The Chairman: I understand that that is the case.

Mr. Aiken: And when the Senate meets it may be reported later today?

The Chairman: Both in the Senate and in the House of Commons at 8 o'clock.

Mr. Aiken: I was merely wanting to probe into whether there had been any settled thoughts in the government's mind on the divorce question before the report was received. Some of us had wondered about this particular subject. However, I think you have cleared it up, that in fact there has been no Cabinet decision on the divorce amendments.

Mr. Trudeau: For the very simple reason that the report has just been handed to me by the Joint Chairmen on, I suppose, an advanced basis. You say it will not be tabled in the House until tonight sir.

The Chairman: It will not be, no.

Mr. Trudeau: Therefore, it has not been into Cabinet. We have discussed the subject but we have not looked at the report.

Mr. Aiken: Several subjects that come under the Criminal Code have been mentioned. Is there any consideration being given to a general revision of the Criminal Code?

Mr. Trudeau: Yes, consideration is being given to it. We in the Department feel that the whole subject of law reform is one with which we will be very concerned in the coming years. The Criminal Code is one area of law reform which we will be tackling, but I am advised by Mr. Christie that we do not have any schedule or deadline on that, that the Criminal Code was overhauled completely in 1953-54 and there is no definite program at the moment to overhaul it.

Mr. Aiken: I would like to turn particularly to the question of detention after arrest. It has been raised under the subject of bail but I would like to make a suggestion rather than ask a question because it seems that the questions on bail that have been raised have not really been broad enough to cover the whole problem of detention and taking into custody.

I think that in many cases the police unnecessarily arrest a person, take him into custody and lodge him in jail when a simple summons to such a person would be quite sufficient. I think there are really two prongs to this problem. The one is bail but the other is more fundamental, that many people should not be arrested in the first instance but merely summoned. Many who are arrested by the police should not necessarily be locked up but should be identified, charged and then released.

I think that if this particular subject is under investigation it perhaps should be a little broader than the simple question of bail. I think on various occasions within the last year or two people have been arrested and placed in custody where there was no doubt whatever that they were perfectly responsible persons, that they would appear for their trial and that the only thing that was necessary was to issue a summons to them. I think this would relieve the whole problem of bail.

I would like to suggest when this is being considered that some thought be given to a provision that would permit the police to make an arrest simply for the purpose of laying a charge and then releasing a suspect rather than arrest automatically being followed by his being lodged in jail.

It is very difficult to get bail. The police have no problem in going to a justice of the peace and getting an information and a warrant; they have no problem in arresting because they can do it on the spot, but the individual who is arrested, first, may not be guilty, and, second, there are very, very few people who do not appear for their trial. I think it is not only an unnecessary expense to the public but it is also a breach of the civil rights of a lot of people.

I would ask that this additional subject be given very serious consideration because I think that even improving the bail system would not get around the fundamental problem that the police readily consider that they have to lock up everybody that is going to be charged and that they have to keep them locked up. I think an interim solution could be found that would relieve both the public of the expense—and it is an expense—and also the person being charged. I would just like to make that suggestion.

Mr. Trudeau: Mr. Chairman, it is a very welcome suggestion by Mr. Aiken. I can add very little to it. I feel that he has made a very valuable contribution here and, in that connection I can only say that I personally feel very strongly. As a matter of fact, I have pleaded in some cases that there has been unnecessary hardship because the arrest had been proceeded with rather than a summons in the case of people who are very well known and who are very large property owners—where there is no question of trying to escape arrest or anything like that. It causes not only inconvenience and humiliation to them but, as you say, it is done at a cost to the public.

Very often this is done because part of the object of the informant is to make sure that the person against whom he is laying information gets punished by the very arrest itself, which of course is contrary to the whole spirit of our laws. Because one man is annoyed at another and lays an information, he should not be allowed to begin the punishment until the trial has gone through.

Although, as you know, the Criminal Code leaves discretion to the magistrates in many of these cases, I think they too should be advised and perhaps admonished not to issue warrants for an arrest when a mere summons would suffice.

As to what the remedies are, I will ask my officials to keep this question in mind and to advise me on it. I know that under the civil law there are some cases where you could sue for damages. I do not know if under the

common law this constitutes a tort of any kind, but I expect it does not.

D. S. Maxwell (Associate Deputy Minister): It does—false arrest.

Mr. Trudeau: Well it does constitute a tort then, so there is this redress which, in some cases, is open by way of civil litigation. Perhaps this is not enough; perhaps there should be more stringent provisions put down in the criminal statute. However, I imagine we will always have to leave some discretion to the magistrates.

I would like to thank Mr. Aiken for the suggestion, Mr. Chairman.

Mr. Aiken: Mr. Trudeau, I have just one more comment on the matter. I think that the Criminal Code leaves a police officer very little discretion. If he decides to detain a person he is almost obliged to arrest him and place him in a lockup and I think for his own safety and to prevent something kicking back on him, he would much rather lock him up because he can always say that he had reasonable cause to believe that he was guilty or that he might try to escape. However, I am suggesting that perhaps there might be a further provision in the code whereby a person could be detained and charged without being locked up.

Mr. Guay: Mr. Minister, you said some time ago that you foresee a complete reform of the Criminal Code which could last four years. Do you not think that, in the meantime, immediate and priority amendments could be made to the Criminal Code? I have in mind specially the matter of provincial lotteries which often comes back in the form of private bills introduced before the House. I am referring to Sections 221 and following of the Criminal Code.

Mr. Trudeau: Mr. Chairman, I wish to say to the hon. member that if I spoke of a reform of the Criminal Code which might last four years, I was mistaken. I did not intend to say that and I do not think that I mentioned any definite period. I reminded the Committee, I believe, that the last reform of the Code dates back twelve or thirteen years at least and that, in my opinion, it was inadequate. Accordingly, it might be useful for us to examine again the problems of this Code, but during a period not yet specified.

With regard to the specific problem raised by Mr. Guay, I wish to say, Mr. Chairman, that it is a very good suggestion. It is a fact that the hon. member has already made representations in this regard and I wish to inform the member and the Committee that indeed my Department has made a very careful study of this question of lotteries and that we intend to recommend to the Government, to the Cabinet, and to the Council of Ministers, certain reforms in this field.

Mr. Guay: In this matter of amendments to the Criminal Code, Mr. Minister, what are the priorities set up by your Department?

Mr. Trudeau: Do you mean in the field of lotteries particularly?

Mr. Guay: No, I am referring to amendments to the Criminal Code in general. What priorities have been set up?

Mr. Trudeau: Well, Mr. Chairman, we intend to introduce an omnibus bill, rather than come back before Parliament for the purpose of moving certain amendments individually or separately, by means of specific bills. Indeed, we wish to introduce a bill concerning amendments to the Criminal Code and in that bill we shall recommend several amendments to the Criminal Code in the fields mentioned by Mr. Guay and a moment ago by Mr. Tolmie or Mr. Gilbert. And so, I cannot speak of priorities since there will be a common bill.

Mr. Choquette: Birth control, abortion and all similar subjects, are they all covered by this comprehensive amendment?

Mr. Trudeau: Indeed. Birth control involves perhaps also certain amendments to the Food and Drugs Act. With regard to abortion, I must reserve judgment. We have also examined some proposals—in particular, those which have been made by medical associations and even by a committee of the Bar —but this is a very delicate question. I believe that private bills have been introduced before Parliament on this subject. I must honestly confess, however, that I have not formed a definite opinion as yet on this problem. I think that the Act should be amended; however, the way to effect the amendments and to reconcile them not only with social ethics but also with the needs of modern society raises rather serious problems which I am studying. I repeat, this is among the studies which have already been undertaken by my Department. At this time, I dare not say categorically whether these amendments have been included or not in the omnibus bill which I mentioned some time ago.

Mr. Guay: Mr. Minister, will you tell us what you think of the conferences on the constitution that several provincial politicians seem to recommend? In your opinion, should the federal government be represented if such a conference were to be held?

Mr. Trudeau: Mr. Chairman, may I ask the member whether he has in mind a specific project or conferences on the constitution in general?

Mr. Guay: I have in mind conferences on the constitution in general which, it appears, are being recommended at the present time. In fact, Mr. Robarts, as it seems, wants to hold a meeting of all the provincial government leaders for the purpose of studying all the constitutional problems as a whole.

Mr. Trudeau: With regard to conferences on the constitution in general, I shall refer a little to the reply which I gave earlier to Mr. Gilbert and especially to the passage where I stated that the Prime Minister (and this has been mentioned in the Throne Speech) had already implied that he would be interested perhaps in holding a federal-provincial conference for the purpose of studying the problem of the Declaration of Human Rights. According to what the Prime Minister has told us, this matter will be discussed during a meeting of the provincial premiers and of the Prime Minister of Canada on the 5th of July next. I believe also that the proposal of Mr. Robarts is on the agenda of this short meeting; furthermore, it would not be proper for me to predict what will be decided during this breakfast working session. I gave you earlier my opinion about this problem and I don't think that I shall be able to say exactly what course will be followed in the conference proposed by the Prime Minister, nor the course which will be followed in the conference proposed by Mr. Robarts.

Mr. Guay: I wish to ask one last question and I shall be very brief. With regard to the committee of experts in constitutional law which has been set up, do you think that it should play more than an advisory role? Should it not eventually be able to make recommendations to ministers and not necessarily by submitting a White Paper or a report? A simple report might be sufficient so as to enable us to make certain amendments to the Constitution or perhaps set up a court on the Constitution for the purpose of settling certain agreement problems or other similar agreements.

Mr. Trudeau: Mr. Chairman, I think that the hon. member is right. This group dealing with constitutional matters will not simply play an advisory role in the sense that it will be there to give me advice when requested to do so. I am hoping that it will make all kinds of recommendations. Perhaps one of the first recommendations to be expected from that group will have to do with the priorities to be set up. Speaking of priorities, I think that the member has given us an interesting example of one of them. I personally would give another priority to the question of a reform of the judicial system, which will enable the court called upon to decide on constitutional questions to have a special composition and special guarantees. The latter would enable it to become an instrument capable of commanding universal respect when ruling on matters pertaining to constitutional fields. No matter whether it be referred to as a constitutional court, whether it be the same Supreme Court differently constituted, or a division of the Supreme Court dealing with constitutional matters, or whether it be a new court entirely independent of the other, these are problems which we are studying, which are quite important and I share the opinion of the member when he says that it is a question which should be given priority.

Mr. Choquette: Mr. Minister, allow me to congratulate you. It is your first appearance in this capacity before the Committee and, in my opinion, you carry out your duties with exceptional skill.

Mr. Minister, I wish once more to draw your attention on a principle which, it seems to me, is obsolete, to wit, that none is supposed to be ignorant of the law. This idea was brought forward again last Friday by the member of Oxford. I am pleased to have instilled this idea into him. It is an assumption which puzzles us, to wit, that none is supposed to be ignorant of the law. Since there are so many pieces of legislation, the average man is definitely not able to meet the requirements set up by this principle. And this brings me to the following question: Is your Department considering the possibility of our starting a mass information campaign concerning the state of our legislation? First of all, can this campaign be undertaken? Has the problem already been studied from some angle with a view to inform the population, that is, the mass of people itself, about the state of our legislation?

Mr. Trudeau: Mr. Chairman, I want first of all to thank the hon. member for his congratulations. His vocabulary is already impressive and once again he has carefully chosen words to speak to me in terms which are quite flattering.

The problem which he raises with regard to this old saying: "None is supposed to be ignorant of the law", is quite real. I need not inform the hon. member—he was a brilliant law student—that this saying comes from Roman law. It is, I believe, a rule within which societies could not operate and I don't think that we can change the intent itself of the saying, but I quite agree with the member that we should modify the implications to a considerable extent. It is a fact that modern societies have increasingly complex systems of legislation and regulation, and in a country such as Canada where there are various levels of government, where there are federative forms of government, there is no doubt that it is still more complicated for a citizen to know within what legal structure he lives and what legal value will be given to his actions or his ambitions. For this reason, I understand the purpose of the hon. member when he asks if action has already been taken by the government in this field. I can mention a few measures from memory.

I know that the Government—unless I am mistaken, this is done through the Department of the Secretary of State—issues pamphlets in which, among other things, the parliamentary system as well as the constitutional system, are explained; the latter, as I said earlier, constitutes nevertheless the fundamental law. It would be important for the citizens to know broadly their rights and their obligations under these fundamental laws.

• (12.45 p.m.)

One must also realize that the government is not the only agency capable of doing this educational work. The bars of the various provinces and the Canadian Bar itself undoubtedly constitute the ideal forum for the promotion of this idea and we know that at least in the province of Quebec the bar has presented television programs for the purpose of informing the public about the legal system which governs them and I would not be astonished that in this field the bars of other provinces have shown themselves as progressive as the bar of the province of Quebec.

It is a fact that the matter of educating the public on his right as a whole . . .

I repeat, it is the task not only of the bar but of various organizations, whether they be manufacturers' associations, chartered accountants, engineers or the various professional associations. It is the task of these associations to inform their members continuously about amendments of the Act which are important for them. However the government should still give serious consideration to the initiative which the hon. member has mentioned.

As for me, I shall ask my officials to study this question in order to find out whether the public in some priority sectors should be informed about certain amendments to the Act. The member knows that this has been done on particular occasions when, for example, a new department—I am thinking of that of Manpower and Immigration—published new regulations.

I know that it keeps the public well informed through the press and I think that each department should have certain responsibilities in this connection.

The member knows that the Department of Justice is the one where are written all the Acts coming from all the government departments but, in my opinion, it would be too burdensome and certainly not an example of good administration for the department responsible for the writing of these acts, but not for their content, to be the one to advertise the content. In other words, I think that the hon. member who is quite right and justified in asking the Department of Justice this question, should also see to it that other departments who have projects with farther-reaching consequences for the public should advertise them.

As far as our department is concerned, Mr. Chairman, I will inform my officials of this matter and I believe this is related to a remark which has been made since I am in Parliament, to wit: That the government is not doing enough to inform the public in what field it is legislating and that since nobody is supposed to be ignorant of the law, it would also be good for the public to be informed of what the government is doing on this behalf.

Mr. Choquette: Mr. Minister, the theme "International vocation of Quebec" is a slogan which is increasingly being spread on Quebec territory. The Prime Minister of Quebec, Mr. Johnson, has made it its own. A former provincial minister, Mr. Lajoie, agrees with it to such an extent as to declare that the confrontation on the matter of the constitution must take place. In your opinion, the issue of the international ability of Quebec, that is the ability to enter into agreements within its

jurisdictions, is one of the constitutional priorities or do you consider it simply as another means for quibbling?

Mr. Trudeau: This is an interesting question, Mr. Chairman, and I shall try to reply briefly to it.

As a Member of Parliament or minister, I have no objection at all to Quebec or any other province finding an international vocation for itself. As far as I am concerned, I am delighted that the citizens of Quebec are concerned with the problems of international importance and that they wish to play a part in dealing with them. Let me add however, that under the federative system of government such as ours and the international law itself only a central state may have jurisdiction in international matters. The regional states, which are called provinces in the case of Canada, or states in the case of the United States, or which are known by some other name, the governments of provinces, or rather the governments of regions, are not recognized in international law.

And this leads me to say that if the citizens are finding an international vocation for themselves, I rejoice that this is so. However, I say to the members of this Committee that this vocation must express itself through the central government. I believe that as citizens concerned with the problems of education, for example, the federal Members of Parliament of all the provinces care much about the vocation of Canada in the field of education, but that does not follow that the central government must legislate in this field. Assuredly, Canada has a vocation in the field of education. Of course, it may be said that education, as town-planning is a question of national interest, but then the sharing of powers between the central government and the provinces must be considered. It must be ascertained which one of these governments has the jurisdiction on these questions of national interest and here again our Constitution is such that on matters of education, the provinces have jurisdiction. And then, if it is a matter of national interest, we say that the provinces must legislate and must be responsible for their actions in that field. In my opinion, it would not be right for the central government to say to a province: "Your laws in the field of primary education are very bad and we suggest that you prepare better laws." Exception must be made of course is the case provided by Section 93, subsections 3 and 4 of the constitution. Likewise, I believe that if we accept the fact that the extra-territorial power is given by the constitution to the central government, the latter is responsible for exercising this power and if it does not exercise it properly the citizen should defeat this government at election time.

It does not behoove a province as such to pass judgment on matters which are not within its jurisdiction. Having said this, let me add that the federations, and this is true of all federations, Mr. Chairman, not only the Canadian federation, are confronted with a particular problem in the field of international relations in the sense that if the central government alone has a *locus standi* in internation law, it nevertheless cannot put into effect any of the agreements or treaties entered into with other countries because, under the constitution, the matter covered by these treaties is of provincial jurisdiction. This means that there has to be great co-operation between the central government and the provinces in all fields which fall under provincial jurisdiction and are the subject of international agreements. But it would be very naïve on the part of people to think that this is a problem peculiar to Canada. I repeat, that it is a problem that all federations have had to face, whether it be the United States, Switzerland or Germany.

The constitutions of these countries have dealt with these problems and have found solutions from which inspiration can definitely be drawn by Canada for directing its constitutional progress; however, I believe that the basic principle must be recognized that the country can have only one foreign policy and that basically it is why countries federate, or why independent nations confederate. It is precisely to give to a central power jurisdiction over international matters.

If its jurisdiction on international matters could be taken away from the central government by some indirect means or other, I think that this should be interpreted simply of the end of the central state since there are very few fields where one can state with certainty that a uniform procedure should be applied by the entire country. The way we deal with the foreign countries is no doubt one of these cases.

Mr. Chairman, let me add that I do not understand, I do not quite see the perspective of the provincial officials who attach so much importance to their action on the international level. If the population whom they represent, or if the ethnic group whom they represent, has an international vocation, a vo-

cation which goes beyond the physical boundaries of the territory which they occupy, it seems to me that the first task which they must take, the first area where they should express this vocation, should be in the negotiation with other Canadians and with other provinces.

If a province believes that it has an international vocation and that it will be able to express this vocation with advantage within the United Nations, where it will be only one member out of 125 and that it will be able to express this vocation carefully and advantageously at that level, why should it not begin to express that vocation with advantage at the level of negotiations with the federal government or with the other provinces? Indeed, if a province wants to protect the rights, say, of the English language—I am giving a hypothetic example,—and that for so doing it intends to conclude agreements with Great Britain or with the United States, should it not start to conclude agreements with its sister provinces where there are also English-speaking minorities to protect. And once again, if as a member of a language group, of some community, one does not believe that ideas which one considers just will not find acceptance at the federal parliament level where the number of regional groups is limited (where all members of the same country), why should one think of having success within the United Nations?

In short, Mr. Chairman, if Canadians cannot agree among themselves, they who are twenty million inhabitants in number who share the same kind of civilization, that is, the industrial society, if they cannot reach a certain agreement among themselves and negotiate the points which they have in common at the level of the central government, how can they speak of being able to succeed within the world community? There are more than 125 independent countries whose degrees of civilization and industrialisation are quite different.

Mr. Choquette: I have one last question to ask. I have the impression that the minister will quite categorically give a negative answer. It is a rather preposterous question, but I shall ask it nevertheless. Let me explain: certain judgments of the Privy Council must undoubtedly have produced more or less intense reactions since 1867, I am thinking, for example of the ruling which settled the problem of the Labrador boundaries.

I am thinking also of the decision of 1937 with regard to international agreements which gives to the federal government sole jurisdiction to negotiate international agreements and specifying with regard to the implementation of these agreements that only the provinces have jurisdiction when their responsibility was concerned. This, of course, does not seem to please the provincial jurists except those of Quebec.

And now here is the stupendous question which I wish to ask: Has consideration already been given to the possibility of establishing a system of retroactivity so that the judgments of the Supreme Court which might have been annulled by the Judicial Committee of the Privy Council could be put back in force, since the court of the Supreme Court is that of the last instance?

Mr. Trudeau: As a rule, Mr. Chairman, the member asks very brief questions to which I give long answers. He has now asked me a very long question which I think I can answer rather briefly. He has, moreover, suggested the reply: it is no.

Mr. Choquette: Well, since this reply is very short, I shall ask a last question concerning the declaration of human rights. One hears complaints here and there that the declaration of human rights is not always respected by policemen or within our prisons. I am thinking more particularly of these provisions of the declaration which grant the sacred right to any inmate to communicate with his attorney and to be equally informed of the ground of his arrest. Well, we all know that there is a transgression of these provisions in common prisons. Is not the department thinking, for instance, of creating an infringement which would make liable to a fine any policeman who would transgress these provisions of the declaration of human rights. In other words, these provisions remain without effect if the inmate cannot communicate immediately with his attorney and so it would have been useless to insert them in the declaration of human rights. I am wondering whether a new infringement could not be created in order to give some effect to these provisions?

Mr. Trudeau: It is not a question to which a very brief reply may be given, Mr. Chairman, but in a few words I shall say to the member that herein lies the entire problem of the effectiveness of a declaration of rights which is statutory rather than constitutional. The courts have been inclined to interpret the

guarantees given by this statute, by this act, as guarantees which belong to an act among many others. The courts, in general, have not given great priority to this statute over the others. In other words, they apply the statute so long as it is not contradicted by some other statute.

I must say however that in the example mentioned by the member and where there have been many violations, favourable judgements have been rendered. I know of cases, although I cannot quote them from memory, where decisions have been set aside and arrests considered invalid and, consequently where an action for damages could be brought, because the inmate was not allowed to communicate with his attorney in time. One case, in particular, concerned the use in certain provinces of methods relating to the "breathalizer" test or blood taking. The inmate has not been visited by his attorney in time when these analyses were made and the decision which was rendered by a lower court was reversed during the appeal.

Thus, the protection does exist and I agree with the member that it is not sufficient. It is one of the subjects which we consider as having priority and it is also one of the reasons why the Prime Minister suggests that the first general or constitutional matter which should be dealt with by the provinces and the federal government is that of the problem relating to the protection of human rights.

Mr. Choquette: Thank you Mr. Minister.

(English)

The Chairman: Gentlemen, it is one o'clock. Mr. McQuaid, Mr. MacEwan and Mr. Goyer have indicated they have questions to ask and, no doubt, Mr. Ryan has some also. Possibly some of the Members may wish to have a second turn at questioning. If it meets with your approval we will schedule another meeting for Thursday of this week, to be held in this room at the same time. Is that agreeable to all Members or do you want to go on with your questioning, Mr. McQuaid?

Mr. McQuaid: No, I think we should adjourn, Mr. Chairman.

The Chairman: In that case this meeting is adjourned until the same time on Thursday of this week. This was a very interesting meeting and I am sure we all enjoyed it very much.

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, JUNE 29, 1967

Respecting

Main Estimates 1967-68, Department of Justice

The Honourable P. E. Trudeau, Minister

and

WITNESSES:

From the Department of Justice: Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

26908—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

Timothy D. Ray,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, June 29, 1967.

Ordered,—That the subject-matter of Bill C-4, An Act concerning reform of the bail system, be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

26908—1½

REPORT TO THE HOUSE

THURSDAY, June 29, 1967.

SECOND REPORT

In accordance with its Order of Reference of May 25, 1967, your Committee has considered the items listed in the Main Estimates for 1967-68 relating to the Department of Justice.

Your Committee has held two meetings from June 27 to June 29, 1967; and has heard the Honourable P. E. Trudeau, Minister of Justice, and the following witnesses:

From the Department of Justice: Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

Your Committee commends to the House for its approval the Main Estimates, 1967-68, of the Department of Justice.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 1, 2 and 3*) is tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 29, 1967.
(3)

The Standing Committee on Justice and Legal Affairs met this day at 11.35 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Brown, Cameron (*High Park*), Cantin, Choquette, Guay, Honey, MacEwan, Otto, Tolmie, Whelan (11).

In attendance: From the Department of Justice: Hon. P.-E. Trudeau, Minister; Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

The Chairman announced that the members of the Subcommittee on Agenda and Procedure are Messrs: Aiken, Forest, Gilbert, Wahn and himself as Chairman.

The Chairman then welcomed Mr. Brown.

The members were then invited to resume questioning the Minister and his officials under Item 1 of the Main Estimates, 1967-68, of The Department of Justice.

Following the questioning, the Chairman thanked the Minister and his officials.

Following discussion, it was

Agreed,—That Item 1 carry.

Agreed,—That the Main Estimates, 1967-68 of the Department of Justice carry.

Agreed,—That the Chairman report the Estimates to the House.

At 12.45 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, June 29, 1967

The Chairman: I will call the meeting to order.

I would like to announce that the Steering Committee will consist of Messrs. Forest, Wahn, Aiken and Gilbert.

Mr. Tolmie's bill respecting the expunging of criminal records has been referred to us and an Order of the House has been made which makes available to the Committee the evidence taken in the previous session. A bill relating to drug addiction has also been referred to us. I believe the Steering Committee will be meeting very shortly to consider the additional evidence which we may require with respect to Mr. Tolmie's bill and also the witnesses whom we would like to call with respect to the drug addiction bill.

• (11.40 a.m.)

We will now carry on with the questioning. I understand Mr. MacEwan has some questions. He is first on the list that has been carried over from Tuesday.

Mr. MacEwan: I will not be long, Mr. Chairman.

Is it correct, Mr. Minister, that there is now an additional section in the Department of Justice which looks after administration or personnel? Has a new one been added?

The Hon. P. E. Trudeau (Minister of Justice and Attorney General of Canada): I will have to ask the Deputy Minister to advise me on that.

I am advised that nothing has been added.

Mr. MacEwan: How many sections are there?

Mr. Trudeau: There are six sections.

Mr. MacEwan: There has been no sections added. Is there any plan to add a new section to the Department?

The Chairman: You may address the Committee directly if you wish.

Mr. Trudeau: Relating to the question whether any sections are to be added Mr. Chairman, I might say that since my arrival in the Department—and I discussed this at some length with the Deputy Minister and the head of the Civil Service, Mr. Carson—I have advocated that a management and organization study be made of the Department. This will probably be done, and at that time we will look at the administrative problems to which the hon. Member has referred.

It is quite obvious that I am a new minister. The Deputy Minister has also only been named in recent months, although he is a young "old hand" in the Department.

He is younger than I am, which makes him pretty young.

I should also like to point out, as I stated in my opening remarks, the fact that the Department has been redefined by the Government Organization Act of 1966. For these reasons I thought it wise to have the advice of the Civil Service Commission with respect to a management and organization study and I expect this will be done fairly soon. Until such time as it is done I am a bit reluctant, shall we say, to make any definitive and overall new administrative arrangements.

Mr. MacEwan: I understand that a lawyer who was formerly with the Civil Service Commission has been with the Department of Justice on a loan basis now for some months. I wonder if the Deputy Minister could advise me if that is correct?

Mr. D. S. Maxwell (Associate Deputy Minister, Department of Justice): You are speaking of Mr. Regan, I presume. Yes, he is head of personnel in our Department.

Mr. MacEwan: Is that presently a separate section or has that change still not taken place?

Mr. Maxwell: No, I do not think I would so describe it. It is part of our administrative operation.

Mr. MacEwan: Yes. If he comes from Nova Scotia he is a good man. I knew him through

the Civil Service Commission and also law school and I was wondering just what his duties were, and so on.

Mr. Whelan: With a name like Regan, how could he be anything else?

Mr. Trudeau: Well, his name is Regan, he is from Nova Scotia and he is a lawyer. That must make him a pretty good person.

Mr. MacEwan: Will the lawyers who are to be added from the various departments, including the Department of National Revenue, now be physically moved to the Justice Building or will they operate in offices of their own departments?

Mr. Maxwell: Some of them will move into the Justice Building, or they will be associated with the operations that we may establish in various cities. However, a corps will have to remain in the Department in order to do certain work that has to be done on the spot.

Mr. MacEwan: But they will report to the Department of Justice?

Mr. Maxwell: Yes.

Mr. MacEwan: Directly to the Department of Justice?

Mr. Maxwell: Yes.

Mr. MacEwan: Finally, I wonder if the Minister or any of his officials could advise me if they have any idea when the commission is expected to complete its work on the revision of the statutes?

Mr. Trudeau: We have been trying to estimate deadlines, Mr. Chairman. These statutes, of course, will be called the Revised Statutes of 1967, which means that the cut-off date is planned for the end of December, 1967. We hope the statutes will appear, with the normal gestation period, some nine months later. They may be a bit overdue but this is what we are aiming at.

Mr. Whelan: You do not expect it to arrive prematurely?

Mr. Trudeau: No, we do not want anything to be half-baked.

Mr. MacEwan: Those are all the questions I have, Mr. Chairman. Thank you.

The Chairman: Mr. McQuaid originally indicated he was going to ask some questions but he later told me you were going to ask them for him. Mr. Goyer and Mr. Ryan are not here.

Mr. Aiken: Mr. Chairman, I have a supplementary with respect to Mr. MacEwan's last question. I understand that the Department is waiting for the House to pass the Interpretation Act before they complete their work. Is this holding up the revision in any way?

Mr. Trudeau: It is in this sense, sir, that the Interpretation Act of course, is essential to the statutes as they will appear in the revised form. Our work is now proceeding on the assumption that the Interpretation Act will become legislation. If it does not, it will certainly mean reviewing a lot of the decisions we have made and in some sense it may retard the deadline I mentioned. At present I do not have great cause to suspect that the third reading of the Interpretation Act will not be passed. I would hope, with the cooperation of members of Parliament, that it can be done before the summer recess.

Mr. Aiken: Thank you.

The Chairman: Are there any further questions? Do you have a question, Mr. Brown?

Mr. Brown: No, I do not have a question, Mr. Chairman.

The Chairman: I must apologize, Mr. Brown, for not having welcomed you to the Committee. This is Mr. Brown's first meeting. We welcome you, knowing that you are going to be of tremendous assistance to us.

Mr. Whelan, do you have a question? As you were the successor to the Minister of Justice on this Committee I thought you might have a question.

Mr. Whelan: Not at this time, Mr. Chairman.

The Chairman: Mr. Otto?

Mr. Otto: Yes, Mr. Chairman, now that you have invited me. I do not see any provision for money—unless it is for special services to conduct a review of the different jurisdictions. I realize, of course, that to a great extent this is a provincial matter but some comments have been made in Ontario about modernizing the jurisdictions and changing the administration of certain phases of law from the Supreme Court to the County Court. You will also recall the recommendations of the Divorce Committee and I have heard comments from Law Associations and judges

about the reorganization of mechanics' lien actions and bankruptcies, in the Supreme Court. All of these matters will require a certain amount of study in co-operation with the provinces. Have any monies been allocated for research into this field or is this being considered?

Mr. Trudeau: As Mr. Otto properly says, Mr. Chairman, this problem of the administration of justice per se is within the provincial jurisdictions and the administrative questions are not directly our concern. I think I indicated that in the Department we intend to deal more and more in areas of research and I believe the general problem of the efficiency of the administration of justice is the type of problem we might very well look at, but thus far we have no specific projects in mind.

Mr. Otto: No money has been specifically allocated for this?

Mr. Trudeau: No.

Mr. Tolmie: I just have one short question. Mr. Trudeau, a great deal of criticism has been offered concerning the number of convicted people who are sent to prison in Canada. Charges have been levelled that we in Canada send perhaps a higher proportion of convicted people to prison than is the case in any other comparable civilized country. As I understand it, the magistrates have very little discretion at the present time with regard to granting probation or a suspended sentence to individuals who commit more than one offence. Have you considered amending the Criminal Code so that a magistrate would be allowed greater discretion in granting probation to those who have committed more than one offence?

Mr. Trudeau: Yes, Mr. Chairman, we are considering that problem but our considerations are not sufficiently complete at this time for me to report to the members of this Committee. It is a very important aspect of the Criminal Code and we are very aware of the problems the member has mentioned. We plan to make this type of amendment as part of the recommendations which will be made to the Cabinet in the course of the summer and which, if they are acceptable, will be before Parliament as part of the omnibus amendment bill to the Criminal Code in the fall.

Mr. Aiken: Mr. Chairman, I have a question for the Minister and then I have several other questions that are concerned with detail and perhaps you might wish to have someone else answer them.

The first question relates to the appointment of judges. There has been some criticism in the past of the procedures followed in appointing judges and the suggestion has been made that judges ought to be appointed on the recommendation of the provincial Law Societies or after consultation with the provincial Law Societies. I think we have in Canada on the whole an excellent judiciary and an excellent record. There have been some exceptions and I think it would be desirable to eliminate, if possible, even those few exceptions that appear from time to time. Is consideration being given by the Minister to any new procedure or any additional consultation in the appointment of judges, and particularly in the high courts?

Mr. Trudeau: Mr. Chairman, the member has asked a question which will force me to jump the gun, as it were. I have been thinking about this a lot. Quite frankly, I have also been discussing this recommendation with some officials of the Canadian Bar. As the hon. member knows, the Canadian Bar Association has recommended that appointments to the higher courts be made after consultation with a committee of the Bar which is named or designed for such a purpose. I have been thinking about these recommendations very seriously and that is why I used the expression "jump the gun". I have not absolutely decided which way I think it would be best to proceed. As the member knows, a bill was introduced last week by Mr. Robert Stanbury, the member for York-Scarborough, and all lawyers are interested in this debate.

The problem as I see it, and as the member says, is that nominations to the high courts in the past have, I think, been of a remarkably high standard throughout Canada and one is naturally reluctant to change a system that works well. However, even from the point of view of public opinion there is something to be said for consultation with members of the Bar or Law Societies by the Minister of Justice before making such appointments.

What the general public may not realize is that these consultations, so far as I know, always take place. I think one of the reasons the higher courts have had good judges is that as far as I am aware the Ministers of Justice in the past have never made recommendations without consulting in an informal way leading members of the Bar in the respective area or province in which they want

to make an appointment. These consultations are generally held with sitting members of the bench and with persons who are largely in a position to be able to guarantee that the nomination will be as good as possible. I must say that since I have been appointed, although I have not as yet recommended many persons for nomination through the governor in council, I have always done so after consultation with members of the bench, chief justices if possible, members of the bar and even with people who have been designated by the Canadian Bar Association to act as advisers to the Minister of Justice. I have done this informally.

My own intention is not to institutionalize these proceedings yet. What I want to avoid is pressure groups just transferring their activities from one area to another. If any body were designated to be the institutional body which would, as it were, pass recommendations on suggestions by ministers of justice there would be brought up the constitutional problem of whether the Governor in Council can be bound in any way, and I think that the constitution on this is rather clear, that the Governor in Council cannot be bound by the bar or by any other body. On the question of recommendations, I think that consultations have taken place, and should continue to take place, but once again care must be taken to avoid institutionalizing any such procedure in such a way that pressure will just be transferred from one place to another. There is no reason to think the Minister of Justice's judgment, if it is made after consultation with the bodies I suggest, will be any worse than the decision made by any other group.

Mr. Aiken: Mr. Chairman, I would not suggest that a procedure be set up that would take away from the Minister and the Governor in Council the obligation and the responsibility of making these recommendations. The only suggestion I would make is that perhaps a more regular type of consultation should be held with specified groups who would have to take some responsibility in connection with the recommendations. I think the Minister has answered the question very much as I had hoped.

I have some questions, Mr. Chairman, about some individual items in Vote No. 1 which strike me as unusual and about which I would like to get some explanations.

On page 50 of our Estimates there is shown the cost of judges visiting custodial institutions. I have no objection to this; in fact, I think it is an excellent idea. The amount of $3,000 seems quite small for the number of judges there are in Canada. Is this the total sum that is expended, and in what manner it is made up? Is it for accommodation and travel and does it refer to any particular part of the country? I am objecting, not to the largeness of the amount, but to its smallness, if I have any objection at all.

Mr. Trudeau: I think I will ask Mr. Beddoe to advise the Committee on this point, Mr. Chairman.

Mr. E. R. Beddoe (Administrative Officer, Department of Justice): This amount was included in the Estimates as the result of a recommendation in the Fauteux Report on Justice. I think it was recommendation No. 8.

This is actually a token amount that we have provided in our Estimates, and have done for several years, in order that the expenses of any judge who so desires may avail himself of this service.

In the past, $3,000 has been more than adequate. In 1964, the total expenditure was only $12. In 1964-65 it was $608; in 1965-66, it was $134, and for the year ending March 31 it amounted to $934.

Mr. Aiken: Does this mean that the judges are not visiting the institutions or that they are merely not charging their expenses? It seems to be a very small amount. I think it would do many of them good if they visited some of the places to which they are sending people in my opinion. It would be more useful to magistrates, frankly, but that is not in our jurisdiction. Is this merely an indication that they are not bothering?

Mr. Beddoe: This would be the indication. We have no record of judges visiting these institutions and not charging. Our Estimates reflect only the actual accounts that we receive from the various judges.

Mr. Aiken: Then it is not really a picture of visits to institutes?

Mr. Beddoe: The picture we have here is only of the actual expenditures that we have made from the Vote for this purpose.

Mr. Aiken: I suppose if we wanted to get accurate information on the visits of judges and magistrates to institutions we would have to go to the Penitentiaries Branch where it would be a matter of record rather than of expenditure.

Mr. Beddoe: Yes, this is true; but there could also be cases of their visiting provincial institutions and I doubt that the Penitentiaries Branch would have a record of that.

Mr. Aiken: Thank you. Similarly, I do not understand the item of transportation expenses of prisoners and escorts and discharged inmates. How does this happen to appear in the Department of Justice Estimates and not in the Solicitor General's Estimates? Does this arise from the division of responsibility?

Mr. Beddoe: No. If you will look at the wording of the Estimates in Vote No. 1, we are authorized to make recoverable advances for the administration of justice in the Northwest Territories and the Yukon Territory. This was an item that was charged to our vote previously but has been taken over the R.C.M.P. They have assumed these costs, and you will see that no amount appears in the current year, 1966-67.

Mr. Aiken: So that that item will now no longer appear in the Estimates of your Department. That is really what I was getting at.

Another item that intrigues me because it was so small, which is unusual in examining Estimates is the contribution of $200 to the Conference of Commissioners on Uniformity of Legislation in Canada. It does not seem to be very large. Could I have some explanation of why it is there?

Mr. Beddoe: This is the annual levy that is made by the conference on the Department of Justice. It has never been increased, and we have never encouraged that it be.

Mr. Aiken: For how long has this amount of $200 been appearing.

Mr. Beddoe: To my knowledge it has been going on for five years at least, and possibly more. I would have to refer to my records.

Mr. Aiken: So far as you know, does the federal government contribute in any other way to this conference?

Mr. Beddoe: By the attendance of many of our senior officers, yes.

Mr. Aiken: But does the conference pay for itself, or is it paid for by the provinces? Who maintains the Conference on Uniformity of Legislation?

Mr. Maxwell: I think the answer is that the provinces support the conference, with the help of a small contribution that it receives from the federal government. I presume that it is self-sustaining on the basis of contributions received from the various people who go to it and support it.

Mr. Aiken: Is this a continuing matter? Does the conference meet regularly?

Mr. Maxwell: Yes.

Mr. Trudeau: Yes, it does; and I know that it has been meeting for a great many years. The amount, as Mr. Beddoe says, is only $200 for perhaps five years, or more, but this conference is provided for by section 94 of the B.N.A. Act, and it deals essentially with uniformity of legislation among the common law provinces.

Mr. Aiken: Yes.

Mr. Trudeau: Therefore, in a sense, it does not apply directly to the federal government.

I should, perhaps, add that in recent years there have been international conferences on uniformity of legislation and we have just this year decided to become a member of that conference. Therefore, it is not inconceivable that some item similar to this appearing in the provisions next year might be higher.

Mr. Aiken: I know that our own Committee has made several suggestions about uniformity of legislation among the provinces. This may not really be our affair, but they arise relative to such things as motor vehicle legislation, highway traffic regulations and motor safety.

This seems to be a very small item, but if they are not asking for any more and if the conference is proceeding properly I suppose we should not be concerned about it.

Mr. Trudeau: The point is that the federal government has nobody to be uniform with, as it were.

Mr. Aiken: No. This is merely a grant in good faith, to show our interest?

Mr. Trudeau: I suppose so. You, perhaps, may have a point, and that we should show our good faith even more forcefully and perhaps try to encourage more uniformity in the area that you suggest. We feel that, in a sense, we are moving along this line by joining the international organization concerned with uniformity of legislation. It is obviously an important step.

Mr. Aiken: I have just one other question, Mr. Chairman, and it relates to the grant to

the Canadian Corrections Association in connection with the congress held in 1965. This entry seems to have been slightly delayed because there is no expense shown for 1967-68. Was this merely inserted in last year's Estimates as a matter of record, or is it intended to be kept alive?

Mr. Beddoe: No; this was a one-time grant to assist the Association. It was made to the Fifth International Conference. The grant that appears here was to assist in the administrative costs because we were the host country. It is not an annually recurring item.

Mr. Aiken: Presumably it will disappear from next year's Estimates?

Mr. Beddoe: That is true. There is not provision in the current year for it.

Mr. Aiken: Thank you, Mr. Chairman.

The Chairman: Are there any further questions? Mr. Cantin, Mr. Choquette, Mr. Honey, have you any questions?

If not shall Item No. 1 carry.

Yes. Mr. Cantin?

Mr. Cantin: Are we going to hear the details now, or are we just finishing?

The Chairman: So far as I am concerned, I am now going to ask if the Committee is ready to carry the Estimates. Now is the appropriate time to ask any questions you may have, because I doubt that we will be meeting again.

(Translation)

Mr. Cantin: My question is about judges' pensions. Could the Minister tell us if a decision has been taken with regard to a pension to Mr. Justice Landreville?

Mr. Trudeau: Mr. Chairman, I will try to say in a few words what I said in the House in the past few weeks. I am glad that the honourable member has brought the matter up because this Committee is an appropriate one in which to study this question. I have already said that no decision has been made and I repeat this to the Committee this morning. No decision has been taken either for or against the awarding of a pension to Mr. Justice Landreville. However, I can give fresh information to the Committee, taking advantage of the fact that few members of the Press are present...

Mr. Choquette: I see only one.

Mr. Trudeau: ...in saying that I received, three days ago, at the end of the day, on Monday, a letter from Mr. Justice Landreville containing a number of medical certificates indicating that his health has really been affected. These medical certificates indicate that he could no longer continue in his function as a judge even if he were permitted to do so. I wish to tell the Committee that I shall have to answer this letter, of course, which means that within the next few days I shall have to consider the matter. I repeat again, as I said in the House, that I have not made any decision in this regard. These medical certificates, of course, lead me to pay even closer attention to the matter.

• (12.15 p.m.)

The questions that have been brought up in the House in the past few weeks indicate that there is some concern among the members of the Opposition. As fas as I am concerned, I shall merely state my position here. I am going to study the matter but I would say that I am not ready to admit as final that any person asked to resign from public office should not be eligible for a pension, whether he be a member of the armed forces, the public service, the Court or even a worker who has had to resign from industrial work. I have consistently refused to say no definitely before deciding whether this pension should be paid, for these two reasons: firstly, that my mind was not made up and that I had not yet seen the supporting medical certificates; and secondly I refuse to say, *a priori*, that any person who resigns from public service employment is not eligible for a pension. This, Mr. Chairman, is what I wanted to convey to the Committee.

Mr. Choquette: Then, this means that it is extremely difficult for you to make a decision on the merits of the case. It will be a political decision.

Mr. Trudeau: I do not know how you are using the word "political". If you are using it in its noble sense from the Greek word *polis*, in the interests of the city, it will be a political decision, but only in that sense. I am saying quite frankly that it is a problem that I will have to study very carefully, quite apart from the political approval or disapproval that might ensue. I refuse to decide *a priori* that a man who has not been found guilty of any crime before the courts of the country and consequently is not guilty of anything before the law should be punished

to the end of his days for the sole reason that he has not carried out his duties in accordance with the very high standards of behaviour expected of our magistrates. For that reason I refused before Parliament to close the matter of a pension. It is a matter that must be considered, and I propose to consider it. And if any members, either here or in the House, have any advice to offer, I will be glad to hear it. What astonishes me is the preconceived idea, indeed the prejudice, on the part of the public and of certain Members of Parliament, especially apparent in the case of Mr. Justice Landreville, which I have not seen in the many other cases where public servants or military personnel have had to resign. I will not be influenced by such prejudice. I am going to study the matter on its merits and will welcome any suggestions anyone may give me in this regard.

Mr. Choquette: I congratulate the Minister on his attitude. It is quite clear. The Committee is perhaps not the place to say it, Mr. Chairman, but his attitude is one of serenity and objectivity. It is clear that the Opposition is trying to persecute Mr. Justice Landreville. I congratulate you on your honest and objective attitude.

● (12.20 p.m.)

(*English*)

Mr. Aiken: May I ask a supplementary question? This relates to the same general subject. Since the question of Mr. Justice Landreville has come up, one thing that struck me as an observer was that apparently Mr. Justice Landreville, regardless of the rights and the wrongs of the situation, was not clear about what the terms of his appointment as a judge were, or what his duties were as regards conflict of interest, and so on. I believe these have never been defined. The Rand inquiry, as I read it, made an effort to say what judges ought to do, and ought not to do. Mr. Justice Landreville, throughout the hearing, accepted that he had not, as far as he was concerned, breached any of the privileges of his appointment, and that he was not involved in any conflict of interest, and so on. He felt that his clearance by a preliminary inquiry was all that was necessary, and the fact that he was not guilty of a criminal offence was sufficient. Has the Minister given any thought, or does he think it in any way necessary to lay down some more specific instructions or duties to judges at the time of their appointment? At the present time he takes an oath of office and I presume nothing else. This situation has happened in connection with another judge, too, a former member of the House, who was in jail for some time awaiting charge and was found guilty. I do not know what the status is now; I think there is an appeal. Nevertheless there was some objection that he was paid a salary while he was in jail. Is there any thought in the Minister's mind that some more specific rules of conduct should be laid down for judges to get away from this very vague generalization of history and tradition that they should not do anything wrong, and to what point does this apply? It is very difficult, but it has come to my mind that perhaps there is misunderstanding in some cases about conflict of interest, about how far a judge must be involved in criminal charges before he ought to resign or ought to be asked to resign.

Mr. Trudeau: I think it is a very valid point, Mr. Chairman. The criminal charges and the settlement of them are not the only aspects to be considered in the question of whether a judge should or should not resign, and indeed when I, as Minister of Justice, recommended to Cabinet that the joint address be proceeded with for removal of Mr. Justice Landreville, I indicated that my thoughts on this were the same as those of the hon. member, and as the member knows from reading the address which was brought in before the Senate, I was very careful to make sure that the grounds on which the address was being ruled were spelt out in the address itself. They did not have to do with any criminal conduct, but merely with the failure to meet these very high standards of ethical behaviour which judges in this land are expected to meet. Now the member asks if they should be spelt out with more precision. I think this is eminently a case where precedent and the common law and the moving ethics of a society must be essentially the factors which will guide us. As the member knows, this kind of procedure has never been necessary before in Canada and even in this case it did not have to go through to its termination. If we are to go for another hundred years, or perhaps more, hopefully, before such a thing happens again, I do not think there would be any great need for us now to spell out in advance for a hundred years the kind of ethic which should be guiding judges. I think this is really a moral judgment of the society at that time as guided by Parliament.

As I have answered to the previous questions, I am very grateful for the occasion to speak about this to this Committee, though it is late and I will not hold you much longer, because I want them to know quite frankly of my candor on the subject. I have held the view throughout that as a general proposition no judge should be removable from the bench except for physical or mental reasons, or because of obvious and very grave misconduct. I think this is a fundamental principle of our judicial system: that judges are there to stay. This we believe in very strongly because we do not want either Parliament and even less the Executive interfering in the judicial procedure. If we were to reach a position where judges could be removed by the Executive, or forced to resign by the Executive, or indeed even forced to do so by action of Parliament because of something which is foreign to their conduct as judges, we would be treading on very dangerous ground. There would be all kinds of next steps. You might be able to look into a judge's private life in the past. You might be able to look into his private life in the present, and you might use all kinds of excuses to remove judges because you do not like basically what their judgments are. Of course no government or legislature would remove a judge by saying: Well, we do not agree with his decisions and therefore we are getting rid of him. But we must avoid opening the door to any action which might permit excuses to be used to remove judges the Executive or the legislative functions do not like because of the judgments they render. Once again, this is why I am trying to remain absolutely impartial toward Mr. Justice Landreville, because we must remind ourselves that even in the Rand Report it was stated that the conclusions reached had nothing to do with his conduct on the Bench, that his conduct on the Bench in no way met with reproach from that Commission. Nor does it from me.

Mr. Aiken: Mr. Chairman, I am satisfied the statement the Minister has made is a fair one and I am not proposing that rules of ethics be laid down. I think it would be impossible. But, the other side of the problem which I would like an answer on is a more definite procedure for removing judges. This Landreville Case has probably been one of the most tortuous bits of procedure that could have been gone through, and Mr. Justice Landreville insisted throughout that he was not guilty of anything and that there was really nobody who could try him. We had the situation where the Law Society made a recommendation of some kind and then a special inquiry was set up and a recommendation made. Then we had a Standing Committee of the House which went through the whole thing again and now a resolution in Parliament. The latter one is the only recognized procedure. We have gone through every bit of torture we could give the man in this particular case without executing him quickly. Could there not have been set up or should there not be a body composed perhaps of fellow judges or partly of fellow judges and partly of other persons, to whom such a question could be referred and whose decision would be the one on which the recommendation to Parliament would be made, instead of going through this tortuous procedure that we went through here. I think that might be the one good thing that has come out of all this.

Mr. Choquette: It was a political issue; that is why we went through all those proceedings. There is only one proceeding. It is impeachment, is it not, Mr. Minister?

Mr. Trudeau: The BNA Act speaks of a joint address in both Houses—

Mr. Choquette: Yes.

Mr. Trudeau: —which is not, I suppose, impeachment in the historical sense but in a way is what we commonly call impeachment. I share the concern of the hon. member and I hope that this has not been used as a precedent since it did not go through to completion. I hope that the way in which the Address was written and the procedure which I stated in various places would be followed might serve as some kind of a precedent because I share the concern of the hon. member that no person accused of anything should be totally unaware of the kind of procedure which will be followed in the study of those accusations. I think this is fundamental.

The Chairman: We are going to lose a quorum.

Mr. Trudeau: Yes, well, I have very little more to say on that.

The Chairman: Mr. Choquette, we are just ready for the vote.

Mr. Choquette: All right, I will stay for a little while.

Mr. Cantin: Can we go along right now with the vote?

(*Translation*)

Mr. Trudeau: We will vote and then I shall continue to answer your questions.

Mr. Choquette: Yes. I have a plane to take at 1:20.

Mr. Trudeau: If we are ready for the vote—

(*English*)

Mr. Aiken: I am through with my questions as soon as this one is answered, Mr. Chairman. Has anyone else a question?

Mr. Trudeau: I do not mind staying on to discuss this but if there is no intention to vote against the estimates can we proceed with the votes, Mr. Chairman?

The Chairman: Shall Vote 1 carry?

Item agreed to.

The Chairman: Shall the Main Estimates 1967-68 of the Department of Justice carry?

Some hon. Members: Agreed.

The Chairman: Thank you. Mr. Minister, we will carry on but at this time I do want to thank you for the very clear and very informative answers you gave to questions asked by the members and I would pass the same compliment on to those who have been here with you assisting in that respect.

Mr. Trudeau: In turn, Mr. Chairman, could I thank you and the members of the Committee for the courtesy and understanding with which we have looked at these problems.

Mr. Aiken: Would you consider a more direct procedure set up for the future on removal of judges? There is nothing at the moment. It seems that except for the Address nobody knows what the preliminaries should be.

Mr. Trudeau: My answer is a bit in the same sense as you meant when you mentioned the rules of behaviour and conduct. It is such an infrequently used procedure that the temptation is not to spell it out in too much detail. But I think that if you look through you will find, for instance, that Todd in particular spells out very well what the procedure has been and which has become in a sense common law. I must confess though that on at least one point the procedure I suggested was different from that which Todd suggested. I would say, Mr. Chairman, that on this question we must be guided essentially by rules of natural justice. These indeed provide that an accused person should know more or less what to expect in the way of procedure. I think these can be summed up in a few general propositions which could be brought down to the following: (a) that the Address itself should spell out clearly the grounds on which removal is being asked: (b) that the Address be brought before both Houses of Parliament; (c) that the accused or the person to whom the Address is directed be allowed to appear and adduce witnesses on his behalf and plead in his defence or refuse to testify if he so wishes and (d) that the hearing be public and he be entitled to counsel if he so desires.

Mr. Aiken: How many hearings should an accused person have, a Royal Commission, a Magistrate's Court, a Committee of the House of Commons and so on? This is where my objection arises. Frankly, I think the right decision has been reached and should have been reached two years ago. But why was it necessary to drag this on and on? Why could not the matter have been decided before taking so many inquiries and going through so many partial inquiries and partial hearings, some at which Mr. Landreville was represented and some at which he was not. This is the thing that bothers me.

Mr. Trudeau: It bothers me too, sir, and I share the hon. member's concern. I hope that in future cases the action one way or another will be a bit more expeditious. Once again under our Constitution this is for Parliament to decide and I think beyond sharing the hope of the hon. member I cannot say more at this time. But I hope the statements I made this morning will be used as some kind of precedent or rules of the game—I should not say "of the game"—rules of conduct. I thank the hon. member. It may be something on which I will ask officials in my Department to prepare a memorandum that can be consulted in future years by future governments.

Mr. Aiken: I think that would be very helpful.

The Chairman: Thank you, members, for being here and helping to make the quorum. The meeting stands adjourned.

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

TUESDAY, OCTOBER 31, 1967

RESPECTING

the subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

APPEARING:

Mr. Milton L. Klein, M.P., sponsor of Bill C-96.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27235—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Ryan,
Mr. Brown,	Mr. Latulippe,	Mr. Scott (*Danforth*)
Mr. Cantin,	Mr. MacEwan,	Mr. Tolmie,
Mr. Choquette,	Mr. Mandziuk,	Mr. Wahn,
Mr. Gilbert,	Mr. McQuaid,	Mr. Whelan,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Grafftey,	Mr. Otto,	
Mr. Guay,	Mr. Pugh,	

(Quorum 8)

Fernand Despatie,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, October 31, 1967.

(4)

The Standing Committee on Jutice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest, Goyer, Grafftey, MacEwan, McQuaid, Pugh, Scott (*Danforth*), Tolmie, Whelan, Woolliams (11).

Also present: Mr. Klein, M.P.

The Chairman read the Order of Reference dated June 26, 1967. He referred to a meeting of the Subcommittee on Agenda and Procedure, held on October 19, 1967.

The Committee proceeded to the consideration of the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts. The Chairman introduced Mr. Milton L. Klein, M.P., sponsor of this Bill.

Mr. Klein made a statement and was questioned thereon.

The Committee agreed that the following documents be made exhibits:

— Article entitled *Methadone—Fighting Fire With Fire,* by Gertrude Samuels, The New York Times Magazine, October 15, 1967 (*Exhibit C-96-1*);

— Extracts from Dr. Donald Louria's book entitled *Nightmare Drugs,* pages 78 to 94 (*Exhibit C-96-2*).

It was also agreed that the suggestions made by Mr. Klein be referred to the Subcommittee on Agenda and Procedure for consideration and subsequent recommendation to the Committee.

The sponsor of the Bill was questioned further and members made comments regarding the procedure to be followed in dealing with the matter before the Committee.

The Chairman thanked Mr. Klein for his representation.

Following an announcement made by the Chairman regarding the next meeting of the Committee, on motion of Mr. Woolliams, seconded by Mr. Forest, it was

Resolved,—That reasonable living and travelling expenses be paid to Messrs. E. A. Spearing, Arthur G. Cookson and James P. Mackey who have been called to appear before this Committee on November 2, 1967, in the matter of Bill C-115.

At 12.35 p.m., the Committee adjourned until Thursday, November 2, 1967.

Fernand Despatie,
Clerk of the Committee.

27235—1½

MINUTES OF PROCEEDINGS

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, October 31, 1967.

The Chairman: Gentlemen we have a quorum. I would like to take this opportunity of welcoming you back from your vacations in the hope that you are re-invigorated, refreshed and raring to go.

The first order of business is the reading of the Order of Reference dated Monday, June 26, 1967, which we have before us: "Ordered that the subject matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs." The sponsor of the Bill is our very good friend Milton Klein, Q.C., of Montreal.

The Subcommittee on Agenda and Procedure met on October 19, 1967 with respect to this bill. Mr. Klein was present at a meeting together with Mrs. Rebecca Stotland, who would like to appear before the Committee to give the personal history of a member of her family and also her own views respecting the subject matter of the Bill.

It has also been suggested that Dr. Holmes, who is in charge of the Alcoholism and Drug Addiction Research Foundation in Toronto, might be willing to appear as a witness. Mr. A. J. MacLeod, Commissioner of the Canadian Penitentiary Service, has indicated that he will be only too willing to attend. I got in touch with Dr. Garneau and I now find, because of a mistake, that it should have been a Dr. Gendron. I have no doubt that he will also be willing to appear. I believe, Mr. Klein, you have the names of one or two other witnesses. Perhaps you could inform the Committee of their names.

Mr. Klein: Yes, I intend to.

The Chairman: All right. I believe I should call your attention to a memorandum which has been handed to me to the effect that because our proceedings are recorded on tape it is requested that when you are asking questions or making statements you speak as closely to the microphone as possible in order that you will be recorded clearly and accurately by this equipment.

I know we are all very pleased to have Mr. Klein appear before the Committee. No words of mine are required to introduce him. He is a distinguished lawyer from Montreal, a member of the House of Commons and a person who is vitally interested in social affairs. Without any further remarks, Mr. Klein, would you please proceed.

Mr. Milton Klein, Q.C. (Sponsor of Bill C-96): Mr. Chairman and members of the Committee, I want to particularly thank the Chairman for his kind remarks. I come before this Committee, gentlemen, not as an expert on narcotics or drug addiction but rather from the point of view that as a practising lawyer in Montreal I have always felt that incarceration for drug addiction was not the answer. I do not think a jail sentence solves the problem. On the contrary, it delays the solution of the problem. The subject matter of the Bill is to remove the stigma of a criminal conviction and also to treat the addict as a sick person rather than a criminal. In other words, I am not suggesting that a person who is a drug addict or is in possession of drugs should not be apprehended. I think we ought to continue to apprehend these people, but the moment an addict is apprehended he should become a clinical rather than a criminal case and the judge before whom he is brought should refer the case to some proper authority rather than take this man and throw him in jail. I think that is society's answer to the problem; they cannot do anything about it, so let us sweep it under the rug and throw him in jail.

• (11.15 a.m.)

Narcotics are administered to sick people and people who take narcotics are sick. All through the centuries we have been stressing sex education; what to do about the birds and the bees. I think in this century we will have to add an additional word and say, "What are we going to do about the birds, the bees and the weeds?" I believe we are having less and less of a problem with the birds and the bees and more and more of a problem with the beads and the weeds.

The question of addiction is the No. 1 problem in the minds of the parents of this

country. There is not a mother and father today who are not concerned that their son or daughter who is attending university is not participating in the use of marijuana. They are very concerned about it. I suggest that it is the duty of the members of Parliament to interest themselves in this problem which, as I say, is not only the No. 1 problem on the campus but has become the No. 1 problem in the high schools.

I asked some high school students what they thought ought to be done about the situation and where should we start. The answer seems to be universal that they are not getting enough information about drugs and drug addiction. The place to start is in the eighth grade of high school when the child is 13 or 14, and from that age on. Although the sniffing of glue is not a narcotic it is in the whole area of narcotics. I believe when a person is arrested on a charge of being in possession of drugs—and I am now making a distinction between the pusher and the person who is participating in drugs or in marijuana—that his name should not be published in the newspapers because in my view it does not help the situation. Do you disagree?

Mr. Woolliams: I do not think you can ever cure anything by keeping it quiet.

Mr. Klein: I am not speaking about keeping it quiet; I am speaking about rehabilitating the person who takes it. Take the case of a young student who is smoking marijuana and gets caught and his or her name is published in the newspaper. I think it does damage to that person to the point where I do not know if they can be rehabilitated afterwards.

Mr. Woolliams: Do you not think it is a deterrent?

Mr. Klein: No. I will deal with that matter right now. I make no distinction between marijuana and narcotics. I do not think this is the time to make such a distinction because I think the situation is too serious. I said that when people sniff glue they do it for the same purpose that people smoke marijuana, to get "high", or whatever it is called in the vernacular. I do not know what it is called.

Mr. Woolliams: They "go on a trip".

Mr. Klein: Whatever it is called; they go on a trip but their parents stay home.

Mr. Scott (Danforth): Are you suggesting that marijuana is a narcotic?

Mr. Klein: I do not know if it is a drug or it is not, but I want to point out that the medical profession is trying to tell the public, "Stop smoking because it is not good for you" and yet we have some medical doctors who say that the smoking of marijuana is not harmful. I do not know how they reconcile the two. In any event, I do not think this is the time to give the public any authoritative medical advice on the question of whether marijuana is harmful or not. In my view this is not the time to do that.

Mr. Woolliams: You are not suggesting for a moment that we should hide such knowledge?

Mr. Klein: No, no. I am not talking about hiding knowledge. The medical profession is wrestling with this problem and the country is also wrestling with the same problem. What concerns me a great deal is that this problem seems to be unique to the North American continent. It does not exist to the extent that it exists on this continent, for example, in the countries behind the Iron Curtain. I am not suggesting that it should exist there, I am suggesting that it should not exist here. When a person is apprehended—and I am speaking in the context of the question you raised—for using marijuana, let us say, and you publish his or her name and they are convicted, I do not know what sentence you give them but you then have a person who has hit a low.

On the other hand, if you do not expose them—and I am talking about individuals—and convict them but hang over their heads the possibility of conviction if they do not conform to what the judge tells them, I think that is a greater deterrent than the publication of the name or the conviction. I think the threat of exposure is far more important than the actual exposure or the conviction. This is my view.

An hon. Member: You mentioned marijuana in particular.

Mr. Klein: Because marijuana—or LSD for that matter—is hitting an area now where more publicity is being given to it than anything else. I am not singling out marijuana. I am referring to the area of narcotics, and this is not from a medical or scientific point of view, it is from a sociological point of view and I am putting marijuana and the

sniffing of glue and everything else into that area.

Mr. Scott (Danforth): But how do you equate that with your Bill? You say the real deterrent is the threat of exposure. How does that tie in with the idea that it is really a psychiatric problem and requires medical treatment?

Mr. Klein: I will deal with that now. I believe what is also developing is a new situation in our society. We have always thought of juvenile delinquency in terms of slum areas and with the advent of all these other areas we are talking about juvenile delinquency is no longer limited to the slum areas. Juvenile delinquency is now in the area of the middle and upper middle class.

Mr. Whelan: Was it ever limited to the slum areas?

Mr. Klein: We have always thought of it as an area in which the underprivileged were the only juvenile delinquents.

Mr. Whelan: Is that not because it was published there and not in the other areas?

Mr. Klein: Whatever the reason; but I maintain that for the first time it is beginning to appear in the minds of the people that juvenile delinquency is not the sole province of the slum areas.

Mr. Whelan: It never was.

Mr. Klein: Perhaps it was not. I do not know how many of you gentlemen have read the article which appeared in the magazine section of the New York *Times* in the issue of October 15, where a team of doctors—I understand the same principle is now being used in Canada—husband and wife, Dr. Vincent P. Dole and Dr. Mary Nyswander, are now operating a laboratory at the Rockefeller University in New York where they are treating drug addicts with a substitute drug called methadone. I am only giving you the essence of the article but from it I gather that one of the arguments against methadone is that in itself it is an addictive drug.

Mr. Scott (Danforth): Is that not the stuff the hippies are using?

Mr. Klein: No. It is the same name but it is not the same drug.

An hon. Member: It is methedrine, I believe.

Mr. Scott (Danforth): We have an expert with us!

Mr. Klein: We are lucky to have a representative of the hippies present!

The remark has been made by some people: Why treat people with a drug to which they may become addicted? Are you not really substituting scotch for bourbon? The argument which is made is that you simply cannot expect the drug addict—which is one of the reasons for emphasizing that he is sick rather than a criminal—to be taken off the drug; you have to treat him with another drug. As I understand it, when a person is taking methadone, even if you inject heroin, the heroin has no effect when he is under methadone. He does not get high, so to speak, and his need for narcotics or heroin is thereby deadened. There is no longer a craving because it does not affect him any more and the method of applying methadone is comparatively inexpensive.

I would like to make a distinction here. I am not suggesting that the drug addict should be left free. I want to make a distinction between incarceration and confinement. When he is being treated with methadone he may have to be confined to a hospital in order to get this treatment. The Chairman referred to Dr. Holmes, to whom I will make reference later, and when I discussed this question with him over the telephone he referred to this institution in the Vancouver area called Matsqui. He very pointedly said that that institution should not be under the Department of Justice; it should be under the Department of National Health and Welfare.

Mr. Woolliams: I would like to get your ideas on this at this point. Do you think we should be tougher with the peddlers and pushers, particularly keeping in mind the fact that the hippies have now planted marijuana seeds along the Trans-Canada Highway out at Banff and Calgary and in various other areas? It will grow like weeds and it will be very easy to get marijuana. Do you think we should be tougher with those people who are bootlegging this stuff into the country?

• (11.30 a.m.)

Mr. Klein: We are going into this area that we have been reading so much about in the newspapers. Of course, we should do this. I was told yesterday by a doctor whom I hope will appear before this Committee that some of the pushers are deliberately putting heroin into the marijuana in the hope that people will be hooked.

Mr. Woolliams: Taking them in.

Mr. Klein: Yes.

Mr. Woolliams: And that is why marijuana and heroin differ. You can become addicted to one and not to the other.

Mr. Klein: That is correct, and they are using that. Incidentally, one paragraph here, speaking of the drug addict, reads:

> He feels he must seek more heroin from the illegal "black market", all the time trying to stay clear of the police and hoping that he won't be sold a "hot shot".

An hon. Member: What is a hot shot?

Mr. Klein: Rat poison, which will kill him.

This article was written—and incidentally, if the Committee is interested I will give you the names of the persons that I or my office have spoken to—by a person named Gertrude Samuels and I think it is exceedingly well written. We have been in touch with her at the New York *Times* and she has indicated that she would be pleased to come before this Committee if the Committee sees fit to call her.

Mr. Scott (Danforth): Is she a reporter or a researcher?

Mr. Klein: No, she is a staff writer for the New York *Times*. The article reads:

> The compulsive search for the narcotic "high" soon becomes the addict's whole life: his habit, an advanced state of addiction leaves him functionally disabled. He generally cannot hold a job, continue with school, get enough money by legal means to obtain the heroin, support his family. He is a self-made outcast despised by society.
>
> Periodically, when his habit becomes too large and expensive to maintain, he may seek to withdraw from heroin, using other analgetic drugs to relieve the withdrawal pains. He will accomplish this at a hospital or, if he can obtain withdrawal drugs, on his own. Sometimes he is withdrawn compulsorily because of a jail sentence. In any case, once he achieves withdrawal, he inevitably starts back on the addiction trail.

Once a person takes methadone as the substitute addicted drug it makes him a good member of society again. He can hold a job. All the defects that a person experiences as a result of taking heroin disappear under methadone. The person does not know the reason for this. It is said that methadone is to the addict—I think this is the gist of it —what insulin is to the diabetic. We do not throw people in jail because they have diabetes. They are sick; therefore they are treated with a drug which is called insulin. Our suggestion is that the addict is also sick and he is being treated with the addicted drug methadone, which to him is what insulin is to the diabetic.

The Chairman: Mr. Klein, would you be good enough to leave that copy with us?

Mr. Klein: Yes, I will.

The Chairman: It will be filed as an exhibit. Is that agreed?

Some hon. Members: Agreed.

Mr. Klein: If we continue to send people to clinics so they can be dealt with, I think the persons in charge of those clinics will then have first-hand information on what to do about these addicts. They will learn more about what to do with them.

I also wish to speak about the families of addicts. These really are the people who suffer most. They are bled dry by the addict; they love the person who has the addiction and they will do anything they can for them. Their situation is even more hopeless than the addict because, as I have said before, at least the addict goes on a "trip", but the family stays home. If you throw a person in jail he becomes a criminal in people's eyes and a stigma is attached to the whole family. I believe that the future of medicine does not lie in psychiatry or in corrective surgery; I think the future lies in what we might call corrective chemistry.

A very interesting book has been written by a Dr. Donald Louria entitled "Nightmare Drugs". He is associate professor of medicine at Cornell University; associate physician at Bellevue Hospital; Chairman of the Narcotics Subcommittee of New York City and Chairman of the New York State Council on Drug Addiction. Incidentally, we have been in touch with him and he would also be very pleased to come before this committee.

I would like to read a few paragraphs from this book where the matter of civil commitment of drug addicts is mentioned. It states as follows:

> Civil commitment consists of remanding an addict to a hospital or rehabilitation centre instead of jail, in the belief

that jail is no cure for addiction. There are several forms of civil commitment used by various states.

First, as in California, addicts who are arrested and convicted of crimes including some felonies, may be sentenced but are referred after conviction to a special authority to be considered for commitment to a "rehabilitation" centre.

Second, as in the State of New York, under the provisions set forth in the Metcalf-Volker Act of 1962, the arrested addict could elect civil commitment in lieu of trial if he was not accused of selling narcotics or of certain felonies.

In other words, if an accused is brought before a judge in New York State and if he appears merely as an addict and not a pusher, or some other particular offence, and simply where he is committed as a result of his being addicted to drugs, he can say to the judge, "I want a civil commitment in this case. I will follow the medical prescription of the institution to which I am committed." After being committed, he could be confined for as long as a year or more for the purpose of taking this treatment. The writer then states:

Third, an addict wanting to be cured may sign himself into a program. In some states he can leave the program whenever he wishes if the entrance was voluntary; in others, it is mandatory to complete the prescribed minimum period specified by the program even if the commitment was voluntary.

Fourth, in some states the civil commitment of an addict may be initiated by relatives, those with whom the addict lives, or certain public health officials, even if no crime has been committed. In New York State this has recently been broadened so that virtually anyone can initiate civil commitment proceedings against an addict.

I mention these things simply because I believe that we are entering an era where we are beginning to recognize, or have recognized for some time, that we must treat them as sick people and not as criminals.

Mr. Chairman, I would be very happy to file this as well if you would like me to do so.

The Chairman: Is it agreed that this may be filed as an exhibit?

Some hon. Members: Agreed.

Mr. Klein: Mr. Chairman, you referred to certain individuals who might be interested in appearing before this Committee, I may say that I have or the secretary in my office has spoken to the following persons, and I would like to report to you their names and comment on their availability to appear before this Committee. Dr. Peter Roper, President of the John Howard Society, who resides in Montreal has indicated that if this Committee would send him an invitation to appear he would be very happy to do so.

Mr. Scott (Danforth): What would be the nature of his presentation? Would he deal with that Society's attempt to rehabilitate these people?

Mr. Klein: I would imagine so. I merely indicated to him the subject matter of the Bill and he indicated what appeared to me to be a strong feeling in favour of coming before this Committee. Miss Isobel McNeill, who is in charge of special research projects of the Alcoholism and Drug Addiction Research Foundation of Toronto, stated that she will come. Dr. Gregory Fraser, the clinical director of the outpatient division of the Alcoholism and Drug Addiction Research Foundation in Toronto, also indicated that he would be very pleased to appear. Dr. Vincent P. Dole of New York City, who is connected with the Rockefeller Institute, stated that he did not know whether he could or would appear but he would send us his comments on the Bill.

Miss Gertrude Samuels, a staff writer on the New York *Times* magazine section, has indicated that she will come. Dr. J. Naiman, a psychiatrist at the Jewish General Hospital in Montreal whom I understand, wants to initiate a program or has initiated a program of this nature at the Jewish General Hospital in Montreal, has indicated that he would like to come. Dr. B. Cormier, an associate professor at the McGill University Clinic of Forensic Psychiatry, stated that he will come.

I do not know if he is treating patients or whether he is somehow or other associated with them, but I believe he has something to do with the treatment of prisoners in the penitentiaries who are incarcerated because of drug addiction. I may not be right in that. Dr. Donald Louria, the person who wrote this book, an extract of which is now filed as an exhibit, and as I stated he is the associate professor of medicine at Cornell University Medical College and Chairman of the Narcotics Subcommittee of the New York City

Medical Society and Chairman of the New York State Council on Drug Addiction, has stated that he will come. I might mention he stated that he would like to time his appearance some time towards the end of November. Mr. Chairman, you might take note of that. These are the people who have indicated their wish to appear before this Committee.

I might also add that when this Bill was presented I received a letter from the Canadian Mental Health Association stating that they would like to support this Bill, and they asked me for suggestions concerning the manner in which they could support it. I hope that Dr. Griffin or some other member of that organization will come before this Committee, if the Committee agrees with this suggestion.

Mr. Chairman, I would like to conclude by putting forward certain suggestions to the Committee. One of the suggestions I would like to make is that the Committee split itself up into subcommittees of three or five members and go out into the country and hold hearings at the universities or in the high schools and speak to these people and see what can be done about this matter. For example, I think the Committee should visit the Alcoholism and Drug Addiction Research Foundation in Toronto. I think the Committee should visit some of the psychiatric wards and drug addiction wards in the penitentiaries. I also think, although I do not know how this Committee can do it—it could recommend it, in any event—that children should visit these centres because there is nothing that would impress children more than the sight of persons who have reached the bottom as drug addicts and to see what happens to people when they become addicted. They ought to see it, not be told about it. Seeing it may have a traumatic effect on some, but I think it would be worth it to them to go to these centres and see the depths to which a human being can sink when addicted to drugs.

• (11.45 a.m.)

Finally, after this Committee has had the opportunity of hearing some of the witnesses I am certain that it is going to be impressed by them, as I have been by those with whom I have spoken. I am not suggesting that I am not impressed with the others, but I did not speak with them all.

This is a very serious problem. I respectfully submit that the public of Canada would be very grateful to this Committee if it would, in fact, examine this subject and make such recommendations as it sees fit.

Thank you for being so courteous in hearing me this morning.

The Chairman: Thank you very much, Mr. Klein. Mr. Klein has suggested various witnesses who might be available and willing to appear before this Committee and about visiting different groups or organizations who are dealing with this subject. Perhaps that might be referred to the Steering Committee for study and consideration and recommendation back to the main Committee subject, of course, to anything that any member of the Committee would like to say about it now.

Mr. Scott (Danforth): I think that is a good idea, and I so move.

An hon. Member: I second the motion.

The Chairman: Then it is agreed?

Motion agreed to.

The Chairman: Mr. Klein, we are now at the stage of our proceedings when members are going to question you.

First on my list is Mr. Pugh; then Mr. Woolliams and Mr. Tolmie.

Mr. Pugh: Mr. Chairman, I certainly commend Mr. Klein for bringing forward this Bill, the whole purpose of which is rehabilitation of drug addicts of whatever type. Our best evidence will come from witnesses we call before the Committee. Personally I like to see witnesses.

I would ask you now, sir, about your explanatory notes where you say:

> Developments in the fields of medicine and psychiatry tend to establish that drug addiction, when it occurs, results from some type of mental illness or disorder.

That is a very broad statement. Probably the witnesses whom we are going to call will be able to cover it thoroughly before we think about going elsewhere.

As a result of having witnesses we can probably settle in our own minds just such questions as the one contained in your broad statement that addiction results from some type of mental illness or disorder; and, secondly, that in the field of medical research and from actual case histories we can determine a percentage of cures and whether

what you suggest in the way of rehabilitation would be a good thing.

As you were speaking I had a number of questions on incarceration, non-publication and the like, but I feel that if we hear these witnesses then probably many of the questions that we have in mind may well be answered. That is all I have to say at the moment, Mr. Chairman.

Mr. Klein: I agree with you completely. As I said at the outset, the people who will come before this Committee are far more capable than I of discussing the facts with you. I do not pretend to have the kind of knowledge necessary for this Committee to make any decisions upon. That is why these witnesses should be called. I quite agree with you.

Mr. Pugh: With all due deference to the press, I think we should get the best evidence by calling these people rather than someone like Miss Samuels who is a staffer and who, naturally, is going to make a good article out of this subject. She has probably seen and interviewed a number of witnesses herself, but I rather feel that we should get the evidence from competent witnesses, from Canada, if possible.

Mr. Klein: Yes. I merely presented these names with the object of indicating an area in which information could be obtained. Relative to one of the questions you raised it is interesting to note that one of the headlines in this article in the New York *Times* is, "How long will they take methadone?" and the answer is "Maybe for a lifetime."

Mr. Pugh: I noticed that one of the other headings in the article was "Fighting Fire with Fire."

Mr. Klein: Yes.

Mr. Pugh: That is all I have to say at this time, Mr. Chairman.

The Chairman: Mr. Woolliams, you are next.

Mr. Woolliams: I would like to join with Mr. Pugh in congratulating Mr. Klein on his presentation of a very thoughtful brief. It deals with what is probably one of the most serious problems facing the youth of today, particularly the use of marijuana and what goes on afterwards. I may be rather jumping the gun relative to the Bill itself, but I wish to bring to your attention something about which although I may be influenced the opposite way eventually, I have pretty well made up my mind. I have read subclauses (a) and (b) of clause 2, but it is (c) that really concerns me. I do not believe that the medical and psychiatric evidence called will assist us in this. It says:

> (c) it shall be within the discretion of the Judge or Magistrate before whom the drug addict is appearing to decide whether the charge already laid against him shall be proceeded with.

I have always taken the position—and you being a lawyer will, I think, agree with me—that whatever kind of protection you may have your rights flow from the law, not people. Let us consider the giving of that kind of discretion to a judge or magistrate. Perhaps I am being a bit unkind to both this morning, but they are not trained in this field; in fact, many articles are appearing today in jurisprudence that suggest that judges have special training or at least have some assistance from experts, when they are passing sentence on any crime under the Code. They do not have special training. They are lawyers appointed from offices. Sometimes they are corporation lawyers with no experience in the field of criminal law. Naturally, with their background and training in law school, finally they become experienced on the bench, just as a lawyer gains experience in his office, but, to come to grips with this, to give a judge or a magistrate the discretion in whether a charge should be proceeded with does not, I think, solve the problem. That is my first thought.

It may be that examination of the drug and narcotics act in the Criminal Code would indicate changes should be made. I had the experience this summer of defending three university students in a case involving marijuana. It is rather shocking that the courts of appeal in the various provinces have so differed in this regard the judges have pretty well taken the position now that they cannot fine in lieu of imprisonment; they have to pass some form of sentence; they can imprison and fine.

Now, the Court of British Columbia disagrees with that, but the Court of Alberta takes the opposite view. In order to get around the very serious situation of these high school students from another country who had been found smoking marijuana at Banff the judge incarcerated them for one day and fined them $500. The sentence was passed at 3.30 in the afternoon, so in fact

they never had to serve that time. I use this as an illustration because it may be that the penalty provisions of the Narcotic Control Act require some change. To have a magistrate able, under the law, to direct that it is a case for rehabilitation, or that a person go to a hospital, or to a medical centre where he is going to be cured, instead of being incarcerated and called a criminal, I would go along with, but I do not agree that a judge or a magistrate should have the power of deciding whether or not a charge should be proceeded with.

First of all, I do not think they are sufficiently skilled in the field, and, secondly, human nature being what it is, I feel that the protection of the liberty of the individual should still flow from the law, not people. That kind of discretion, whether it be ministerial or judicial, always gives me concern.

My second thought deals with your suggestion that M.P.'s might cross the country and visit universities for observation purposes. There is a limit to that. I have sat as a member of Parliament both on the government and opposition sides. Many of us are members of several committees and have particular jobs to do from day to day in the House. There has been some criticism—and perhaps all of us should take a look at our own records—on absenteeism. We cannot do our jobs in the House of Commons if we are absent for lengthy periods. It might be done at a time when the House is adjourned, but this would mean that we would really have no holiday at all. A member of Parliament has to use the two-month adjournment of the House to go about his constituency finding out things which will affect his work in the next session and what are the reactions of the leaders of the community and of his constituents. Many of us work harder when the House is not sitting and are glad when the House reconvenes so we can have a rest.

The fact is, I doubt whether we could afford the time.

Mr. Klein: May I interrupt for one moment?

Mr. Woolliams: Yes, certainly.

Mr. Klein: I agree with the last statement. I am of the opinion that parliaments of Canada in recent years have been legislating too much.

Mr. Woolliams: I am glad you agree with me.

Mr. Klein: I do.

Mr. Woolliams: That may be true. It is, however, very difficult for members of Parliament, who have responsibilities to other committees, to leave the House for a week or ten days on a trip of this nature.

I think I agree with Mr. Pugh's suggestion that we call the witnesses first and do as good a job as we can in committee.

I have one other thought or criticism. I have never felt that one can cure anything by hiding it. I know it is hard on the individual. It may be a university student who does not want his name to appear, or his family may not want his name to appear because they think their son is a swan, but I do not think you ever cure anything by hiding it. The publicity given to the subject today in newspapers and periodicals has, I think, somewhat motivated you in bringing your Bill on this subject so forcibly and thoughtfully before the Committee. As far as I am concerned, I do not think we should say the press should be excluded.

Mr. Klein: I am not suggesting that at all. I am not suggesting that publicity ought not be given to persons who are apprehended, but that the names ought not to be published. We do not allow the name of a minor to be published because it will affect him in later life. I am talking about students who might innocently—although I do not want to use the word "innocent"—be attracted to marijuana, who might take it once and get caught the one time they took it. If that happens and their names are exposed in the newspapers I think they are finished.

Mr. Woolliams: Yes, but do you know how the three girls I defended reacted? They did not worry about the trial, or what the punishment was, but what mother and father and the university president would say, because they were scholarship children.

Mr. Klein: Yes, of course.

Mr. Woolliams: So, to me it was no deterrent. That is what they were concerned about.

Mr. Klein: Obviously it was not a deterrent in the case of those three girls. We are going into a different area when we are speaking about that but I am in full agreement that you have to expose but when you expose beyond a certain limit it becomes promotion.

• (noon)

Mr. Woolliams: But then I do not have control.

Mr. Klein: You can put an article in the paper, but it depends on how you put it in. You might put it in with a splashing headline, or you might put it in as the New York *Times* does without headlines. But you will notice when a big headline is splashed across a newspaper that a person went haywire in Texas and shot eight people from a tower, somehow or other two weeks later it happens in New York or in some other place. So, there must be a balance between exposure and the danger of promotion.

Mr. Woolliams: Well, those are my thoughts. Thank you, Mr. Chairman.

The Chairman: Have you a supplementary question, Mr. Pugh?

Mr. Pugh: I will hold it.

Mr. Tolmie: Mr. Chairman, like the other members of the Committee I congratulate Mr. Klein on his Bill. However, I do feel that if we are going to gain anything from the Bill we have to restrict it to the actual intent of the Bill. I do not think we can get launched into an investigation of drug addiction in a general sense. I would have to give this idea of crossing the country as M.P.s investigating drug research centres and so forth a lot of thought before I would agree with it. I think we can achieve something here if we restrict ourselves to the purpose of the Bill as indicated in the explanatory notes.

The purpose of this Bill—and it is a narrow purpose, really, and this is the only way that we can gain anything—is to remove the stigma of a criminal conviction attached to drug addiction. This is the gist of the entire Bill. I agree with this completely: that if a person is a true addict then, of course, he should not be treated as a criminal. It is beyond his control, there is no intention, there is no criminal intent, and I think it is outdated. Whether this Bill will achieve its purpose, I am not too sure. As I understand the explanation and remarks of Mr. Klein there actually would be two types of addicts. There is one who is charged with a definite offence and therefore would have to appear before a criminal court and be sentenced, and perhaps also be given an opportunity to have some type of treatment. Then there is the other type of addict—and this is the type I think this Bill would deal with—who is an addict per se. He is criminally responsible at the present time. In my opinion this type of person should not come before the courts at all. He should come under sub-clause (a) or (b); that is, the proper authority, whatever this might be, would investigate the case and assign him to some type of institution where he could get treatment. But sub-clause (c) states:

> it shall be within the discretion of the Judge or Magistrate before whom a drug addict is appearing to decide whether the charge already laid against him shall be proceeded with.

I think that in order to make this Bill meaningful, sub-clause (c) should certainly be clarified. I realize that most of these private members' bills give the subject matter and they are subject to a lot of amendments. But, if the purpose of the Bill is that an addict should not be treated as a criminal—and I believe this to be a good purpose—then I think Mr. Klein would agree with me that the actual wording of sub-clause (c) should be changed. It should be so changed that anyone charged with drug addiction does not come before a magistrate or does not come before a criminal court.

This is the person we are trying to protect. We are trying to protect this person from the ignominy and the shame of a criminal record. I understand that in most cases it is not within his strength or his purpose to be able to avoid his condition and therefore it is not criminal. If this can be done, I think this Bill has a lot of merit. The only real point I want to make is that I do not think we should get involved in a general discussion on drug addiction and go off at a tangent. If we stick to the purpose of this Bill, and the evidence brought forth should be restricted to this, then I think we are actually accomplishing something. I would like your comment, Mr. Klein, on my plea to restrict it to a narrow sense of the criminal aspect without dragging in so many other ramifications.

Mr. Klein: First, I would like to say, Mr. Tolmie, that I do not consider this Bill a literary masterpiece and did not intend it to be one. It would make very little difference to me, if this Committee would come to the conclusion that it comes to, whether it uses the text of this Bill or not. I am not interested in the text of the Bill. I am interested only in our agreement that the addict is no longer a criminal but a sick person. That would be good enough for me. I am not interested in whether this Bill is adopted as it is.

Secondly, as I understand it, the Bill itself is not submitted to this Committee but the

subject matter of the Bill is. I think that in discussing the Bill and in discussing the question of drug addiction perhaps it was remiss on my part not to have included in the Bill that we ought to be dealing not only with what to do about the addict when he is already one but what to do with a person before he becomes one, which is perhaps even more important. So, I think that in dealing with it when you have before this Committee men of the calibre which I have suggested, it would be worthwhile to spend the few minutes that it might take to elicit from them what they think ought to be done or what could be done to avoid addiction. That is all. That is my view.

Mr. Tolmie: Just one last remark. I know what you are driving at, Mr. Klein, and again I say that the idea in this Bill is good and I think a witness can give us a lot of very worthwhile information on general drug addiction and preventative means. He also should give us information on the feasibility of not having this considered to be a criminal offence. This is a Bill, the subject matter of which is referred to us, and in order to have a concrete recommendation which perhaps eventually will result in legislation, I feel that the emphasis should be on the criminal aspect of this Bill. The rest is gratuitous; it is good. But if we are going to achieve something, I think most of the evidence should be directed to the substance of the Bill, which is the criminal aspect.

Mr. Pugh: I would like to ask a question, Mr. Tolmie. On this matter of magistrate and judge, we are talking about drug addicts. Who is going to decide whether this man is a drug addict? Surely you would have to have witnesses. Surely the man is entitled to a defence and an adjudication before somebody says: "You are going to be incarcerated in some form or other for rehabilitation." On the sworn statement of two or three people you just cannot incarcerate a man.

Mr. Tolmie: This is not my point at all, Mr. Pugh. My point is simply this. If we come to the conclusion that drug addiction per se without any offence is not a criminal offence then this person should not be charged at all. If this person through investigation is found to be in such condition then he is given any available treatment. I am distinguishing between the drug addict who has committed an offence and who definitely has to come before some type of criminal court and the drug addict who now can be charged for addiction itself. This is wrong because it is not a criminal offence, and he should not even be charged. He should be investigated by a proper authority to determine his degree of addiction and to be given the necessary treatment to eliminate it if possible.

Mr. Woolliams: Do you think that possession is now considered a major crime?

Mr. Tolmie: Possession of drugs?

Mr. Woolliams: Yes.

Mr. Tolmie: Not necessarily, no.

Mr. Pugh: What about association? Here is a party. There are twenty kids there. They are charged. They are there. We had a case this summer, Mr. Woolliams on this very point where a young girl was in a room and she was charged. She had never ever smoked or done anything at all. She got off eventually but she had to go through the process, the criminal process. How would you treat a case like that?

Mr. Tolmie: I am not cognizant of the actual details of the law with respect to this but if the law states that one associated with drug users can be charged then one should be charged. I am talking about the confirmed addict who comes up before the courts regularly and is convicted. This is the type of person that should not have to come up before the courts because it is a disease. It is not a crime. That is my distinction.

An hon. Member: And first offenders should go to jail?

Mr. Tolmie: No. I say this is the law now. They do not necessarily have to be drug addicts if it is a first offence.

Mr. Forest: Since your purpose is to bring the subject matter before the Committee there seems to be no special reason why you presented this Bill instead of amendments to the Criminal Code or to the Food and Drugs Act. Is there any special reason?

Mr. Klein: There is no provision that could adequately be amended in the Criminal Code and the reason it was brought in this fashion is that I do not think that we should amend, at least at this stage, the Narcotic Control Act or the Food and Drugs Act with respect to this. I think we are in a period when we have to be rigid about drugs and participation in the taking of drugs. Again I repeat that in my view we have to be rigid even on the question of marijuana at this stage. I do not

know what the future of marijuana will be. But, at this stage, I think we have to be rigid about it.

Mr. Woolliams: But do you not think we go through a phase? At one period in university in my time if you could eat twenty goldfish it was quite a feat.

An hon. Member: What was that?

Mr. Woolliams: Goldfish; they used to swallow goldfish.

Mr. Klein: Except that there are fewer consequences in swallowing goldfish than there are in smoking weeds.

Mr. Woolliams: Oh, I know; but it is a phase we are going through.

Mr. Klein: It may well be. I would hope so.

Mr. Forest: When you say, in subclause (a) "by the proper authority to the Attorney General...", what do you mean by "the proper authority"? Would that be the Crown or who would that be?

Mr. Klein: What paragraph are you talking about?

Mr. Forest: Subclause (a).

Mr. Klein: The proper authority would be the judge before whom he is brought or the magistrate before whom he is brought because this Bill, as I stated at the outset, envisions that the whole thing will begin with the fact that the person has been apprehended. Once he has been apprehended what we want to do is to avoid a criminal conviction and incarceration. It starts when the man is arrested. You may feel that we should go into the areas of civil commitment as they do in New York State but I think that would be a constitutional question because I do not think Parliament could legislate with respect to civil commitment. Only the provinces can legislate on civil commitment. I may be wrong on that but I think that it is a constitutional problem.

Mr. Forest: What about facilities for providing for confinement to a clinic? I understand that in a big city it would not be too much of a problem but what about the smaller cities?

Mr. Klein: If we can provide jails we can provide clinics. I have been told by a doctor whom I spoke to yesterday—I do not want to mention his name because I do not know whether he would want his name mentioned but he is attached to the Allan Memorial Institute of the Royal Victoria Hospital of Montreal—that there are facilities for confinement.

Mr. Forest: There are or are not?

Mr. Klein: There are. And when you say: "What about the big centres? If a person is convicted of drug addiction in a small centre he is sent to a jail in a large centre. So, if he can be sent to jail in a large centre he can be sent to a clinic in a large centre.

• (12.15 p.m.)

The Chairman: We are going to have evidence on that.

Mr. Klein: Yes.

Mr. Scott (Danforth): Mr. Chairman, like everybody else, I am not really just questioning Mr. Klein. Because of the importance of the subject I think most of the members are giving their views on how the Committee might proceed and the type of investigation it may undertake.

I agree with everyone who has congratulated our distinguished colleague for bringing this matter before us; it is a very serious and amazingly complex problem. I say first of all, with all kindess, that I think this Bill is a gross oversimplification of an attempt to solve it. It is well-meaning and well-brought forward but mainly it grossly oversimplifies the fact. I would hate to see any reports going out of this Committee indicating to the public that there is some magic solution, whether it be methadone or some other thing that may be available.

Your Bill refers to drug addiction. Drug addiction here is not defined. My studies have indicated that the first time a person takes a shot of heroin he is an addict—right away.

You will recall the Royal Commission on Crime that we had in Ontario and the evidence that came to us from the United States—and our colleagues in the American Congress have done a lot of work in this field. This whole industry is controlled by enormously well-financed and well-organized international syndicates and they are turning out addicts like sausage factories. They even have infiltrated our schools. I was shocked to find on the weekend that certain forms of this are available in the schools my own children attend. I think it is dangerous to suggest that there is any easy or simple

answer. I want to put the opposite case to that made by Mr. Tolmie.

I think if we are going to do a real job on this we should try to get broader terms of reference. But if we do not have the broad terms of reference required, even though our Committee may not come up with an answer it can do as many other committees have done, a tremendous job in public education. I agree with Mr. Woolliams that while we want to treat these people we must try to get into the area of the pushers—the people who make drug addicts of young children. All the articles we read are very disturbing. People are not taking this stuff because they are mentally ill. They start on these minor drugs for thrill purposes. They are not mentally disordered people. The medical evidence is that once they get on the minor drugs they want greater thrills and they graduate into heroin, LSD, and the more dangerous one lately, the sniffing of airplane glue.

Mr. Klein: That is why marijuana in itself is dangerous.

Mr. Scott (Danforth): But we have one of the chief medical people in the American government saying that the use of marijuana is no more dangerous than the excessive use of alcohol. In your Bill you make a basic assumption which I think is completely incorrect, that drug addiction is a mental illness or a disorder.

Mr. Klein: I think the distinction is that once he is addicted he is mentally ill.

Mr. Scott (Danforth): Not at all.

Mr. Klein: It is the fact that he is hooked. You are not hooked, a sane person is not hooked, but once a person is hooked, to use the vernacular, he is sick. Whether he is mentally ill or physically ill, he is sick.

Mr. Scott (Danforth): I cannot agree with you. I think your basic assumption is dangerous. I know some doctors who are drug addicts but they are perfectly competent, intelligent men. They carry on a practice. They are not mentally ill in the sense that you suggest here, where they can go to a clinic. You see, we just do not know enough about the whole problem of drug addiction. That is why I think it is fallacious to say: "Let us confine ourselves to the Bill." We are glad to have the Bill because it brings the whole matter before us. However, I think we should try, if we are going to make a serious attempt at it and not just a superficial run-through, to get staff, as we did in the prices committee, that we should get expert help, and that we should get in the law enforcement agencies. If we could smuggle him in quietly I would like to have Bob Kennedy appear before the Committee. He presented a tremendous brief when he was Attorney General of the United States on the whole problem of organized drugs, the way they infiltrate society, corrupt justice and everything else.

We are at the far end of the sausage factory, as I say, with this Bill. They are being churned out and we want to send them all to clinics. The fact that there are no clinics and there are no trained staff and no money may be immaterial. I assume, Mr. Chairman, that it might be wise for the Committee to consider the whole area of investigation that we want to undertake and its limitations before we proceed too far because there have been interesting experiments in Great Britain with an entirely different technique to the one you suggest. Other countries have tried to deal with this whole problem of drug addiction. I think this is a two-fold matter. It is not just a matter of treating people. For example, some young people today consider the taking of these minor drugs almost a badge of honour in their particular group.

Mr. Klein: And they do not want it suggested that they are squares.

Mr. Scott (Danforth): I do not know why they do it. As I say, I do not know myself.

Mr. Woolliams: That is really what I meant of course. It was said in somewhat of a jocular manner. However, it is a phase, somewhat of a phase.

Mr. Scott (Danforth): No, I do not agree with that, Mr. Woolliams. I do not think that a single social agency in Canada would support your view. This problem is going to become increasingly difficult and increasingly dangerous among not only the young people but the general population as a whole. We have to try to determine—whether we can do so or would have the authority so to do is another matter—the extent and the cause of this, if we can, by bringing in experts. I am not sure whether we would be able to do that completely but there is an enormous amount of material available.

Finally, I think that we should be permitted to get into the areas of dealing with the pushers—the people who distribute it, and the need for tremendously increased penalties and law enforcement against this type of

individual. I think an all-embracive study would be far more useful because we are not going to find a quick or an easy answer to something like this.

Mr. Chairman, I hope that the Steering Committee will take under advisement the comments that have been made this morning and others that will be made and perhaps give some consideration to a report back to the House dealing with how far we can go and how serious we want to be. Dealing with this Bill alone would be a very superficial and oversimplification of an extremely dangerous and complex problem. I do not say that with any unkindness to the witness because if it had not been for you we would not have had the subject brought before us.

Mr. Klein: I think I covered it in my remarks, as you did, and suggested that you do the very thing that you are suggesting.

Mr. Scott (Danforth): But I just wanted to put the opposite case to the Committee.

The Chairman: Mr. Scott are you finished?

Mr. Scott (Danforth): Yes, I am. Thank you, Mr. Chairman.

Mr. Tolmie: What you said in reference to my position was not the case at all, Mr. Scott. I simply stated that the subject matter of this Bill relates to the criminal aspect and, as such, our remarks at this particular time should be so directed. If we become involved in the general ramifications of drug addiction we are not even going to deal with this Bill properly. I quite agree that we, as a Committee, should study the entire field of drug addiction but we should have a proper reference before us. That is my position.

Mr. Scott (Danforth): Then I will withdraw the phrase "opposite case."

Mr. Tolmie: Thank you.

Mr. MacEwan: I am glad Mr. Klein brought this Bill forward because it is a very vital and important matter in this country today. Although this Committee has a great responsibility, I think this Bill limits our scope. I hope the Steering Committee will take up this matter immediately and if there is any way—if they decide there is I hope they will refer it back to the Committee—to widen our terms of reference into this matter, by all means let us do so. I do not know about going about the country and so on. I think we should start from home base first and then, if we decide later on to carry out enquiries at various centres, we can do so.

Mr. Chairman, I think this matter should be gone into immediately by the Steering Committee, having regard to the remarks made, and then we can start from there. If we have to widen the terms of reference perhaps we can do that.

I have a very short question. Mr. Klein, I wondered why you did not bring the intent of this Bill forward by way of an amendment to the Criminal Code because after all there are criminal aspects and so on. It seems to me there have been quite a few separate bills brought forward. We have so many that we will never keep up with them. Did you consider it by way of an amendment to the Criminal Code?

Mr. Klein: Yes, but I came to a certain conclusion. Of course the Committee may come to a different conclusion altogether. As I said before, I am not interested in whether the conclusion is mine, yours or anybody's as long as we come to one. My intention was merely to bring this matter before this Committee. I repeat again, actually you are not dealing with a bill any more. You are not even dealing with this Bill. What you are dealing with is the subject matter of this Bill. So I think you have as wide a reference as you can have when dealing with the subject matter of this Bill. If you come to the conclusion that you want to recommend an amendment to the Criminal Code, then of course that is fine.

Mr. MacEwan: Mr. Chairman, I think our subject matter should include the relevant sections of the Criminal Code because they are important, having to do with the laws of evidence and so on. Perhaps we could consider that. Mr. Chairman, that is all I have to say.

(Translation)

Mr. Goyer: Mr. Chairman, the problem of drugs is not a new one; in Syria, they have been growing drug-producing plants for five thousand years. Various political groups have been responsible for the transportation of drugs from one country to another.

This was the case with Britain, for example. After the invasion of China, Britain introduced drugs into China and began to corrupt the Chinese people, who, today, are reacting strongly against this problem of drugs.

During the recent war between Israel and the Middle Eastern countries, Israel discovered enormous caches of drugs in the desert and today finds herself faced with the great problem of halting the traffic in drugs within her own borders. These drugs were being transported through parts of her territory which formerly belonged to Egypt. Israel gave us the example of a modern country which, in an environment where drugs are very common, has succeeded in combatting this scourge, the drug traffic, by education within her own frontiers.

I feel that this is where our efforts should be directed. A political society must establish priorities. I do not feel that priority should be given at this time to the treatment of drug addicts because our society is not organized to do so in a truly effective manner. I feel that our political society should instead attempt to locate those responsible for the traffic and distribution of drugs, and should try to educate the people on the evils of drug.

If young people today are taking up drugs or similar substances, this is surely a social problem, it is not simply a physical disease and I feel that to try and regard the drug problem as a physical disease is, in short, a waste of time. It is never a waste of time to treat people who are sick, but in a sense it is, because you do not go to the root of the problem.

• (12.30 p.m.)

First of all, I would prefer that we study the bill according to this order of priority: first, we determine what is presently being done to prevent the entry of drugs on the Canadian market, what is being done to trace the people who are distributing drugs in Canada, and what is being done to educate young people to the evils of drugs. Then, we could study the treatment to be given to those who are brought before our courts. I would be very happy to see our prisons used as hospitals now, since there are several categories of criminals who are suffering from mental disorders. That is a problem which is, I feel, financially insurmountable, considering Canada's capacity for production. Hence, we should hear testimony, if possible, (I do not know whether there are any legal problems involved here) from representatives of the RCMP, which is responsible for the application of our laws in this field. We should also hear testimony from representatives of the Department of Justice to find out whether there is any educational campaign going on in Canada. We should also hear from the representatives of the provinces. Although this may create a constitutional problem, we should still hear the testimony of the representatives of the provinces, in order to learn whether our schools are doing anything to try and halt the growing use of drugs. Drugs today are not simply causing physical or mental disease in individuals, but in our entire society. It is time that we woke up to the problem. Young people are taking up drugs and similar substances. What are we doing to stop that? How do the distributors proceed to create a market for drugs and similar products? That is something which I would like to know. I find that point of great interest.

(*English*)

The Chairman: That is all very interesting but my own particular point of view is that if, as a result of the efforts of this Committee, we can even come to the conclusion that a person who is a drug addict, and I mean a drug addict in the full sense of the word, totally incapable of controlling himself, if he wants to he can restore himself to normal living by taking that particular drug, we have done a whole lot. I think that is really what you have in mind, is it not, Mr. Klein? Of course, all these other things are related but this Committee is not so constituted that we could possibly attempt to go into it on a major scale. That is for a special committee which will be set up for that very purpose. I think we can do a great deal, and when we hear competent medical witnesses we will then be able to make up our minds on what we as a Committee can recommend which would be beneficial.

Mr. Scott (Danforth): May I ask a question? Is it not possible for us to go beyond the general reference of the Bill?

The Chairman: I do not think that is the case, Mr. Scott, but I think there are limitations to what we can expect to accomplish. This Committee has quite a few matters referred to it and if we were to develop them to their fullest extent or went into all the ramifications of the subject matter this one alone would take up 100 per cent of the Committee's time. There is no question about that.

Mr. Pugh: Mr. Chairman, this may be a very important start.

The Chairman: That is what I feel.

Mr. Scott (Danforth): Mr. Chairman, will you refer these comments to the Steering Committee? It is obvious that there is a rather broad consensus of opinion around this table that a very thorough look should be taken at this subject matter.

The Chairman: We will certainly get a close-up view of the problem and a close-up view of the method of helping drug addicts to return to normal living. Where we go from there I do not know, but if we can accomplish that much we have done a tremendous job.

Before thanking you, Mr. Klein, I would like to call to the attention of the Committee that there will appear before us on Thursday of this week at 11 o'clock from the Canadian Association of Chiefs of Police Mr. E. A. Spearing, M.B.E., President, who is the Director of Investigation for the CNR at Montreal; Mr. Arthur J. Cookson, Chairman of the Law Amendments Committee, Chief of Police of the City of Regina and Mr. James P. Mackey, Chairman of the Committee that submitted briefs to the Committee on Corrections and who is also the Chief of Police of Metropolitan Toronto.

At this time it might be appropriate to ask for a mover and seconder of a motion that reasonable living and travelling expenses be paid to Messrs. E. A. Spearing, Arthur J. Cookson and James P. Mackey, who have been called to appear before this Committee on November 2, 1967, in the matter of Bill C-115, which is the Bill that has been sponsored by Mr. Tolmie relating to the expunging of criminal records.

Mr. Woolliams: I do not know what you mean by "reasonable" these days, but I so move.

Mr. Forest: I second the motion.

Motion agreed to.

The Chairman: Mr. Klein, I wish to thank you on behalf of the Committee

Some hon. Members: Hear, hear.

The Chairman: You can see the great interest that your subject matter has aroused and we thank you for your presentation.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

THURSDAY, NOVEMBER 2, 1967

RESPECTING

The subject-matter of Bill C-115,
An Act to amend the Criminal Code (Destruction of Criminal Records).

WITNESSES:

Representing the Canadian Association of Chiefs of Police: Messrs. E. A. Spearing, M.B.E., President; James P. Mackey, Past President; Arthur G. Cookson, Second Vice-President, Chairman, Law Amendments Committee; D. N. Cassidy, Secretary-Treasurer; Walter Boyle, Chairman, Crime Prevention and Juvenile Delinquency Committee.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27237—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Fernand Despatie,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 2, 1967.
(5)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Grafftey, Guay, MacEwan, McQuaid, Otto, Scott (*Danforth*), Tolmie, Wahn—(13).

In attendance: From the Canadian Association of Chiefs of Police: Messrs. E. A. Spearing, M.B.E., President (Director of Investigation, Canadian National Railways, Montreal, Que.); James P. Mackey, Past President (Chief of Police, Metropolitan Police, Toronto, Ont.); Arthur G. Cookson, Second Vice-President, Chairman, Law Amendments Committee (Chief of Police, Regina, Sask.); D. N. Cassidy, Secretary-Treasurer (Ottawa, Ont.); Walter Boyle, Chairman Crime Prevention and Juvenile Delinquency Committee (Chief of Police, Town of Mount Royal, Que.).

The Chairman referred to the Orders of Reference dated June 19 and 27, 1967 (*see Evidence*).

The Committee proceeded to the consideration of the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

It was agreed to have the following documents made exhibits:

— Letter from Mr. W. T. McGrath, Executive Secretary, Canadian Corrections Association, to the Honourable Guy Favreau, Minister of Justice, dated November 4, 1964 (Ordinary Pardon). (*Exhibit C-115-1*)

— Article "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status", by Aidan R. Gough, in the Washington University Law Quarterly, April, 1966. (*Exhibit C-115-2*)

— Text of a resolution passed at the 108th Annual Session of the Synod of the Diocese of Montreal, of the Anglican Church of Canada, on April 19, 1967. (*Exhibit C-115-3*)

— Memorandum for the Parliamentary Committee considering legislation relating to Criminal Records, submitted by Mr. H. L. Goodwin, Q.C., Crown Attorney for the County of Lincoln, Ontario, dated April 20, 1967. (*Exhibit C-115-4*)

— Text of a resolution passed by The Corporation of the Borough of East York on May 1, 1967. (*Exhibit C-115-5*)

— Letter from Mr. A. B. Whitelaw, President, The John Howard Society of Canada, dated May 18, 1967. (*Exhibit C-115-6*)

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— Text of a resolution passed by The Canadian Bar Association at its 1967 Annual Meeting, dated September 9, 1967. (*Exhibit C-115-7*)

— Samples of bonding application forms. (*Exhibit C-115-8*)

The Chairman mentioned that the Members of the Committee had been provided with a copy of the brochure *Canada's Parole System,* by Mr. T. George Street, Q.C., Chairman, National Parole Board.

The Chairman introduced Messrs. Spearing, Mackey, Cookson, Cassidy and Boyle.

Mr. Spearing presented a brief on behalf of the Canadian Association of Chiefs of Police.

It was agreed to have the statistical data attached to the brief printed as an appendix to this day's Minutes of Proceedings and Evidence. (*see Appendix* B).

The representatives of the Canadian Association of Chiefs of Police were questioned. They were thanked by the Chairman for their brief and their appearance before the Committee.

At 1.10 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

The Chairman: Gentlemen, we have a quorum. The Order of Reference that we are dealing with this morning relates to the subject matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records) which was referred to this Committee to deal with, on June 19, 1967.

Mr. Scott (Danforth): I wonder if I could ask a question? Has the Committee had an opportunity yet to consider the suggestions on the drug matter?

•(11:10 a.m.)

The Chairman: Not the Steering Committee, Mr. Scott, but the Clerk of the Committee and Mr. Klein, the sponsor of the Bill and I met yesterday. He gave us the list of people who he thought would be valuable to the Committee and they have all been communicated with. We hope to have a report of who will likely be witnesses by the end of the week or at the beginning of next week.

Mr. Scott (Danforth): Will that report also include the discussions we had about the scope of the Committee hearings?

The Chairman: That I am going to take up with the Steering Committee. The Clerk is just writing to the people who had been suggested as witnesses.

Mr. Scott (Danforth): Thank you, Mr. Chairman.

The Chairman: We have two or three who we know now will come. I was going to suggest that the next meetings deal with the matter of bail bond before conviction on Tuesday and Thursday and then the following week go right into the drug situation and stick with it until we are through with it.

Mr. Scott (Danforth): Thank you, Mr. Chairman.

The Chairman: An Order of the House was made on June 27, 1967:

> That the Minutes of Proceedings and the Evidence taken during the past Session before the Standing Committee on Justice and Legal Affairs in relation to Bill C-192, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs and become part of the records of that Committee when it is considering the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

In other words, the evidence we took in the previous session is available for use of the Committee in dealing with this matter.

Now, before introducing our witnesses, we have a number of documents that I trust the Committee will agree to have filed as exhibits. They consist of a letter from Mr. W. T. McGrath, Executive Secretary of the Canadian Corrections Association to the Honourable Guy Favreau, Minister of Justice, dated November 4, 1964, subject matter, ordinary pardon.

An article entitled "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status", by Aidan R. Gough, in the Washington University Law Quarterly, April, 1966.

Text of a resolution passed at the 108th Annual Session of the Synod of the Diocese of Montreal of the Anglican Church of Canada on April 19, 1967.

Memorandum for the Parliamentary Committee considering legislation relating to Criminal Records, submitted by Mr. L. H. Goodwin, Q.C., Crown Attorney for the County of Lincoln, Ontario, dated April 20, 1967.

Text of a Resolution passed by The Corporation of the Borough of East York on May 1, 1967.

Letter from Mr. A. B. Whitelaw, President of the John Howard Society of Canada, dated May 18, 1967.

Text of a Resolution passed by The Canadian Bar Association at its 1967 Annual Meeting, dated September 9, 1967, and finally, samples of bonding application forms as discussed at the Committee's meeting of April 18, 1967. I trust it is agreed that all these should be filed as exhibits. Is it agreed?

Some hon. Members: Agreed.

Mr. Scott (Danforth): What will happen to them? Will they be printed, or what?

The Chairman: No, they will just be part of the record and anybody who wants to study them and those who are preparing the Committee's report will have the opportunity of reading and studying them as well as any other member of the Committee who wants to read and study them. They will not be printed as appendices.

Mr. Scott (Danforth): Yes.

The Chairman: And the Clerk has the brochure entitled "Canada's Parole System" prepared by Mr. T. George Street, Q.C., Chairman of the National Parole Board and that, I believe, has been distributed to the members this morning.

• (11.15 a.m.)

An hon. Member: Yes.

The Chairman: That completes the formal routine proceedings. It is now my privilege to introduce to the Committee the distinguished representatives from the Canadian Association of Chiefs of Police who are with us this morning. The gentleman to my immediate right is Mr. E. A. Spearing, M.B.E., President and Director of Investigations for the CNR in Montreal. He is the President of the organization. Mr. Arthur G. Cookson, Chairman of Law Amendments Committee and Chief of Police of Regina. Stand up, Mr. Cookson. Mr. James P. Mackey, Chairman of the Committee that submitted brief to the Committee on Corrections. He is the Chief of Police of Metropolitan Toronto. Then we have, in addition, Mr. W. Boyle, Chief of Police, Town of Mount Royal and Mr. Donald Cassidy, Secretary-Treasurer of the Canadian Association of Chiefs of Police. These gentlemen are our panel for today and I know we welcome them sincerely. They are here in an effort to assist the Committee in drawing a report and making a recommendation to Parliament on the evidence that we have heard. I believe you all have a copy of the brief submitted by the Association and I am going to call upon Mr. Spearing.

Mr. E. A. Spearing (President, Canadian Association of Chiefs of Police): Mr. Chairman and members of the House of Commons, as President of the Canadian Association of Chiefs of Police I am pleased with the opportunity of submitting in behalf of that organization the following brief in the hope it may materially assist in some way the work and conclusions of your Committee.

The Association was established in the year 1905 and among its objectives are:

—The study of modern and progressive practices in the prevention and detection of crime;

—The uniformity of police practices and cooperation for the protection and security of the people of Canada.

The Association feels that the scope of the Criminal Code has as its general and prime purpose the protection of society as a whole. It is appreciated that this embraces several fields including the apprehension, punishment and rehabilitation of criminals, each of which has its place and value in the overall basic purpose of the protection of society. However, this basic purpose should not be lost sight of in our zeal for the rehabilitation of the criminal as now so often appears to be the case. Release from detention does not necessarily mean rehabilitation of the criminal. We believe the protection of society through preventive deterrents and rehabilitation should be the philosophy that governs the correctional process.

Mr. Chairman, I should say at this point mention should be made that the foregoing, as well as some of that which follows in this brief, was submitted earlier this year, in the month of March, by this Association in response to an invitation for briefs promulgated by the Canadian Committee on Corrections and which in part dealt with the subject of criminal records. On this particular question the Association replied, and I will now quote:

> The existence of a criminal record does not restrict the reformation of a criminal. It should be borne in mind that the expunging of criminal records from the official files will not expunge them from the public records, newspapers, or from the minds of men.
>
> We are opposed to cancelling criminal records based on a period of good behaviour, alleged or otherwise. The absence of a recent conviction may be attributed to many things; absence from Canada, illness, failure of detection or imprisonment.
>
> The expunging of criminal records would present many problems in practical terms to the police to identify and trace persons wanted and suspected of

crimes. The record is replete with cases where wanted and suspected persons have been identified, located and brought to justice only through the existence of criminal records.

With the many ramifications of organized and syndicated crime nationally and internationally, and the easy movement of criminals by high-speed aircraft, doing away with criminal records after a period without a known arrest would seriously impede and complicate police action. Many criminals are unknown to the police in the locality in which they operate and their identity only becomes known through the exchange of criminal intelligence, criminal records and information or arrest. Canada's relations with the law enforcement agencies of other countries and with Interpol would be seriously impaired by expunging criminal records.

• (11.20 a.m.)

It is not unusual for professional criminals to live a life of crime without arrest or conviction or to go many years without being arrested. For all intents and purposes it might appear to some well-meaning persons that the criminal's so-called period of good behaviour indicates he has reformed. This may not be the case; for instance, a major Canadian criminal, one who currently is actively leading a life of crime, has not been convicted since he was sentenced to serve time in custody for the offence of false pretences at Montreal, in the year 1931 and that was 36 years ago.

That, Mr. Chairman, concludes the brief submitted by the Association to the Canadian Committee on Corrections.

May I add at this time that the subject of Bill C-115 was brought before the Plenary Session of the Canadian Association of Chiefs of Police Annual Conference at Moncton, New Brunswick, in September 1967 and a resolution passed at that time authorized the executive to study this Bill and make whatever presentation it considered advisable to the Committee on Justice and Legal Affairs.

Mr. Chairman, as Bill C-115 deals in part with the offender under 21 years of age, I should like to continue this brief with the following information pertinent to this subject. This Association's Crime Prevention and Juvenile Delinquency Committee studied certain recommendations made by the Department of Justice Committee on Juvenile Delinquency and I will now give you the outcome of their deliberations wherein they may be of interest to your Committee; however, before doing so it will be of interest to tell you and your Committee that this Association endorsed by resolution at their 1967 Annual Conference the recommendation of the Justice Committee on Juvenile Delinquency as follows:

Recommendation No. 85 by the Department of Justice Committee on Juvenile Delinquency

Juvenile Court Records should be available for use in disposing of a case against an individual who, having a juvenile court record, is subsequently convicted of an offence in the adult court.

The Canadian Association of Chiefs of Police approve this recommendation. The reasoning given for the recommendation of the Justice Committee on Juvenile Delinquency is contained in paragraph 343 of their report as follows:

The further question is whether official information relating to a person's juvenile court record should be barred, not only to prospective employers, but also to adult courts. We suggest that different considerations apply to these two situations. The ordinary employer is concerned with making profits. He is not performing any public function nor does he represent the community. On the other hand, for the judge properly to fulfil his responsibilities as the community's representative in the sentencing function, he must have available all the relevant facts. One example should suffice to illustrate the distinction: A boy aged thirteen years is sent to a training school for sexual assault of a young child. He is released on his fifteenth birthday and from then until he seeks employment in his eighteenth year he has no further involvement with the law. Unless he is to become a charge on public welfare he must find employment somewhere and in such circumstances it is reasonable to prohibit questions by prospective employers concerning his juvenile offence. Suppose, however, that this same person, now an adult of twenty-five years, is again convicted for sexual assault of a young child. How can the court protect the interests both of the

person being sentenced and of the community without knowledge of his juvenile misconduct? It follows, in our view that juvenile court records should be available for us in disposing of cases against the individual who is subsequently convicted in adult court.

The recommendation, it will be noted, establishes the value of, and the need for records.

• (11.25 a.m.)

Dealing specifically with juveniles and this recommendation being in direct conflict with the obvious intent of subsection of Bill C-115, it is difficult, if not impossible, for us to reconcile the wisdom of the proposed legislation. It has, we submit, its principal weakness in the automatic expungement of the record after conviction on reaching the age of 21 years. It does not take into consideration the person who could be convicted prior to his 21st birthday and is serving or has begun to serve a sentence on that day. We submit that if such legislation is to be considered there most certainly should be a minimum period specified after completion of the sentence, not after conviction. There should also be a hearing before a superior court or other judicial body on proper application being made, and if the application is found to be justified, a court order or certificate to be then issued for the destruction of the criminal record.

A further observation which might be made to the proposed legislation to destroy criminal records at age 21 is it could conceivably encourage the commission of crime by young people at a stage in life when they are easily influenced and temperamentally impetuous. The knowledge that even if convicted of crime they would have no record upon attaining the age of majority could influence their judgment and encourage them to "take a chance".

Law enforcement emphasizes that records, as they concern and involve the criminal and his activity, are an important, essential and vital tool in their work. Records are used in many ways; they indicate modus operandi pointing to the wrongdoer and to eventual apprehension and successful prosecution. The same records, during the lifetime of the wrongdoer, are required by the courts and, additionally, by such other organizations as the National Parole Board, correctional institutions and probation services. The value of criminal records has been proven and justified. Police departments across Canada realizing the importance of these records have voluntarily contributed data to a central bureau in Ottawa. There is a continuous and ever-increasing demand for this information with the ever-increasing crime trends. We are confident that any interference, such as the destruction of records, would seriously impede the work of the police and affect the security and welfare of the country as a whole.

There are other aspects and purposes for which records are utilized of inestimable value and should be mentioned:

(a) identification of the unidentified dead and living.

(b) assist in the identification of persons suspected of subversive activities in national and international matters.

(c) assist in matters relating to travel abroad, for example, the matter of visas. It is considered doubtful that governments of other countries would accept a declaration made by applicants for foreign travel if the basis of a crime-free life meant for a limited time.

(d) assist in the identification of persons considered for employment in sensitive government positions.

(e) assist in determining one's suitability or otherwise for employment within the police sphere of activity.

From a statistical point of view, it is obvious that the universe of crimes committed is known only in part. Not all crimes are reported to the police and there is not complete data on total crimes. There are only data on offences reported to the police and persons arrested. There remains that unknown quantity of the relationship between total crime and known crime.

Let us look at crime statistics in Canada. During the year 1966, figures published by the Dominion Bureau of Statistics showed there were 702,809 criminal code offences reported by the police, representing an increase of 11.8% over the 628,418 offences reported in 1965.

Mr. Scott (Danforth): Have you any information on how many of those had records?

Mr. Spearing: It comes later.

In the five-year period 1962 to 1966, there has been a 36.5% increase in Criminal Code offences in Canada. Based on rates per 100,000 population 7 years of age and over in 1962 the rate was 3,338.6 for Criminal Code offences and in 1966 it was 4,183.4.

• (11.30 a.m.)

There were 182,568 persons charged with Criminal Code offences by the police in 1966 compared to 156,151 in 1962, an increase of 24.9% and a rate change to 1,086.7 in 1966 from 947.5 in 1962.

The annual report of the Commissioner of Penitentiaries for the fiscal year ending March 31, 1967 showed that of 3,401 admissions to penitentiaries, 81.9% had previous commitments to correctional institutions, whereas in 1963, of 3,742 admissions, 76.7% had prior commitments.

In view of the Canadian crime picture and realizing what is happening in the United States of America, we who are responsible for the enforcement of the law in this country are most concerned over any proposed law or laws which will make things easier for the law breaker and more difficult for the victims of crime. Our main objection to Bill C-115 is the generalized form of its draft. We are not without sympathy for the sole criminal but we submit there should not be an automatic destruction of records after 12 years. It is conceivable that a person could have in this 12 year period of time committed crime and evaded arrest or conviction. He could have been out of the country and committed crime without Canadian police authorities being advised. It would seem only logical that before a record is expunged it should follow the submission of an application to a proper judicial authority and after a complete and satisfactory investigation a court order or certificate to be issued to seal the criminal record.

In conclusion, it is our opinion that:

> Legislation to expunge the records of individuals is not necessarily the answer to the rehabilitation problem;
>
> As has been pointed out the newspaper morgues, magazine articles, films, are history. We cannot erase history. We cannot erase the memory of man. Criminal records are a matter of public knowledge;
>
> If legislation is to be enacted it should be to prevent employers asking whether a man has a criminal record or not. This legislation would not prohibit law enforcement agencies, reform institutions, and so on from enquiring as to whether the person has a criminal record.
>
> If necessary for an individual to be bonded a bonding company could not turn down the individual because of a previous record unless a check had been made through the National Parole Board to enquire if the individual would be a good bonding risk.

Attached to this brief are some interesting and informative statistical data for your consideration. They relate to the crime picture in Canada from 1962 to 1966. The source has been the judicial section of the Dominion Bureau of Statistics. The second attachment referred to as a crime capsule contains extracts from the Uniform Crime Reports for the United States for the year 1966 and was prepared by the Federal Bureau of Investigation. The third attachment, Careers in Crime, covers the study of 160,310 criminal histories undertaken and completed by the Federal Bureau of Investigation between 1963 and 1966.

These attachments speak for themselves and are simply submitted as a matter of information for your Committee. That, Mr. Chairman, concludes the brief we wished to present this morning.

The Chairman: Just for the record you might tell us who signed this brief?

Mr. Spearing: Yes sir. This brief is signed by myself, E. A. Spearing, President of the Canadian Association of Chiefs of Police and I am the Director of Investigation, Canadian National Railways; James P. Mackey, one of our Past Presidents, Chief of Police, Metropolitan Toronto; Arthur G. Cookson, our Second Vice-President and the Chairman of our Law Amendments Committee and he is also the Chief of Police of Regina, Saskatchewan; D. N. Cassidy, Secretary-Treasurer, Canadian Association of Chiefs of Police. In addition it is signed by Mr. Walter Boyle, who is a member of the Canadian Association of Chiefs of Police as the Chairman, Crime Prevent and Juvenile Delinquency Committee and Chief of Police of the Town of Mount Royal, Quebec.

The Chairman: Thank you very much, Mr. Spearing. Do members of the Committee wish these statistics and attachments to be made exhibits or appendices to today's proceedings?

Mr. Scott: They should be appendices. They are very important.

• (11.35 a.m.)

The Chairman: It is agreed that they be made appendices. I understand, Mr. Spearing, that you are available for questioning

and that the other members of your committee are also available for questioning.

Mr. Spearing: That is right.

The Chairman: Do any of them wish to make a statement before we enter that phase of the meeting? Perhaps Chief Mackey or Mr. Cookson or Mr. Boyle?

Mr. James P. Mackey (Past President, Canadian Association of Chiefs of Police): Possibly much, Mr. Chairman, will be brought out in questioning. Possibly this is the best way to bring it out.

The Chairman: I have Mr. Tolmie down as the first questioner and then Mr. Otto and Mr. Scott.

Mr. Tolmie: Mr. Chairman, perhaps as sponsor of the Bill I should also make a very brief explanatory statement. In the first place I appreciate the fact that the Canadian Association of Chiefs of Police have attended at this meeting. I also can appreciate your concern; your main responsibility is the maintenance of law and order and your duty is to apprehend criminals.

I think it should be pointed out that many associations and bodies have concurred with the principle of erasing records. I might mention, for example, the magistrates association, the John Howard Society, the university student groups, church groups, parole officials, and the Ontario bar association. Now this does not, of course, mean that they are right and you are wrong, but I bring that out to indicate the general agreement in principle.

You have mentioned certain clauses in the Bill. I would like to make it very clear that I do not expect that the Bill as it is presented in detail should be accepted. The only thing that is on trial so far as I am concerned is the principle. You mentioned the question of erasing records with regard to infants. You mentioned the time limit. I think these are certainly things to be investigated and I do not for a moment believe that they should be accepted as now presented in the Bill.

The purpose of the Bill in my opinion is simply this: once a man has been convicted and has served a sentence, then he has paid his debt to society. The record makes him a second-class citizen. This is self-evident if you talk to people who have records. They cannot be bonded; they cannot join the armed services; in many cases they cannot obtain civil service jobs; they are denied job opportunities. Furthermore, I firmly believe that the retention of a record perpetuates resentment against society by the one who has a record.

This idea is aimed chiefly at those who have incurred records in their youth, perhaps through frivolity or immaturity. I feel they should not be pursued to their dying day by the stigma of a record. Now, examples can be given; for instance, the situation in Nova Scotia where a municipal councillor was forced to resign because he had a record. A very recent example is the celebrated adoption controversy involving Arthur Timbrell. Evidently the fact that certain members of his family had a record played a very important part in the decision not to allow Mr. Timbrell to complete adoption proceedings.

I have received many letters urging me to pursue the Bill to see if it could not be enacted into legislation. I would like to make it clear, and perhaps this would erase some of your doubts, that it is not a case of destroying the records. This is a misapprehension. The record would be retained for certain purposes and I agree with your submission that in certain specified situations the record would be retained.

The Bill does not say this but in my opinion, after hearing other witnesses, this is something that should be very seriously considered. Of course, you have to consider the Bill as it is presented to you. As I say, I do not want to make a speech, but you have mentioned the fact that the existence of a criminal record does not hinder the rehabilitation of a criminal.

• (11.40 a.m.)

I should like to quote very briefly from an article by Aidan Gough from the Washington University Law Quarterly for April, 1966.

> There has been surprisingly little recognition of the fact that our system of penal law is largely flawed in one of its most basic aspects: it fails to provide accessible or effective means of fully restoring the social status of the reformed offender. We sentence, we coerce, we incarcerate, we counsel, we grant probation and parole, and we treat—not infrequently with success—but we never forgive.

Mr. Aiken: On a point of order, does Mr. Tolmie, intend to proceed at any length?

The Chairman: He has indicated he is not going to make a speech and I think we should let him continue for a while.

Mr. Aiken: The Committee is here to hear witnesses.

Mr. Tolmie: I agree, I certainly do not want to usurp the time of the Committee. I make the point because I think it has a very important effect on the rehabilitation of the criminal.

Now, the only objection which I think should be very seriously considered by the Committee is that the destruction of records would hinder the apprehension of criminals. Would it not be possible for the police to keep private records that could be used for the purposes you have mentioned, and, at the same time, allow a person with a record to apply to a central bureau in Ottawa where, after a period of time during which it had been determined that he had led a law-abiding life, he could be granted a certificate of rehabilitation? I do not see any inconsistency here. This is the one objection which has bothered me. I would like to have your views on that.

Mr. Arthur G. Cookson (Chairman of Law Amendments Committee Canadian Association of Chiefs of Police): Mr. Chairman, how would it be determined that he is leading a law-abiding life? How would Ottawa get this information? This is the kernel of the matter. In my opinion, if a man has no record for a period of ten years the presumption is that he has led a law-abiding life. I do not think one can presume otherwise. This is the gist of the whole matter.

Mr. Walter Boyle (Chairman, Crime Prevention and Juvenile Delinquency Committee Canadian Association of Chiefs of Police): If I may I can give you an instance where you could presume otherwise. Let us say that we have in Canada a criminal with one conviction who goes to the United States and commits a crime and is sentenced to ten years or twelve years. He comes back to Canada. According to the Bill he has not offended against the Criminal Code of Canada. Are you going to proceed solely on presumption that this man has lived an honest life?

Mr. Tolmie: As a general principle, I am. There are always isolated cases. One can always choose situations which might impinge upon the principle of any bill. Generally speaking, however if a man has led a crime-free life so far as the records are concerned then the presumption, as I say, is that he is law-abiding.

Mr. Mackey: First of all, Mr. Tolmie, I would like you to understand that we do not want to take a negative attitude towards this Bill. We are just as concerned as anyone in this room about rehabilitating the individual.

Mr. Scott (Danforth): But that is not really your function, is it?

Mr. Mackey: That is correct.

Mr. Scott (Danforth): That is somebody else's job?

Mr. Mackey: That is correct. However, I would like to point out that this is really not solving the problem of rehabilitation at all. The man needs assistance the day or the week he comes out of jail, not ten years hence.

Mr. Scott (Danforth): Or the year before he leaves?

• (11.45 a.m.)

Mr. Mackey: It should begin before he leaves; but this really does not meet the problem of the ten-year period. There is a story this morning in the Toronto *Star* about a man who had a criminal record and who, to all intents and purposes, lived with his family for a period of ten years. He then broke up the family, went back into crime and was sentenced just yesterday. You say this is only one offence. I have a number of cases that I just took at random before I came here which might illustrate what happens. If you wish I am prepared to tell you something about them.

The Chairman: Let us have them on . . .

Mr. Tolmie: Mr. Chairman, I just have one final question. Perhap this is in a personal vein, but I think it is material to the discussion. Suppose one has a son, or very close relative, who commits an offence before the age of 21 and is convicted and has a record. He then wants to apply to go into the armed services or the Public Service and is denied. Do you not feel that boys in this situation should have the benefit of this type of legislation?

Mr. Mackey: Yes; the one-time offender; not the man who has a history of crime. I think we have to be sympathetic towards a youngster who is convicted for stealing a car, even going so far as perhaps a second offence, but beyond that I think you have to proceed with a great deal of care.

Mr. Tolmie: Then you agree with the principle?

Mr. Mackey: With the principle, yes.

Mr. Tolmie: I am talking now about the single offence, or possibly a second one—or possibly three?

Mr. Mackey: No, I am not going beyond that. You can if you want to.

Mr. Otto: Mr. Chairman, I am going to be so law abiding that I am going to restrict myself to questions, according to the rules of this Committee, and . . .

An hon. Member: No comment.

Mr. Otto: I am entirely in agreement with your general approach in your brief, but before we proceed I wonder if we could clarify some things in it which seem to be in conflict with other statements.

At the bottom of page 4 you say that if young people under the age of 21 knew that their records would be expunged they would be more willing to take a chance. Are you suggesting that where youngsters are involved in "joy-riding" or in stealing a car they really premeditate this act and consider carefully its consequences upon their later life, or is it just a spontaneous thing?

Mr. Mackey: Some of them do think twice about it if they know they are going to have a record. This is what prevents a great number of them from having records.

Mr. Otto: I believe Mr. Spearing said that in his review, and then later on that most cases of minor crimes are the result of a sort of temporary impetuosity. How do you reconcile those two statements? Are you really convinced that a majority of the young people committing offences would, in fact, consider the consequences of having a criminal record?

Mr. Mackey: No, I do not; but certainly some of them do consider the fact that they are going to have a mark against them, and I think this stops them from getting in with the gang.

Mr. Boyle: You must remember that when a car is stolen there are usually not one but three or four juveniles involved. Now, the hesitation because he knows that he will have a criminal record, will be arrested, will certainly hold back some who would normally follow at that age. This is what I think we are trying to say, that there are followers at that age.

Mr. Otto: He might know that he might be arrested, but does he really consider that he will have a record and that he will therefore not be bonded at some future time in the event that he wants a bond?

Mr. Boyle: I think most children know they are going to be arrested and sentenced. They know it is a criminal act. Do you agree?

Mr. Otto: But do they know the consequences of having a criminal record?

Mr. Boyle: It is difficult to say. Some will and some will not. There is no doubt about that. However, if they know it is going to be erased automatically at the age of 21 this would create a different situation altogether. The Bill, as we read it, says that it would be automatic. They would know that, no matter what they did, at 21 years of age it was going to be wiped out. That would have an influence on them.

Mr. Mackey: Mr. Otto, in some schools they have a book entitled *Law and Youth*, or *Law and the Youth*—I am not just sure of the title of it—published by McGrath, which deals with the problems that face a young man or woman should they become involved with the law. This book is getting into the schools now, so that some of these young people do know what are the consequences of having a record.

• (11.50 a.m.)

Mr. Otto: This may be so, but I am looking at it personally. In my years of practice I have never once had occasion to defend anyone who I believed was aware of the consequences. It was always a spontaneous thing.

You also say that the record is very valuable for further investigation of criminals, but according to page 34 of the charts, under "Percent of persons rearrested within 30 months"—which indicates that they have criminal tendencies—there appears: "83 per cent acquitted or dismissed". Consequently, you have no record of these persons?

Mr. Boyle: It is all here. . .

Mr. Otto: I beg your pardon?

Mr. Boyle: We have the charges.

Mr. Otto: Oh, I see; you have a record of the charges and also of the convictions, and this Bill deals only with convictions.

Is it also true to say that you have records on many people who have no criminal record of any kind?

Mr. Boyle: Offhand, I would say no. I am speaking only for my own department. I cannot speak for across Canada. But I would say "no" to your question.

Mr. Otto: You would say "no".

Mr. Boyle: I am thoroughly convinced of it. It must be remembered that the Identification of Criminals Act says "charged" not "convicted".

Mr. Otto: Yes.

Mr. Boyle: You must be very clear—"charged" or "convicted".

Mr. Otto: Are you saying, then, that in the case of, we will say, the Mafia syndicate, which is well publicized throughout the United States, most of the members of which have absolutely no criminal record—they make sure of that—you have no record of their activities or of their position in the criminal society?

Mr. Mackey: Very definitely we have some record of them. They are not in our CIB files; they are in special files.

Mr. Cookson: This would be in the nature of a history file.

Mr. Mackey: Intelligence files.

Mr. Otto: Therefore, you really have two records?

Mr. Mackey: That is right.

Mr. Otto: And you are not dependent on the conviction record that the Bill deals with?

Mr. Mackey: Not totally; but we are dependent on fingerprints and photographs, and very much so.

Mr. Otto: As I believe Mr. Tolmie stated this Bill deals with a percentage of people for whom I think we all have sympathy, those who had a criminal record and have lived as good citizens. They are the ones involved in these points that appear in your brief at page 5 (b), (c), (d) and (e). They are the people who may want a bonded job or may wish to emigrate, and so on. You have mentioned in your brief—and rightly, I think—that there exist not only criminal records but also records which have been kept in, or are available from, newspaper files, and so on. Have you had any inquiries, in the City of Toronto specifically, from management consultant firms who may be compiling a record on potential employees? Do you have many calls for that kind of record?

Mr. Mackey: I would have to go back over the years. I can tell you that we have had inquiries and that they have dwindled to practically nothing because they do not get this information.

Mr. Otto: They do not?

Mr. Mackey: They do not get this information from the police department.

Mr. Otto: You are aware that there are firms, some calling themselves "management consultants" and others "management security," who are very sophisticated and produce for management complete files of a man's record from the time of his birth? I am trying to substantiate your argument here, that there are not only the police records but that there are business firms who specialize in obtaining and compiling records of individuals—not only from your records but from newspaper reports and so on. Are you aware of such firms in business in Toronto or Montreal?

Mr. Mackey: I am quite aware that some firms compile records for their own protection, but there is no information on records supplied by the police to these firms. Within their own organization, if a man goes bad, they will inform each other for their own protection.

• (11.55 a.m.)

Mr. Otto: Insurance companies have great files.

Mr. Mackey: I do not know what their files are, sir, but...

Mr. Otto: I have only one other question, and I wish I had brought the information on it with me. There was a team of doctors, brother and sister, in the United States who issued a report about three years ago to the effect that they could predict criminal tendencies in children as young as seven years old, and after 18 years of records they put out a report last year saying that they were 85 per cent correct. Have you considered that report? Do you know the report about which I am talking?

Mr. Mackey: I am not really familiar with it. I have heard some talk of it, but I am not

familiar with it. I have listened to many experts in these fields and I have yet to hear of anyone who can predict.

Mr. Otto: Reverting to the chart on page 34, "Percent of persons rearrested within 30 months" and also, specifically, to page 35, could you enlighten me on the meaning of this? Does that indicate that repeaters are more likely to become repeaters if they are first convicted under the age of 20?

Mr. Spearing: That would be it. It would indicate that.

Mr. D. N. Cassidy (Secretary-Treasurer Canadian Association of Chiefs of Police): May I speak?

The Chairman: Yes, Mr. Cassidy.

Mr. Cassidy: This is an FBI study of some 160,000 people whom they traced from 1963 when they were released and of what has happened to them since that time. In the category, "Persons released in 1963 and rearrested within 30 months" those under 20 accounted for 65 per cent. This is shown by age groups.

Mr. Otto: These are convictions?

Mr. Cassidy: They were originally convicted, and rearrested.

Mr. Otto: I see. This does not include the group on chart 34 who were acquitted or dismissed?

Mr. Cassidy: No; this is of the same group, "Per cent of persons rearrested within 30 months by type of release in 1963". In other words, of those who were released on fine or probation in 1963, 30 per cent came back. In the group, "Suspended sentence and/or probation", 47 per cent came back, and so on.

Mr. Otto: Where, on the chart on page 35, it says "under 20, 65 per cent" does "persons released" mean released after conviction, or released because of acquittal?

Mr. Cassidy: I would say that the FBI charts are based on arrests. However, I think that is made clear at the beginning of the brief.

Mr. Spearing: If I may just interject, it says at the top of page 34:

> A study has been made of persons included in the Careers in Crime Program who were released from custody in 1963.

Does that answer your question, Mr. Otto?

Mr. Otto: Who were released from custody.

Mr. Spearing: They were released from custody.

Mr. Otto: That means arrest?

Mr. Spearing: They had been arrested.

Mr. Otto: So that chart 35 also includes those who were acquitted?

Mr. Spearing: I would not say so at all. Indeed, those who were acquitted—I hope I am not confusing you—would not have been convicted.

Mr. Otto: Therefore, if a chart were compiled not only of those who were arrested and convicted but also those arrested and dismissed that figure of 65 per cent would be considerably higher, would it not?

Mr. Cookson: Oh, I would think so, yes. It is bound to be.

Mr. Otto: Thank you very much.

The Chairman: Mr. Scott.

Mr. Scott (Danforth): Thank you, Mr. Chairman. May I, first of all, register my usual objection about briefs coming in on the morning of the hearing. It is very difficult to assimilate all the information and question intelligently. I have looked through it.

Mr. Mackey: Could we explain that?

• (12.00 noon)

Mr. Scott: Yes, certainly, if you like. I do not really care. The criticism is not directed to the distinguished Chief of Police of Metropolitan Toronto with whom I have debated several times, but it has always been on capital punishment. This is a refreshing change. It is really an internal problem and we know there are reasons for it.

Speaking for myself, may I say to the witnesses that I could not possibly support this Bill in its present form. I have six questions and I will make them as brief as possible. These are very, very frightening figures that you have produced this morning and no matter what we think we cannot close our eyes to them. This is a very dangerous picture you have painted. What is the problem in law enforcement? Is it merely that our population is growing? Is it that we are becoming more criminally inclined? Is it because you do not have adequate forces and equipment and everything else? What in God's name is causing this frightening spiral in criminal activities? Do you know or can you help us?

Mr. Spearing: May we just add one thing to that, Mr. Scott. The statistics indicate that the spiralling crime incidence is far greater than that of the population growth.

Mr. Scott (Danforth): We know that. We can read the figures. What is it all about, Mr. Mackey? What is going on?

Mr. Mackey: I really wish I had the complete answer. I do not think I can give you the complete answer but I think there are many answers to it. First of all, I think our increase in population is one factor. Secondly, that more crimes are being reported today. I think the police departments today are recording everything that is passed along to them or reported to them. I think this is a major consideration, particularly in the juvenile field. There was a day when the police officer on the beat or the father or mother gave the child concerned a pretty good strapping and that was the end of it. It never got into court.

These figures are showing up in the courts today because they are being taken into the courts. They are not necessarily being arrested but they are being taken into the courts. Generally speaking, I think the public are getting much more careless in their habits. These are only some of the reasons. I do not have the complete reason. In the early part of 1967 I became most alarmed when we had over a 20 per cent increase in crime. We concentrated our people in certain areas and we were able to reduce this. There is a need for more law enforcement officers across the whole country.

Mr. Scott (Danforth): Perhaps I can talk to you afterwards because this is not really part of the Bill. However, contrary to what a lot of the police officers think, we are not a bunch of bleeding hearts up here. We are as worried as you people.

Mr. Mackey: Contrary to what you think, we do not think you are a lot of bleeding hearts.

An hon. Member: You certainly give us that impression!

Mr. Scott (Danforth): The problem is that we have to try to equate the need for good law enforcement with the cases of those individuals. There are not that many but there are cases where they have lived a good life and these records should not be held against them. I do not say that there are hundreds of thousands of them but we have all run into them. This Bill, while I do not agree with the terms of it, is an attempt to come to grips with that.

I am impressed with the compromise in your brief and I want to ask you about it. You are not really objecting to this in genuine cases. All you want is some sort of a judicial hearing so that individual cases can be looked into. Of course, there already is provision, as the Chairman knows, under the Parole Board regulations for an individual to make application for expungement of his record. Frankly, I am more inclined to trust the parole appeal board than some of our judges. How do you envisage this will work? Could you elaborate on it? Who would be represented, what would it go into, who would hear such an application and what would be available at it?

• (12.05 p.m.)

Mr. Mackey: If you are asking me that question—

Mr. Scott (Danforth): I will direct it to whoever wants to answer it. Whoever put it in the brief must know.

Mr. Mackey: I do not think we are prepared to make this recommendation. I think there are some differences of opinion within our own group on who should hear these cases; whether it should be a judicial body or the National Parole Board.

Mr. Scott (Danforth): But is the Association prepared to accept a proposal of this kind?

Mr. Mackey: If an application is made and there is an investigation when this man applies for a pardon, I think we would go along with it. This is particularly true in the case of the single offender or, in exceptional cases, the offender who has committed offences twice in his lifetime. However, when you have the situation where a man has quite a background of crime I think we have to be most careful. I have statistics here which I have taken at random—

Mr. Scott (Danforth): You misunderstand my question. I do not want to argue the merits of such an application. You can oppose them all if you like, nobody really cares, but all I am asking is if the police Association would be prepared to accept the principle—never mind whether it is one offence, two offences or three offences, that is your argument at the hearing—of some body being set up, perhaps not judicial,

where people who have a record and who have lived, as we express it, a good life, a clean life since then could apply to have their records expunged. You can be represented and anybody else can be represented and you can make any argument you want, but would the Association accept the principle of some body being set up to mediate and adjudicate on applications of this kind?

Mr. Spearing: May I answer that?

Mr. Scott (Danforth): Yes.

Mr. Spearing: We have indicated in our brief words to that effect. We do not feel that we are competent to set up or suggest what type of committee this should be. We have described it as a judicial committee. This is as far as we thought we should go. We are sympathetic toward the first offender and the sole offender. As we have indicated, we feel that Mr. Tolmie's Bill is much too wide and, from what Mr. Tolmie has said, he also feels it is too wide. If it gets down to the principle of protecting or assisting the one individual, the single offender of tender years, if you want to call it that, then we are for it. However it is done by way of this application being made and a judicial committee, or what have you, being set up, we are in agreement.

Mr. Scott (Danforth): One other question. One thing that worries some of us who have been doing some criminal law is the fear that—and I know of such cases which I am not going to quote—records will be used in some instances almost for harassment.

Mr. Mackey: I think something should be said about this matter of harassment. This is one of the stigmas and I believe harassment has been mentioned in some of the discussions that have been held.

An hon. Member: It is mentioned in the Bill.

Mr. Mackey: As far as the police are concerned there simply is not harassment. You may think that we go out and follow people day in and day out.

Mr. Scott (Danforth): No, that is not what I mean. If I have used the wrong term I would like to withdraw it. I am speaking of cases—and I have dealt with such matters —where a crime is committed in the community and all the records are pulled and away they go after everybody. They even interview them at their work. These are people who, as subsequent events turned out, could have no connection with the offence whatsoever. What is your comment on the use of records in that way?

Mr. Mackey: I do not follow you, sir, unless you are talking about a pardon and they are starting to investigate this pardon. Is that what you are talking about? I do not follow you. Do you mean if somebody is going to work and using their records for purposes of harassment?

Mr. Boyle: You mean that a crime is committed and everyone rushes out and takes someone—

Mr. Scott (Danforth): Not everybody.

Mr. Boyle: No, but you know what I mean. I think technically what you mean is that the police go through the *modus operandi* file and say, "This is his style" and go and interview—

Mr. Scott (Danforth): I have had cases where it has happened.

Mr. Boyle: This is not done to my knowledge.

Mr. Scott (Danforth): Then you are more virtuous than your employees. I know of such cases.

Mr. Boyle: I do not believe so.

Mr. Scott (Danforth): Perhaps you do not condone it. This is another worry about records and I am not sure how we get around it because I can—

Mr. Mackey: If a man is an active criminal he can expect someone to be on his tail if an offence has occurred. If it is the type of man you are talking about who is living in society he will probably never see or hear of the police again.

Mr. Scott (Danforth): I wish I were as sure of that as you are. That is all for the moment, Mr. Chairman. I would like to give somebody else a crack at it.

Mr. MacEwan: I just want to ask these gentlemen if they have read the submission by the magistrates' association and the presentation by the Chairman of the National Parole Board?

• (12.10 p.m.)

Mr. Spearing: The answer to that question is that we have.

Mr. MacEwan: I take it you do not agree with the suggestions they made. I think in one case the Chairman of the Parole Board suggested that some type of board be set up to look into the matter of a person's record. The magistrates thought that perhaps there should be some official in the Solicitor General's department to whom an application could be made to expunge records, and following that there would be no investigation in the community or through any officials at all. You do not agree with that?

Mr. Mackey: I think there has to be some investigation, sir, because a number of these people live in very fine homes and drive Cadillac cars and yet they are operating illegitimate businesses. They have people working for them and we know this, and I do not think you can say that this type of person is automatically a good risk.

Mr. MacEwan: No, but what would be the percentage of the type you are speaking about as compared to ordinary people who have one or possibly two convictions against them? By this investigation are you not invoking a penalty? As I understand rehabilitation a lot depends on keeping the matter secret in an area for the person and I think that is an important factor in it.

Mr. Mackey: I think so, too.

Mr. MacEwan: Would you not be penalizing other people?

Mr. Mackey: I think it has to be kept secret. I think this is one of the important parts of it and one of the reasons you cannot do it automatically is because a man may have been single when he committed an offence and he then marries, has a family and is doing well, and then all of a sudden in his mail box there is a letter indicating that his record has just been expunged and he is now free. His wife reads this letter and says, "Well, that is fine, that is wonderful. I just heard about this." I think this is the type of thing you have to be careful about and we are just as aware of this situation as you are. I think it has to be kept secret but you still have to have a hearing.

Mr. Tolmie: On a point of clarification, Mr. Chairman. The suggestion would be made that the one who wants to have his record expunged would make application.

Mr. Mackey: That is right.

Mr. Tolmie: And then it would be his decision, it would not be an automatic thing pumped out from the central bureau. He would have to apply and if he complies with the conditions, the period of time, then automatically and without investigation he would be issued with a certificate of rehabilitation.

Mr. Mackey: But you would still have to enquire, particularly from your law enforcement agencies, what this man is presently doing.

Mr. Scott (Danforth): May I ask a supplementary on that point. The real difficulty you have raised is how do you prove rehabilitation? What facts do you use? I remember the hearings we had in Ontario before Mr. Justice Roach. We knew these characters on the witness stand were crooks. We knew it but we could not put our finger on anything that would stand up at any sort of a hearing. I think this is part of your problem.

Mr. Mackey: It is difficult.

Mr. Scott (Danforth): In your judgment, how do you prove rehabilitation? What would be the criterion?

Mr. Mackey: I think if there is any suggestion of doubt in the matter that he should not be allowed to have pardon. If he is going to be pardoned he would have to explain beyond any shadow of a doubt.

Mr. Scott (Danforth): That is a big onus to put on a little individual.

Mr. Mackey: It may be a big onus but it is being put on to society as well. You better than anyone here know the type of people you were dealing with at the time of the Roach Commission.

Mr. Scott (Danforth): I know.

Mr. MacEwan: Why is it that you are so opposite to the submissions of bodies such as the Parole Board and magistrates, with whom you deal every day, in the matter of the expunging of records? Do you not think they are qualified? That is really their field, is it not?

Mr. Mackey: I think they are most qualified. I have a great deal of admiration for Mr. Street and there are many things in his brief with which I agree. However, I notice in one area I think he said there were 18,000 people that had been paroled and only

a very small percentage—I think it was around 10 or 12 per cent—got into trouble during the parole period.

Mr. MacEwan: During the parole period?

Mr. Mackey: Yes, but he did not go on beyond that. This is no reflection on Mr. Street because he is a man of great character.

Mr. MacEwan: I noticed at the conclusion of this booklet we have here it reads:

> in the past eight years the board has granted parole to 15,364 inmates. This figure includes 608 minimum paroles . . .

And so on and so forth. It ends with these words:

> that during the last eight years 90 per cent have been successful in completing their parole period satisfactorily.

Mr. Mackey: Completing their parole period?

Mr. MacEwan: Yes. In other words, if they have done that successfully, then I feel they are people whose records should be cleared. That is all have.

Mr. Mackey: I must say you are certainly giving them the benefit of the doubt there.

Mr. Boyle: You have to extend beyond the parole period because you must remember that he will have to go back in if he breaks his parole.

Mr. MacEwan: Yes. Just for the sake of argument, if you changed your minds—which I do not expect you to—what period of time would you put in this or a similar bill to expunge records?

Mr. Boyle: Ten years.

Mr. Cookson: That is for everyone; there would be no distinction between infants and adults?

Mr. Boyle: Yes.

Mr. Scott (Danforth): You say ten years from . . .

Mr. Cookson: Ten years from the end of sentence.

Mr. Scott (Danforth): Across the board?

Mr. Cookson: Yes.

Mr. Scott (Danforth): For the expunging of records?

Mr. Boyle: Upon application and a hearing.

Mr. Scott (Danforth): For a moment I thought you had changed your minds.

Mr. Cookson: No.

Mr. Scott (Danforth): I am just joking.

Mr. Cookson: Mr. Chairman, if I may speak just for a moment. I think this is quite important. You have already been told that we do not disagree in principle with this Bill but it certainly needs a lot of changes. The principle change would be in distinguishing between the known criminal and the sole offender who has committed a foolish act. We are very much in sympathy with this person. We are in full agreement that in this case the record should be expunged after a period of time. However, when you are dealing with a known criminal, unless after a period of time—and I have already specified ten years —there were a very thorough investigation and absolute, indisputable proof that this man had recovered his normal state in society, that his character is now irreproachable, then I think it would be disastrous under any other circumstances—

Mr. Scott (Danforth): What you are really asking us to accept—or is this the case? You can explain it—is that you want us to erect a presumption of guilt against these people.

Mr. Cookson: And unless they—

Mr. Scott (Danforth): One of the witnesses turns away. I do not want to misinterpet you but from what you say I get the impression that while we are grappling with this, and we do not know how the Bill will be amended, you want us to erect a pretty strong barrier.

Mr. Cookson: Yes.

Mr. Scott (Danforth): A pretty strong barrier. Let us be frank with one another.

Mr. Cookson: Yes, this is what we mean.

An hon. Member: As a precaution.

Mr. Scott (Danforth): A pretty strong barrier against the expunging of records.

Mr. Cookson: Except for the sole offender who has made a foolish mistake. This could be taking an automobile without consent or it could be a minor theft—we are in agreement with this—and he has perhaps served his sentence and has redeemed himself in his community and after a period of time—and

we give it ten years—and there is nothing against this person, I see no reason whatsoever why his record should not be expunged.

Mr. Wahn: Mr. Chairman, on a point of order. We seem to be getting into an argument and there are a number of members of the Committee who have not as yet had an opportunity to ask questions.

The Chairman: Mr. Guay.

(*Translation*)

Mr. Guay: I have only one or two questions to ask you. First, I would like to complete what is said on page 6 of your report about the percentage of people who have been incarcerated during the 1966 fiscal year. It is stated that 81.9 per cent of these people had already appeared in court or had already been detained.

So, I would like to ask you the following question: have you previously made an investigation about these people to find out if, since their first conviction, these recidivists had been able to work and how much time they had been able to work from the moment of their first arrest to the moment of their relapse into crime?

Mr. Boyle: No, sir, we have no statistics on that. We have no information on this subject.

Mr. Guay: Do you not think an investigation should be made precisely to find out the cause of the relapse into crime by these people? Maybe, unable to find work at a given time, they had no other choice: relapse into the same sin, into the same crime they had previously committed, either theft or some other offence.

This, I think, would be a very important thing for police chiefs to know, and also for us. And, as to the merits of Mr. Tolmie's Bill, this investigation, I believe, would bring an answer which would help us, if we knew it.

Mr. Boyle: We all agree, I am sure. But we do not have the authority, as police chiefs of a municipality, to make this kind of investigation. An investigation would have to be made at the federal level.

Mr. Guay: Would it not be a good thing if the police chiefs recommended such a measure, a very thorough investigation on every one of the repeaters in order to know the causes of the relapse into crime?

Mr. Boyle: There is no doubt that this would be interesting to know.

Mr. Guay: Another question also interests us: among these repeaters, are there any criminals who have been declared habitual criminals? Do chiefs of police request before the courts, under section 660, that certain criminals be declared habitual criminals so that they can be detained on suspicion?

Mr. Boyle: Yes, this happens. You mean after the fourth offence, and as demanded by the Criminal Code?

Mr. Guay: By the Criminal Code.

Mr. Boyle: Quite rarely, but in a simple way today, because we even have asked for amendments. I do not know the word in French, but it is "persistence" in English, and it is difficult to define in the legal context.

Mr. Guay: I remember presenting a bill in the House of Commons to have the Code amended. On the second line of section 660: "La Cour peut...", I proposed to replace "peut" by "doit", thus making it automatic.

Mr. Boyle: If we had that, it would be wonderful. This would be wonderful for us, for society in general, not only for the police. I do not speak for the police at the moment, but from the point of view of justice in general.

Mr. Guay: Another question. According to the suggestions and to the conclusions you draw in your report, after how many years would the files become unavailable to employers? And to complete my first question, will a repeater have to wait, here again, 10 or 12 years before finding a job? As his file is still public, he has no means of rehabilitating himself, of finding employment, of working for any public body or even for a private concern. He cannot do it. As soon as he is investigated, it is discovered at once that he has had a record for six, seven, eight, nine or ten years. He is then fired and finally he becomes discouraged. He has no chance to rehabilitate himself.

Mr. Boyle: I want to call your attention to one fact: actually, it is forbidden to supply this kind of information to an employer. We are not responsible for this. The records of criminals do not go out of the department. We do not supply this information.

Mr. Guay: Who then?

Mr. Boyle: Frankly, we do not know. Here. It is easy enough to understand, I believe. You buy something at Eaton's and you ask

for credit. Eaton's makes an investigation and asks for the names of your former employers. There will certainly be a period of five years or two years during which you did not work. At that moment, questions will be asked.

Mr. Guay: Even if the records were made to disappear, this period would still remain.

Mr. Boyle: This is evident.

Mr. Guay: It will be known that he has not worked during four or five years.

Mr. Boyle: It is a fact and you cannot prevent it either. In the case of someone who wants to borrow money or buy, naturally the company will make an investigation to find out if the fellow is a good risk, as is commonly said.

Mr. Guay: About the request, would the chiefs of police be of the opinion that this request be made before the court which convicted the criminal for his last offence, and that the investigation be made and conducted by a special commission, to bring the proof before this same court?

Mr. Boyle: It is hard to say. It is not up to us to decide, but we believe that requests for information, judges' reports and convicted persons' records should be centralized.

Mr. Guay: A near-judiciary body would be needed, rather than a court?

Mr. Boyle: Yes, Sir.

Mr. Guay: Thank you.

Mr. Choquette: Does the recommendation you are making apply not only to minors, but to all persons?

Mr. Boyle: Yes.

(English)

Mr. Mackey: Mr. Guay, you mentioned the person who has been unable to find employment. I think this is one of the reasons we get a lot of repeaters. It is most difficult for men coming out of prison to get a job. This is one of the recommendations we put forward. We do not know the means you could use to bring this about but we think this is a problem. As long as I have been a policeman there has been the problem of the offender coming out with a few dollars in his pocket and either having to turn to some of his former associates or to start "B & Es" again or theft again.

Mr. Boyle: I would like to mention that Mr. Mackey made a very good suggestion in our discussion of this matter before we came here. Although he has not elaborated on it, he suggested that some type of government bonding company bond these fellows.

An hon. Member: What is that?

Mr. Boyle: He suggested that some type of government bonding company bond these men as they come out and then the employer would not be apprehensive about engaging a man who has just left prison because he would be guaranteed, up to a certain amount, that should this man steal from his company he would be recompensed. You now have something very substantial, I think. I do not know why Mr. Mackey did not mention it because it was his thought on the matter and I think he should continue along those lines and perhaps persuade you a little better than I can.

Mr. Grafftey: That is only a part of the problem.

Mr. Mackey: That is only part of the problem, really.

Mr. Boyle: I think it might open fields of employment for the men.

(Translation)

Mr. Guay: Sir, as powerful as a government body can be, would it not be possible for it to be a guarantor? Many heads of families would be willing to do everything and to answer to the employer for their 22 or 23-year-old sons, to guarantee their rehabilitation, in fact, by their good will, their good faith. We could perhaps even answer for our friends, for their good faith, and prove that they are rehabilitated.

Could not the employer be forced to keep an employee? Often, the employer will learn that an employee has a record six or seven months after this employee has given good service. When the employer discovers his employee's past, if the latter has a guarantor who can say: I guarantee the good faith and the rehabilitation of this fellow, could we not force the employer to keep the employee in his employ?

(English)

The Chairman: I think Mr. Spearing wants to make a comment too about it.

• (12.30 p.m.)

Mr. Spearing: I would like to comment on the reference made to Chief Mackey's failure

to bring up the subject. As the Chairman I presume I should perhaps have brought up the subject of the United States where there is a bonding company operating bonding those released from incarceration. Perhaps we should have suggested the Canadian government might like to consider such an organization issuing fidelity bonds especially for the protection of those who might eventually become involved, or more particularly those people who might become victimized because of the individual they have taken into their employ.

Mr. Scott (Danforth): That is only dealing in terms of money.

Mr. Spearing: That is right. Now may I just go on with the question of bonding because it has been raised two or three times and also the difficulty these liberated persons have in finding employment.

I am speaking now of one of the largest employers of people in Canada, that is the Canadian National Railways.

Mr. Scott (Danforth): Do you employ ex-convicts?

Mr. Spearing: I was coming to that. We have a policy that does not close the door to those with a criminal record. I have here, just as a guide for myself, many, many cases where we have in our employ people who came into the company and gave the answer that they had not been convicted of a criminal offence. Subsequently we found out they had but they were retained in the service. We have many in the service of the company who answered that they had been convicted of a criminal offence and we have taken them into employment.

We experience no difficulty whatsoever with the bonding companies in securing bonds unless we are dealing with an outright rascal. We simply say that the individual seeking employment appears to us to be rehabilitated and satisfactory for bonding. We ask for their reply and in most cases it is in the affirmative.

Mr. Scott (Danforth): What is the question you ask? Do you ask employees to state—

Mr. Spearing: "Have you ever been convicted of a criminal offence?"

The Chairman: Are you finished, Mr. Guay? Next is Mr. Choquette, then Mr. Wahn and Mr. Grafftey.

(Translation)

Mr. Choquette: There is something that worries me greatly: if we established a procedure, a request, for example, concerning an application for destruction of legal records, I would doubt its efficiency, as we would face the following situation: the request itself, by which application is made for the destruction of the records would be part of the court records. The request would be filed in some record. It would be kept in the records and, if there are indiscretions now about present records, the same indiscretion could be committed about a request to remove the record of a criminal. I wonder how you can reject such an objection.

Mr. Boyle: We have included a provision in case the police would need the record. It would be only through a request, approved by a judge or a magistrate, that the records could be examined. This is what we have provided for. Here again, it is a question of administration.

Mr. Choquette: This means then that you would reserve for yourself the prerogative and the right to search through the records containing the registration of the request concerning the application for removal of a criminal's record?

Mr. Boyle: But only if valid reasons can be given and with permission of a judge or magistrate.

Mr. Choquette: Then, in practice, what would be the use of destroying the record as such, for a guide mark or a reference would remain all the same. A request would indicate that a record had already existed.

Mr. Boyle: We are not the only ones who recommended such a measure. The Justice Commission also recommended it.

Mr. Choquette: I am trying to tell you that I do not see the use of destroying records if there is another guide mark by which the existence of a record can be traced again.

(English)

Mr. Mackey: May I say one thing here?

The Chairman: Yes, sir.

Mr. Mackey: I will mention this just to illustrate the trouble you run into when files are destroyed.

Mr. Choquette: I am quite in favour of what you have put forward.

Mr. Mackey: I would just like to say this. I tried to dig out the files on the famous Red Ryan case and I found they had been expunged from our records. However, I did go to the file we had from the newspapers and it was most complete. I did not really need our records. It was a whole bookful. Really, there is no possibility of erasing records.

Mr. Scott (Danforth): Red Ryan is not the type we are talking about here.

Mr. Mackey: Red Ryan was supported by even the Chief of Police in those days; nevertheless he wound up, as you know, being shot to death. He was a prime subject for the Parole Board. But you just cannot erase all records. Regardless of what you determine by legislation there will be records.

(Translation)

Mr. Choquette: I am in perfect agreement with you. I now would like to ask another question about the statistics supplied to us, that is, *acquitted or dismissed, mandatory released,* and so on. Does it happen frequently, when you are dealing with good citizens —I am not trying here to ask that certain classes be discriminated against; for example, if someone belongs to a good family—that you give him preferential treatment? We are definitely against such treatment. However, when you are dealing with a good citizen, whether he is poor or out of the middle-class, you must certainly know that the offence he is charged with could be of a nature to wreck his career. You also know that the offence he has committed is probably the result of a frivolous whim which will probably not be repeated. Does it happen that, in police departments, in very exceptional cases, you omit the charge and give the accused *a chance,* as we say in English? Does this happen or do you prefer not to be indiscreet?

Mr. Boyle: It can be said that this can happen.

Mr. Choquette: This can happen. This is very important.

Mr. Boyle: It depends, however, on the kind of crime.

Mr. Choquette: It depends on the person you are dealing with.

Mr. Boyle: This depends on circumstances, but it can happen.

Mr. Choquette: I am happy to know these things. I would like to ask you a last question, but I believe you have already answered it. You stated a while ago that you had no statistics of any kind in your possession which could reveal approximately the difficulties encountered by those who are released, with regard to obtaining employment. I am sure you must have some information on the subject?

Mr. Boyle: Frankly, it is not up to the police to know such things. This is not part of our duties.

Mr. Choquette: This would rather come under the Dominion Bureau of Statistics, would it not?

Mr. Boyle: The Parole Board, which deals with paroles, is the better place to get this information.

Mr. Choquette: I conclude by congratulating you for preparing such an interesting brief and I am ready to subscribe to your suggestion and, addressing this to all the chiefs of police, I can assure you that I am happy to read your brief in English. However, if you are called again to testify before this Committee and if you have the opportunity of presenting a brief prepared in French, we would be very pleased.

Mr. Boyle: Well, we had only one day to prepare it. We wanted to mention this fact a while ago. We arrived in Ottawa yesterday and we then prepared it. This is the reason why you did not receive it before.

Mr. Choquette: The reason I say this is because it is in your interest. If you want to avoid a renewed outbreak of violence, respect the bilingual character of the country.

Mr. Boyle: We are completely in agreement on this point.

(English)

The Chairman: Mr. Wahn is next and then Mr. Grafftey.

Mr. Mackey: In answer to some of Mr. Choquette's suggestions, possibly you think that everyone who is investigated is charged. This is not so. There are thousands of cases of shoplifting in the major stores where charges are not preferred.

• (12.40 p.m.)

Also, with regard to expunging of records—this has not been mentioned and I think it is important that it should be—we

would have to have some reciprocal agreement with foreign countries. If we got to a point where we had a reciprocal agreement with the United States, I am afraid that we would have a number of the Mafia moving in here, at least for a period of time, and using this country as a haven. We would not know them as they know them, and it would be very difficult for us if we had such a reciprocal agreement. I think Canada would be the worse off.

Mr. Tolmie: This is a very basic point and I do not want you to go away with the idea that the records are going to be destroyed. Now this Bill indicates it but, as I have said before, after hearing evidence, I do not think that is feasible. The records should be maintained for certain specific purposes, and accessibility to foreign countries would be one of them.

Mr. Mackey: I am sorry I am belabouring the point, Mr. Tolmie, but because I think it is important I am bringing it to your attention.

Mr. Tolmie: Yes, I see your point, because it is in the Bill.

Mr. Wahn: Mr. Chairman, I would like to congratulate the witnesses on their brief and on their presentation of it to the Committee. I think it is most helpful. It indicates how careful we must be in considering what action should be taken on this Bill.

I would like to put this question to the witnesses. We all believe, as a result of evidence heard, that this Bill does need certain changes. Now let us suppose that the Bill is changed so that the criminal record is not destroyed but simply after the ten-year period or whatever period might be agreed upon it is removed and placed in an inactive file, and in the event of a second conviction it is restored to the current records. Let us assume further that in order to remove the record to the inactive file it is necessary to make an application, but that no attempt is made to have a judicial or any other investigation.

If an application is made for the removal of the record to the inactive file, and if the prescribed conditions are met, namely a ten year period or whatever it may be has elapsed, then automatically the record is removed to the inactive file subject, as I have said, to being reactivated in the event of a subsequent conviction. Would any such system seriously interfere with the investigation of crime and the conviction of criminals, or would this be satisfactory from your point of view?

Mr. Cookson: I think we would have very much the same situation as we now have. Many files remain inactive until the individual named in the file reactivates it himself by committing another crime.

Mr. Wahn: Then you would see no objection to a system such as I have described?

Mr. Cookson: No.

Mr. Wahn: That is all, Mr. Chairman.

Mr. Mackey: Mr. Wahn, if you have time, I would like to quote some of these cases to you. I will omit names.

In 1932, theft of auto; 1932 theft of auto; 1933 theft; 1933 theft; 1933 loitering; 1937 theft; 1938 theft, and then we do not see or hear of him again until 1967, some 29 years later, when there were two charges of indecent assault on a male. In 1954 indecent assault on a female, suspended sentence; 1964 indecent assault, five years. In 1939, indecent assault; in 1947 (eight years later) indecent assault; 1948 incest; 1955 (seven years later) attempted indecency and 11 years later, in 1966, indecent assault—a breach of the Juvenile Delinquents Act. In 1934, breaking and entering; 1938 take auto; 1943 indecent assault; 1949 indecent assault, and then 17 years later fraud, three years at that time. In 1937, theft of auto; 1955 (18 years later) indecent exposure—perhaps not too serious; 1964 (9 years later again) indecent assault on a female. In 1943, indecent assault; 1947 indecent assault; 1962 (15 years later) indecent assault again; 1965 indecent assault. In 1937, contributing; 1941 indecent assault; 1942 buggery—and this was in England; 1947, two years before he was supposed to get out of prison, he is in Canada and charged with contributing to juvenile delinquency; 1953 (six years later) buggery again; 1957 (four years later) buggery and then a seven year period of buggery again. In 1923, contributing; 1940 receiving; 1944 gross indecency; 1953 (nine years later) buggery; 1957 indecent assault; 1961 gross indecency, and in 1963 vagrancy. Here is another gross indecency in 1958 and then again in 1967. There are great periods of time between many of these. Here is one of contributing in 1949 and gross indecency 15 years later. They do not necessarily follow a pattern of indecent assault. It

can be a combination of offences. These are mostly indecent cases that I have read to you but I have numerous others here.

The Chairman: Mr. Grafftey, do you have a supplementary question?

Mr. Grafftey: I have a quick interjection. It would seem from what has been said that the whole generic term of sex offences is hard to discuss under this legislation.

The Chairman: Mr. Tolmie, do you have a supplementary?

Mr. Tolmie: This is the point I was going to make, Mr. Chairman. There is this question of sexual offences, and they seem to follow a pattern. Possibly when a person makes an application and the offence is a sexual one, in this particular category investigation might be warranted, because the ones you have mentioned are primarily sexual.

Mr. Mackey: I will give some others, sir, that I have brought along, if you are interested in listening to them. Perhaps it will take too much of your time.

The following are general offences. I know some of these individuals personally and know the type of lives they lead. 1935 housebreaking, 1937 theft; 1938 assault and robbery; 1940 robbery while armed; 1948 (that is 8 years later but, mind you, he got a six-year sentence, so he would likely have four years clear); 1950 keeping a gaming house; 1960 (10 years later) conspiring to defraud, for which he got a year, and seven years later again he got just a year and six months for a $10,000 conspiracy. His partner in crime: 1940 theft; 1941 theft; 1941 theft; 1943 theft; 1944 theft; 1947 attempted grand larceny; 1958 (11 years later) six months, and on June 21, 1967, again charged.

Here is one starting in 1919 and it goes all the way down almost yearly to 1927: 1929, 1930, 1930, 1932, 1935, and then we have a period from 1947 to 1954 in which one might think perhaps that the fellow has eventually found himself, but in 1954 he arrives in Mr. Cookson's city and he is arrested again.

Mr. Scott (Danforth): Let us take that particular case. Why do you say that all those previous convictions should be held against him if he went such a long period of time without getting into trouble?

Mr. Mackey: I am just showing you what happens. They do not necessarily come to our attention, Mr. Scott. What happens is that they get out of circulation and get into some other area. Also, there may be records in the United States or he may have gone to England or somewhere else. I am not saying that he has committed offences during that time, but he just has not come to our attention.

Mr. Boyle: I think you must understand that in the major fields of crime such as breaking and entering and armed robbery, there is only about 20 to 25 per cent of the cases cleared by the police.

Mr. Scott (Danforth): What do you mean?

Mr. Boyle: By arrests.

Mr. Scott (Danforth): Oh, I see.

• (12.50 p.m.)

Mr. Boyle: It means that about 75 per cent of these crimes are unsolved from a technical point of view. We may know who perpetrated the crime but we have no evidence to go before a court and secure a conviction.

(Translation)

Mr. Guay: Mr. Mackey, you speak often about agreements concerning criminals who go abroad to commit infractions. Such agreements have been signed with the United States, with England and with other countries. However, I cannot avoid thinking about the immigration system. I wonder if our immigration system is efficient. Can we rely on the investigations made by the officers of the Department of Immigration? Have you any doubts about the immigration system in force in Canada and in the United States? If we cannot trace again or if we can very easily let a member of the Mafia enter or leave the country, does this depend on our immigration system? Do we have a good immigration system, if a criminal can move so easily from one country to the other?

(English)

Mr. Mackey: It is very easy to move from one country to another to commit crimes today. If you want to go to the States there is nothing to stop you from crossing the border, getting in an aircraft and going down there. You might commit crimes there and eventually be caught. They may put you back into Canada but you may, on the other hand, serve a sentence there. The reason for this I cannot explain but sometimes they will keep them there to serve the sentence and other times they will deport them.

The Chairman: Mr. Grafftey, you have some questions.

Mr. Grafftey: I will try to be very brief. Mr. Chairman, through you, may I ask the Committee this as I move into my questioning of Mr. Mackey. I believe that in our dialogue we have reached the stage where we are discussing a balance between the desirable and legitimate aspect of law enforcement and investigation, and the desirability of erasing certain records under certain conditions. I think that is what we are discussing, is it?

The Chairman: You have been here all morning.

Mr. Grafftey: We have been here since 11 o'clock but I do not think we can arrive at that conclusion.

The Chairman: We are not trying to reach a conclusion.

Mr. Grafftey: We certainly were not reaching any conclusion at the beginning of our discussion.

Mr. Mackey, let us envisage this legislation twenty years from now when Mr. Tolmie's legislation is in force and certain records are going to be burned, or whatever you are going to do with the records when you expunge them. Am I not right in saying that within a very short time you are going to get enough information from those records immediately and photograph, fingerprint, or do anything else to make your investigative procedures possible? In other words, if you realize that tomorrow morning at nine o'clock a record is going to be expunged, surely you are going to get for your investigative procedures of the future all the information you feel you will need.

Mr. Mackey: You are suggesting that we are not going to comply with the order of the . . .

Mr. Grafftey: No, I am not. I certainly do not think I am.

Mr. Mackey: I am not being facetious in this but it is a good point because I think this could be done and I think you would have to watch this.

Mr. Grafftey: That is useful information and I do not believe Mr. Tolmie would object to this.

I am going to try and get to this brief but in my notes expunging a record or taking an eraser and erasing the record does not mean to say—and let us be realistic—that you are not going to have the kind of details and facts from that record to make your job more possible. I do not think, Mr. Tolmie, your proposed legislation envisages that.

Mr. Mackey: I am pleased to hear that because I believed when I read this legislation that this was generally the case and I was trying to decide in my own mind whether it meant one offence or many offences in the Bill. This is why we have attacked it in this manner.

Mr. Grafftey: This is how I probably sounded when I gave the theme of my questioning. I oversimplified it at the beginning.

I will go on from there . . .

Mr. Cookson: Could I add something, if you do not mind, please? When you are dealing with records you are dealing with a very complex variety of documents. Let us say a man is arrested for a criminal offence and is booked. His name and the offence, and so on, is in the jail record. Then his name appears on the docket along with possibly thirty other names on one docket sheet. There is an information and complaint and there is a warrant. There is a record of conviction and this is in the hands of the local magistrate or the district court judge. It eventually gets to the court house, the judicial district centre, and there it is filed, perhaps along with certain exhibits. These exhibits, after a certain period of years—I do not know just what it is—are destroyed but the file is never destroyed. Then there is the fingerprint record and a photograph in the local department identification bureau. Then there is the central bureau in Ottawa which is controlled by the RCMP and there you have a record. So, when you are dealing with the expungement of records all of these various matters have to be considered and, as I say, it is very complex and just how it is to be done, I do not know.

Mr. Grafftey: Let us get on to a subsequent question which is interrelated here. Supposing in one way or another we made it a prohibition for prospective employers to ask the question: "Have you had a record?" verbally or in written form. Would this prevent the said employer from making the kind of investigation into . . .

Mr. Cookson: I do not think you could legislate against it.

Mr. Grafftey: No. Even if you said he cannot ask the question verbally and cannot put it in written form the employer is just

going to make the kind of investigation that he is making today anyway without asking anybody.

Mr. Mackey: But in the Province of Ontario—I am not too sure of the law on this—you cannot ask a person his religion and this type of thing. I think this is in the same area but it does not answer the problems. You are talking about the man being a second-class citizen. At least he does not have to write on there: "I have a record," and I think this is what embarrasses him when he goes to get a job and certainly it is an obstacle in some forms of employment; there is no doubt about that.

Mr. Grafftey: This next question is more or less a question and an assertion. I feel your brief has been excellent. The kind of commission you are talking about is realistic but in view of the fact that we are just scraping the surface in the area of penology and criminology concerned with alcoholism, drugs and all the things we know about—I should say, we do not know about—I felt, as a result of the few cases I have dealt with on royal pardon, that the discretion is a terrible discretion to put in the hands of these officials. I think this is even more terrible. I certainly would not want to sit on any board at any time and I studied this. I majored in criminology in law school and I would not want to sit on any board and try to determine when a man was rehabilitated in terms of what we are discussing here today. I would not want that kind of discretion. I do not think anyone would.

• (1.00 p.m.)

I have a particular case that I am dealing with now which occurred eighteen years ago—of indecent exposure. The man is in a desperate state because of this now and he just cannot get a job. He is sinking fast. I am in constant touch with this fellow. I get the usual thing back from the Solicitor General: get him Royal pardon. That is not what he wants. He wants you people to have everything, all the details you need for investigation and law enforcement. He wants the social agencies of this country to have all the knowledge they want about him so that people who are sick like him are not going to continue. He also realizes there are various kinds of jobs he cannot have because people are aware of the kind of illness he had and that even after 18 years under the right conditions he will repeat this kind of crime, so wiping out his record is not going to do any good. All he wants is to have his record wiped out in terms of not having to answer the kind of questions that are being put to him today. But right now this man would give you everything you wanted. What can we do? I do not think any commission is going to be able to say to this fellow, "You are rehabilitated". On the other hand, do we amend acts?

Mr. Tolmie: Mr. Chairman, perhaps this interjection might be helpful to my colleague. It has been suggested that legislation be passed which would state, in effect, that the applicant was deemed not to have committed the offence and he would be legally entitled to say "No, I have not been charged; I have not been convicted". This is one possible solution.

Mr. Mackey: Yes, I saw that in some of the recommendations, but I think there is a problem here. Some people find it very difficult to live with a lie; very difficult. And on the other hand when they get nicely settled someone might walk in and say: "Well, you have got Johnny Smith there; I saw him in court two or three years ago for burglary or some other offence". This is what you are faced with. I think you have to be honest about this but I think the only way we will ever get around it—and I do not think it is going to be an easy job—is to educate employers to realize that they are going to have to take these people and put them back into society. I think the time is ripe for educating employers. I think they are receptive to it right now.

Mr. Scott (Danforth): And governments.

Mr. Grafftey: It is so important to hear your views; it is very helpful. I hope I am not getting off the subject but I often get this question put to me by young offenders. They come to my office and say they are employed now, and ask me whether they should tell their fellow employees or not. I always advise them that it is an individual decision they must make themselves and that I cannot advise them. Is there any comment you would like to make in this regard?

• (1.05 p.m.)

Mr. Boyle: I think your position of whether you should advise a young fellow to go and tell his employer depends not on the young fellow so much as on the employer. What are his characteristics? What is he like?

(Translation)

Mr. Choquette: Would you suggest, for example, that the procedure be amended? Could not criminal procedure be amended, for example, to forbid, during an appearance before the court, any mention of previous convictions when they involve minor offences?

For example, when a person is accused of rape or of armed robbery, would there not be some offences about which we could forbid . . .

Mr. Boyle: I do not believe so; frankly, I do not believe so.

(English)

The Chairman: Gentlemen, it is one o'clock. Have you anything you want to add, Mr. Aiken?

Mr. Aiken: I have one question, Mr. Chairman.

The Chairman: Go ahead. I think you should have the opportunity of asking it.

Mr. Aiken: We have had a lot of hearings previously and I think that a certain consensus has developed in the Committee that is not apparent from the Bill. In fact, it might have been better had Mr. Tolmie redrafted his Bill after our previous hearings. It seems to me that the Committee is rather strongly considering a central register of convictions where not the file itself but a record of the offence would be maintained in a central register. All entries and inquiries concerning convictions would be made there and it would be from this central register that a record of conviction or a record of no conviction would be issued and the files themselves would not be destroyed. Would this meet the situation? That is, where the record of a conviction itself would be merely deleted from the record and a certificate of some sort given after a period of time?

Mr. Mackey: Frankly, I do not think anybody wants a certificate to have around. I think this kind of certificate is like telling a man who has just come out of a mental institution that he is the only sane one in the office.

Mr. Aiken: Perhaps I expressed it in the negative. What was really requested is that it would be the record itself that would be destroyed and not the file.

Mr. Boyle: The dissemination of this information to other departments on inquiry? I think that is what you are trying to say.

Mr. Aiken: Exactly, so that a person could say that there was no record of his conviction.

Mr. Boyle: It is pretty difficult to answer a question like that.

Mr. Mackey: Could I answer that, maybe in part? At the present time, if we are inquiring about a prisoner who is outside of our jurisdiction, we go to the central repository anyway. So, really this is already in effect. It would be just a matter of what we suggested, of putting them into a separate file and this is the file that has been pardoned or whatever the case may be.

Mr. Scott (Danforth): That is with the attorney general of each province, is it?

Mr. Boyle: No, I am talking now about the central repository here in Ottawa with the RCMP.

Mr. Aiken: I think that really is what the intent of the whole proceeding is: that the person would not have a record of his conviction but the conviction would still be there.

Mr. Mackey: Mr. Chairman, may I suggest that you talk to some member of the RCMP with regard to the central files because I think it is rather unwise for us to discuss them.

The Chairman: Just before I adjourn the meeting I want to thank you, Mr. Spearing, Mr. Mackey, Mr. Cookson, Mr. Boyle and Mr. Cassidy for your appearance before the Committee this morning, for the very excellent brief you have presented and for the information and guidance, and so on, that you have given to us. It will be of great benefit to the Committee in forming and drafting a recommendation to the House for its consideration. Thank you very much.

APPENDIX B

STATISTICAL DATA

Table 1. - Offence and Persons Charged Data Reported by the Police for Criminal Code Offences (except traffic), Canada, 1962 - 1966*

Year	Actual Offences	Offences Cleared			Persons Charged				
		Total Cleared	By Charge	Otherwise	Total Persons Charged	Adults		Juveniles	
						Male	Female	Male	Female
1962 No.	514,986	188,181	142,516	45,665	146,151	110,645	9,194	24,502	1,810
Rate (1)	3,338.6				947.5	1,896.9	158.4	1,266.0	97.7
Percent		36.5	27.7	8.8					
1963 No.	572,105	201,581	151,910	49,671	156,787	115,747	10,358	28,433	2,249
Rate (1)	3,637.5				996.9	1,954.1	175.3	1,428.1	118.1
Percent		35.2	26.5	8.7					
1964 No.	626,038	236,264	167,487	68,777	173,973	124,675	12,689	33,868	2,741
Rate (1)	3,900.2				1,083.8	2,065.9	210.3	1,663.7	140.8
Percent		37.7	26.7	11.0					
1965 No.	628,418	234,898	161,757	73,141	170,855	120,460	12,803	34,284	3,308
Rate (1)	3,831.0				1,041.6	1,954.4	207.4	1,648.6	166.5
Percent		37.4	25.7	11.7					
1966 No.	702,809	264,644	175,570	89,074	182,568	128,895	13,954	35,636	4,083
Rate (1)	4,183.4				1,086.7	2,041.6	221.2	1,678.1	198.7
Percent		37.7	25.0	12.7					

* Source: Uniform Crime Reporting Programme,
Judicial Section,
Dominion Bureau of Statistics.

(1) Rates per 100,000 population 7 years of age and over.

EXTRACT FROM: UNIFORM CRIME REPORTS

FOR THE UNITED STATES

FOR THE YEAR 1966

Summary

(This section is for the reader interested in the general crime picture. Technical data, of interest primarily to police, social scientists, and other students, are presented in the following sections. If you wish assistance in the interpretation of any information in this publication, please communicate with the Director, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C., 20535)

Crime Capsule

Almost 3¼ million serious crimes reported during 1966; an 11 percent rise over 1965.

* * *

Risk of becoming a victim of serious crime increased 10 percent in 1966 with almost 2 victims per each 100 inhabitants.

* * *

Firearms used to commit more than 6,500 murders, and 43,500 aggravated assaults in 1966.

* * *

Daytime burglaries of residences rose 140 percent in 1966 over 1960.

* * *

Property worth more than $1.2 billion lost as a result of 153,400 robberies, 1,370,000 burglaries, 2,790,000 larcenies, and 557,000 auto thefts. Police recoveries, however, reduced this loss by 55 percent.

* * *

Arrests of juveniles for serious crimes increased 54 percent in 1966 over 1960, while number of persons in the young age group, 10–17, increased 19 percent.

* * *

Arrests for Narcotic Drug Law violations rose 82 percent, 1960–1966. Narcotic arrests 1966 over 1965 up 28 percent influenced primarily by marijuana arrests in Western States.

* * *

Police solutions of serious crimes declined 8 percent in 1966.

* * *

Fifty-seven law enforcement officers murdered by felons in 1966. Firearms used as murder weapons in 96 percent of police killings since 1960.

* * *

Careers in Crime: Study disclosed 55 percent of offenders released to the street in 1963 rearrested within two and one-half years.

* * *

Fifty-seven percent of the offenders released on parole were rearrested within 2½ years.

* * *

Sixty-seven percent of prisoners released early in 1963 after earning "good time" were rearrested.

* * *

Eighty-three percent of those persons acquitted or dismissed in 1963 were rearrested within 30 months.

* * *

Seventy-two percent of persons granted probation in 1963 for auto theft repeated in a new crime.

* * *

Of the young offenders under 20 released in 1963, 65 percent repeated.

* * *

Mobility study reveals over 60 percent of the repeaters charged with robbery, burglary, auto theft, sex offenses and forgery were rearrested in two or more states during their criminal careers.

* * *

1966 police employee rate of 2 police employees per 1,000 population was first change since 1960.

* * *

CAREERS IN CRIME

In January, 1963, the FBI initiated a study of criminal careers. At the end of calendar year 1966, 160,310 criminal histories of individual offenders had been incorporated into the program.

The study is made possible by the cooperative exchange of criminal fingerprint data among local, state and Federal law enforcement agencies. The all-important fingerprint card submitted to the Identification Division of the FBI by these law enforcement agencies contains information which serves as a basis for statistical examination of careers in crime. While there is a lack of uniformity in submissions made by all law enforcement agencies for all criminal charges, generally it is the practice to submit a criminal fingerprint card on all arrests for serious crimes, felonies, and certain misdemeanors. Fingerprinting by police is a part of the "booking" procedure of placing a formal charge against an arrested person. The arrest and charge have substance and differ from temporary detention for questioning or investigation. On the Federal level almost all persons arrested are fingerprinted by the arresting Federal agency or United States Marshals. Federal prisons, state penitentiaries and county jails also submit fingerprint cards and related data to the FBI Identification Division.

As the fingerprint card constitutes a positive means of identification it becomes possible to obtain each offender's criminal history. There is a limitation, of course, in that the offender must first be detected, arrested, and a fingerprint card submitted at the time of arrest. Of equal importance is the disposition of each arrest which is also requested. FBI Identification Division fingerprint files of known offenders in this Program are "flashed" to provide an accurate means of follow-up concerning any future criminal involvement. As additional information is accumulated on these persons, it is added to the record which has been previously stored in a computer. These offenders are initially selected because they have become involved in the Federal process by arrest or release. The sample also includes serious state violators arrested as fugitives under the Fugitive Felon Act, as well as District of Columbia violators. Specifically excluded from this study and resulting tabulations are chronic violators of the immigration laws and fingerprints submitted by the military.

To gain insight into the career of criminal repeaters, an analysis was made of the records of 41,733 persons arrested in 1966 for a Federal crime or rearrested locally in 1966 after having been included in the Program previously due to a Federal arrest subsequent to January 1, 1963.

Table A describes the distribution by age group of the persons arrested in 1966. The emphasis upon the youthful offender is immediately apparent from the age distributions. It is noted that 49 percent of the persons in this group were in their twenties or younger in 1966. Significantly over 70 percent of the offenders were first arrested under the age of 25.

Table A.—*Distribution by Age Group of Persons Arrested in 1966*

Age group	Age, 1966		Age at first arrest	
	Number	Percent	Number	Percent
Under 20	3,237	7.8	18,582	44.5
20-24	9,601	23.0	11,768	28.2
25-29	7,579	18.2	4,718	11.3
30-39	10,966	26.3	4,160	10.0
40-49	6,652	15.9	1,705	4.1
50 and over	3,698	8.9	800	1.9
Total	41,733	100.0	41,733	100.0

Leniency in the form of probation, suspended sentence, parole and conditional release had been afforded to 51.6 percent of the offenders. After the first leniency, this group averaged more than 5 new arrests. For the purposes of this study, probation, suspended sentence, parole and conditional release are referred to as "leniency." It goes without saying that probation and parole are special forms of treatment of criminals, but since they represent a lesser punitive action than incarceration, the term leniency is used to point up this characteristic.

From an analysis of the mobility of these 41,733 offenders a significant fact emerges—nearly 43 percent of these individuals were arrested in one state and 57 percent in two or more states. Distribution by sex and race was also considered and indicates that 93 percent were males and 7 percent females; 66 percent were white, 29 percent Negro and 5 percent all other races.

Of 41,733 offender records which were processed, 36,506 were repeaters; that is they had a prior arrest on some charge. The average criminal career of the above repeaters amounted to more than ten years (span of years from first to last arrest). During the period of their criminal career this group averaged over 6 arrests each, 3 convictions and 2 imprisonments. Keep in mind

that disposition data is approximately 80 percent complete with regard to persons committing felonies and slightly less complete for those involved in misdemeanors or minor offenses.

These 41,733 individual criminal records are made up primarily of Federal offenders who were brought into the program due to their involvement in the Federal process. The fact that most of the Federal crimes as defined by statute are also local in nature allows one to infer that statistics concerning local offenders would closely approximate those included in this study. The violators contained in this Program generally are serious offenders and, therefore, likely repeaters since common law enforcement practice is generally not to submit a fingerprint card on minor or petty crimes.

Profiles

Table B illustrates the profiles of known repeaters by type of crime. The table consists of repeaters who were arrested in calendar year 1966. It provides insight concerning the degree to which repeaters contribute to crime counts year in and year out.

These offenders included in Table B have been arrested on at least two occasions and were selected for inclusion in the study by type of crime based on their last charge in 1966. The average age of these offenders ranged from 26 years for the auto thief to 45 years for the gambler. Considering the auto thief who repeated in that offense, his average age was 24 at the time of his first arrest for auto theft while the average age at first arrest for the gambler who repeated was 40 years of age. The extreme ranges of age at first arrest for any offense were the gambler at age 30 and the burglar and rapist at 19 years of age. The average age at first arrest is influenced upward since fingerprint cards are not submitted with any degree of consistency on juvenile offenders.

Criminal careers of these offenders ranged from 15 years for the gambler to 6 years for the more youthful auto thief. The burglar has the highest rate of repeating during a criminal career followed closely by those who were involved in robbery, narcotics, and fraudulent checks. Of the charges accumulated by individuals responsible for murder, assault, robbery, burglary, auto theft and rape, 50 percent or more were the more serious Crime Index type charges.

The narcotic offender ranked highest among those repeating in the same type of crime as indicated by 58 percent rearrests in this violation. The gambler and burglar followed closely with 57 and 56 percent, respectively. Of the auto thieves, 40 percent repeated in auto theft during the course of their criminal career, while 38 percent

Table B.—Profile of Known Repeaters Arrested in 1966 by Type of Crime

	Murder	Felonious assault	Robbery	Burglary	Auto theft	Rape	Sex offenses	Narcotics	Gambling	Bogus checks
Total number of subjects	337	1,600	2,013	3,439	5,264	319	376	3,729	1,234	3,598
Average age 1966	32	31	29	28	26	27	33	31	45	33
Average age first arrest for specific charge	31	29	26	24	24	26	31	27	40	29
Average age at first arrest	22	22	20	19	20	19	23	21	30	23
Average criminal career (yrs.)	10	9	9	9	6	7	10	10	15	10
Average arrests during criminal career	6	7	8	9	6	6	7	8	6	8
Crime Index arrests	3	4	4	5	3	3	2	2	1	2
Frequency of arrest on specific charge (percent):										
One	94	74	62	44	61	81	76	43	42	52
Two	5	17	26	26	22	17	13	21	20	21
Three or more		9	12	30	18	3	11	37	37	27
Frequency of leniency action on any charge (percent):										
One	27	29	30	34	28	32	30	28	23	32
Two	7	8	13	17	10	11	13	11	7	14
Three or more	4	6	8	9	7	5	8	9	4	11
Total (percent)	38	43	51	60	45	48	51	48	34	57
Leniency on specific charge (percent)	3	7	11	17	25	5	7	25	11	25
Average arrests after first leniency	5	6	7	7	5	5	6	7	6	6
Mobility (percent):										
Arrests in 1 State	35	37	37	30	31	37	35	54	68	32
Two States	40	36	29	32	33	35	34	29	21	26
Three or more States	25	27	34	38	36	28	31	18	11	42

of the robbers repeated in that category. Those involved in fraudulent check activities repeated at the rate of 48 percent in this type of crime. For those offenders involved in crimes against the person—murder, rape and felonious assault—the repetition rate in the same criminal act is much lower than property offenders. The frequency of probation, suspended sentence and parole granted to these offenders ranged from 34 percent for gambling to 60 percent for those who had been charged with burglary. There appears to be a similarity between the burglar and the bogus check offender in that 57 percent of the latter were granted the above forms of leniency and both of these criminal types have a high rate of recidivism in the same type offense. Leniency was granted most frequently for specific charges involving the bogus check offender, narcotic violator, and auto thief.

The robber, burglar, auto thief, sex offender and forger appear to have the highest rate of mobility with over 60 percent having been arrested in two or more states during the course of their criminal career.

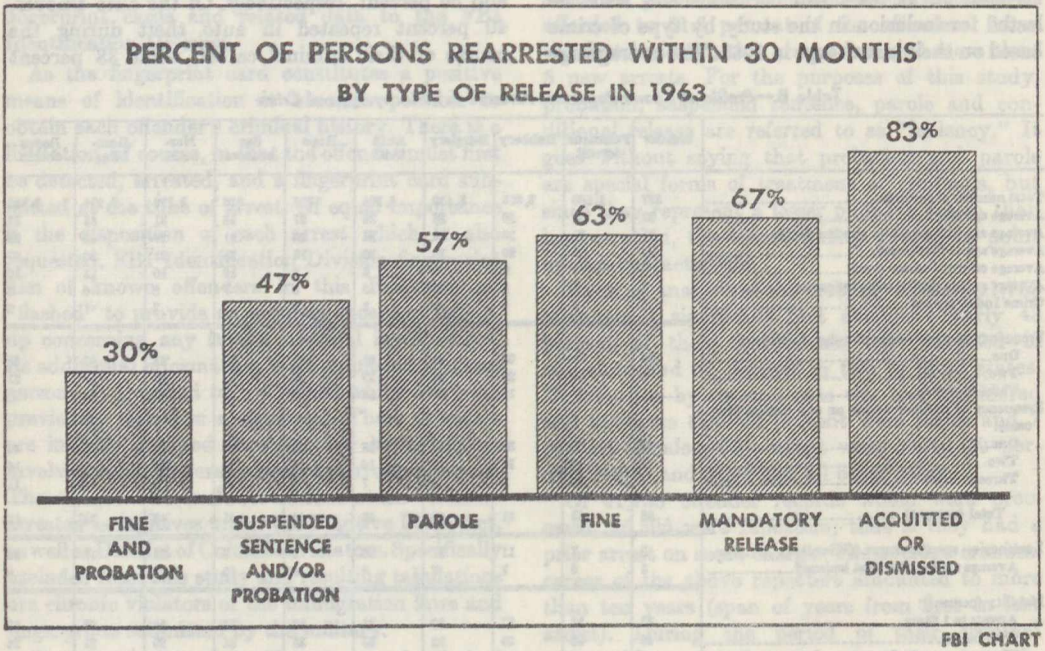
30 Month Follow-Up

A study has been made of persons included in the Careers in Crime Program who were released from custody in 1963. The records of these persons were followed for the next 30 months with the cutoff for this study being June 30, 1966. Inasmuch as they were already part of the Careers in Crime Program new arrests were stored on magnetic tape and necessary items for this study specifically recalled.

Type of Release

Of all offenders (17,837) released to the street in 1963, 55 percent were rearrested for new offenses by June 30, 1966. Chart 18 indicates that persons arrested on a new charge within 30 months ranged from 30 percent for those released with a fine and probation to 67 percent for offenders granted a mandatory release by a penal institution. The percentage figure for parole includes 139 persons handled by Pre-Release Guidance Centers (Halfway Houses) of whom 75 percent were arrested within 30 months. It is interesting to note that 83 percent of those acquitted or dismissed in 1963

Chart 18



were arrested on a new charge within 30 months. As indicated earlier, formal police charge and the submission of a fingerprint card is done generally for felonies or serious misdemeanors. For example, only 16 percent of all rearrests were for drunkenness, disorderly conduct, serious moving traffic violations, and vagrancy. In most instances these were secondary arrests of the same offender who also was arrested for a more serious offense. All offenders who repeated during the two and one-half year period averaged two arrests.

Age

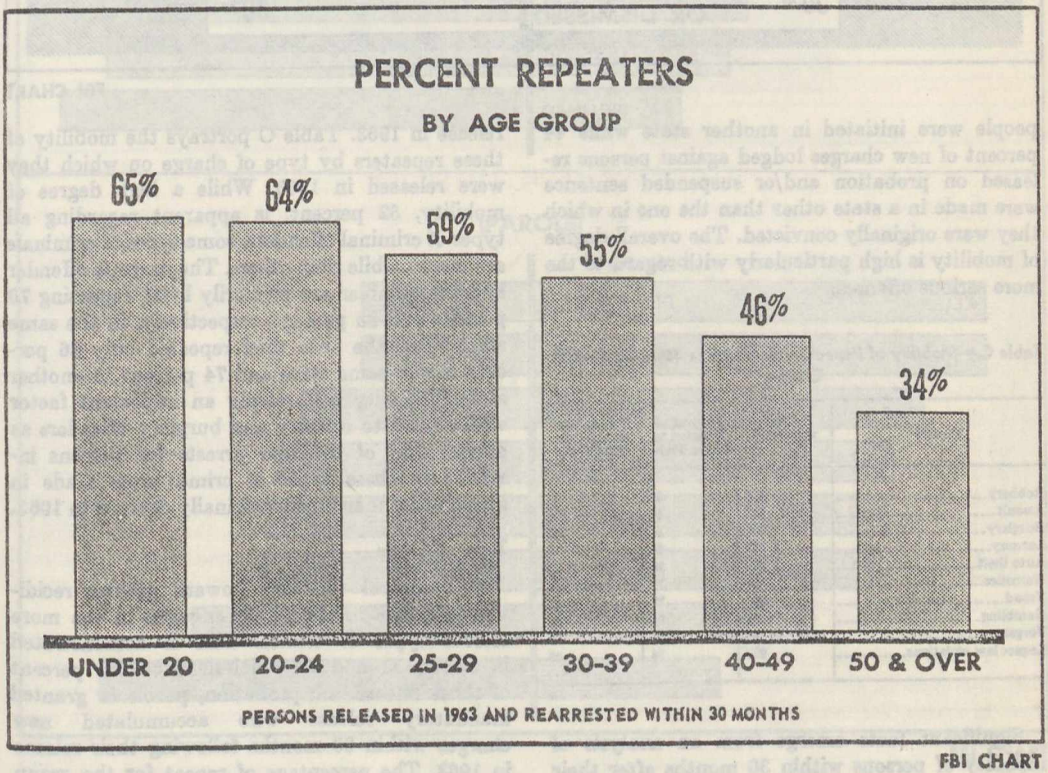
A further examination of persons released in 1963 was made by age group. Chart 19 reflects the percentage of persons, by age, who were arrested on new charges after being released in 1963. The overall high percentage figures are evident as well as the large concentration among youthful offenders.

The various types of treatment; probation, parole and mandatory release for persons released in 1963, when broken down by percentage figures disclose the highest degree of recidivism was among the more youthful offenders. Of those granted probation, 60 percent under 20 years of age and 54 percent in the age group 20 through 24 were arrested on new charges. Considering those who were granted a mandatory release, 81 percent of those under 20 and 80 percent of those falling in the age group 20 through 24 repeated within the next 30 months. Statistics describing those persons released on parole showed that 68 percent of the offenders under 20 years of age and 71 percent of those 20 through 24 years of age were repeaters within 2½ years.

Mobility

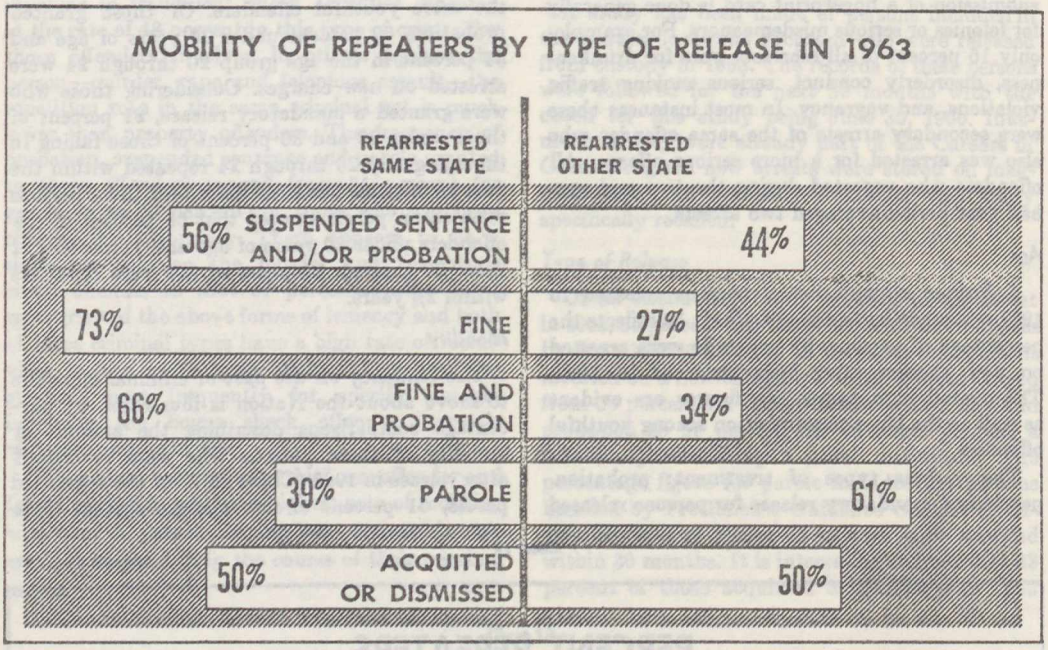
The tendency on the part of criminal offenders to move about the Nation is illustrated by percentage comparisons describing the amount of mobility of those persons who were rearrested after release in 1963 (Chart 20). For those granted parole, 61 percent of new charges against these

Chart 19



FBI CHART

Chart 20



FBI CHART

people were initiated in another state while 44 percent of new charges lodged against persons released on probation and/or suspended sentence were made in a state other than the one in which they were originally convicted. The overall degree of mobility is high particularly with regard to the more serious offenses.

Table C.—*Mobility of Repeaters Released in 1963 by Specific Charge*

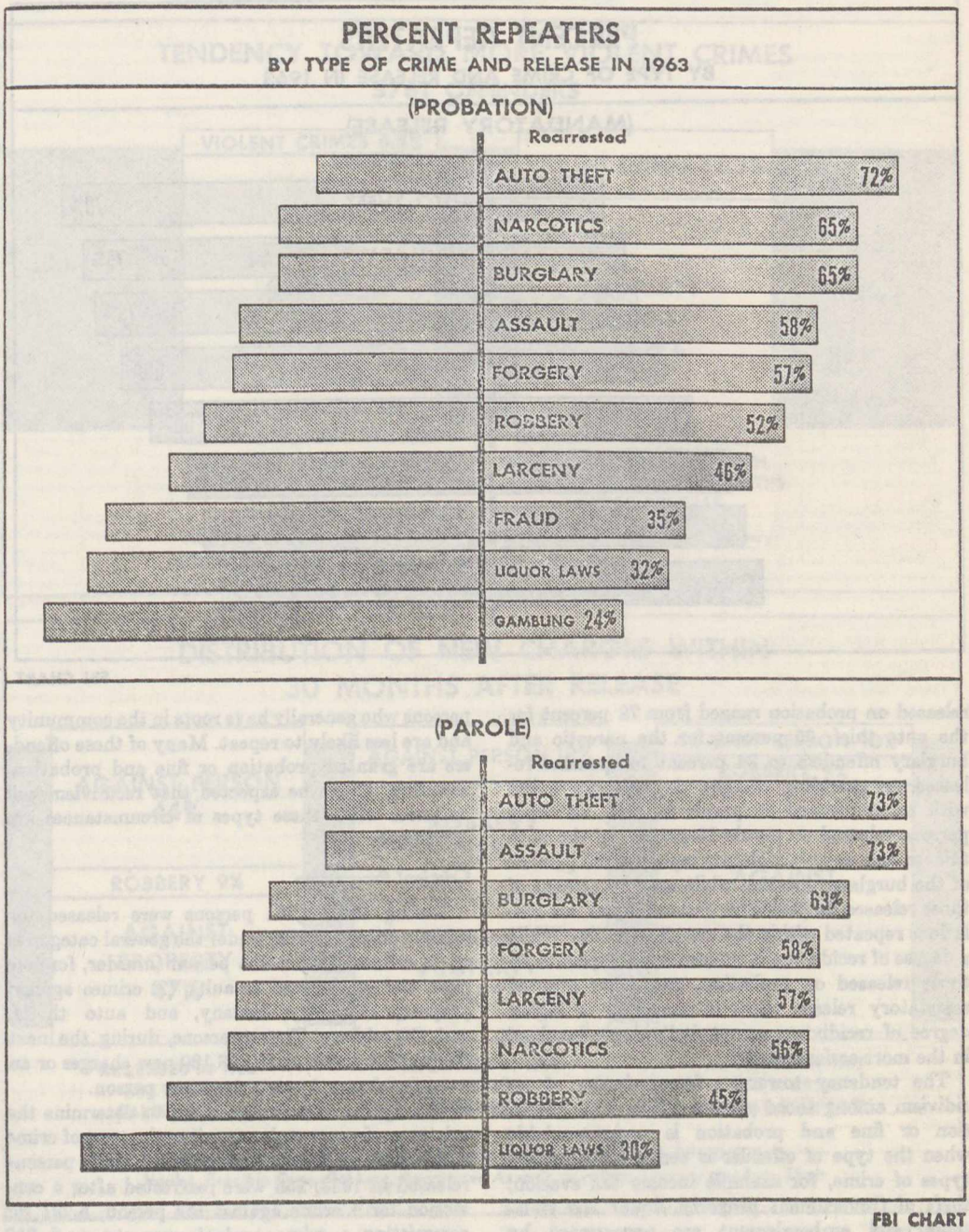
Charge	Total rearrested	Percent rearrested in same State	Percent rearrested in other State
Robbery	218	52	48
Assault	133	64	36
Burglary	302	54	46
Larceny	1,257	64	36
Auto theft	3,539	26	74
Narcotics	857	70	30
Fraud	255	73	27
Gambling	98	85	15
Forgery	1,344	55	45
Liquor law violations	921	74	26

Significant facts emerge from an analysis of mobility of persons within 30 months after their release in 1963. Table C portrays the mobility of these repeaters by type of charge on which they were released in 1963. While a high degree of mobility, 52 percent, is apparent regarding all types of criminal offenders, some types of criminals are more mobile than others. The narcotic offender and the gambler are primarily local, repeating 70 percent and 85 percent, respectively, in the same state while the auto thief repeated only 26 percent in the same state and 74 percent in another state. Mobility is certainly an important factor with regard to robbery and burglary offenders as almost half of the new arrests for persons involved in these types of crimes were made in states other than where originally charged in 1963.

Type of Crime

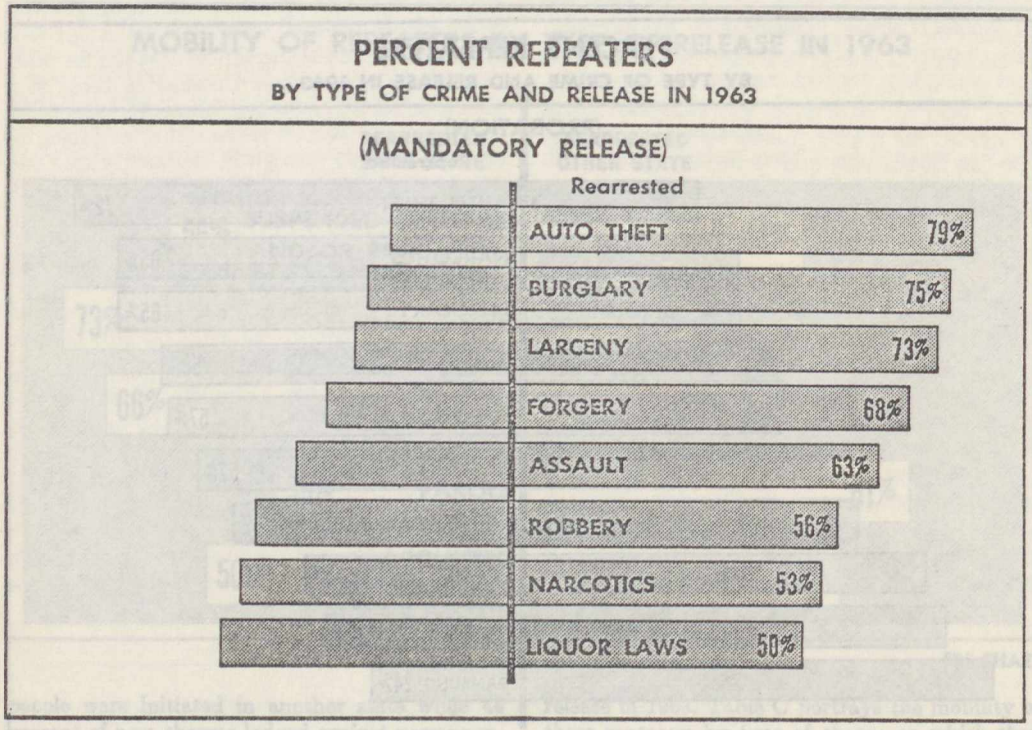
The general tendency toward greater recidivism appears in the group engaged in the more serious types of crimes. This is demonstrated in Charts 21 and 22 which describe the percent of those released on probation, parole or granted mandatory release who accumulated new charges within 30 months following their release in 1963. The percentage of repeat for the group

Chart 21



FBI CHART

Chart 22



FBI CHART

released on probation ranged from 72 percent for the auto thief, 65 percent for the narcotic and burglary offenders to 24 percent for persons released on gambling charges. A similarity exists with those released on parole in 1963. Of those persons released on parole 73 percent of the auto thieves and assault violators repeated, 63 percent of the burglars repeated, while only 30 percent of those released on parole for Federal liquor law violations repeated within the next 30 months. While a degree of recidivism is evident with respect to all those released on probation, parole, or granted mandatory release there is obviously a higher degree of recidivism among individuals involved in the more serious crimes.

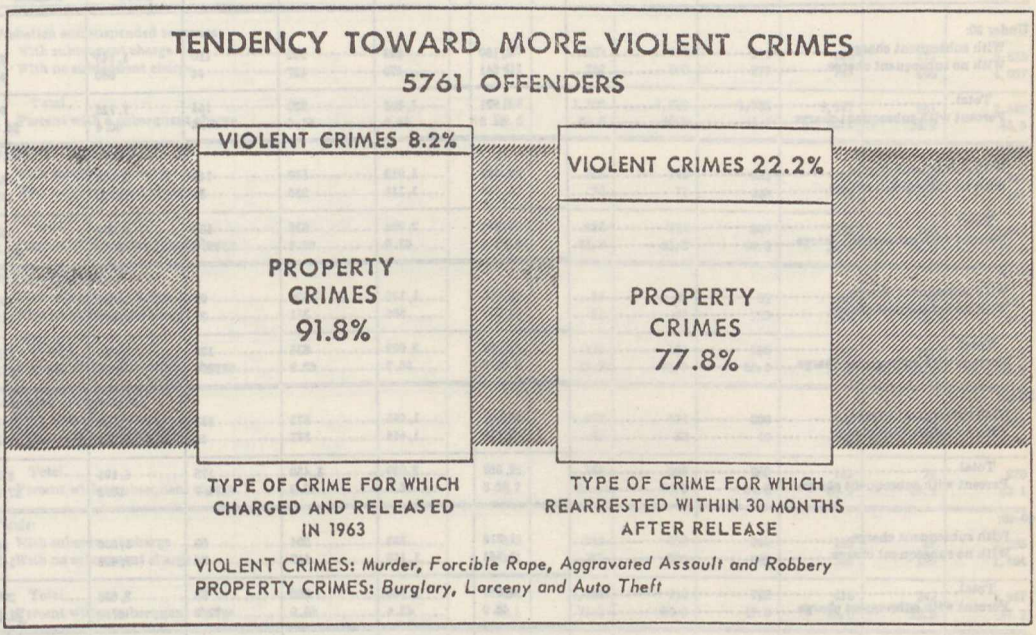
The tendency toward a lesser degree of recidivism among those persons released on probation or fine and probation is understandable when the type of offender is considered. Certain types of crime, for example income tax evasion, theft of Government property, liquor law violations, and embezzlement are perpetrated by persons who generally have roots in the community and are less likely to repeat. Many of these offenders are granted probation or fine and probation, therefore, it can be expected that recidivism will be lower when these types of circumstances are considered.

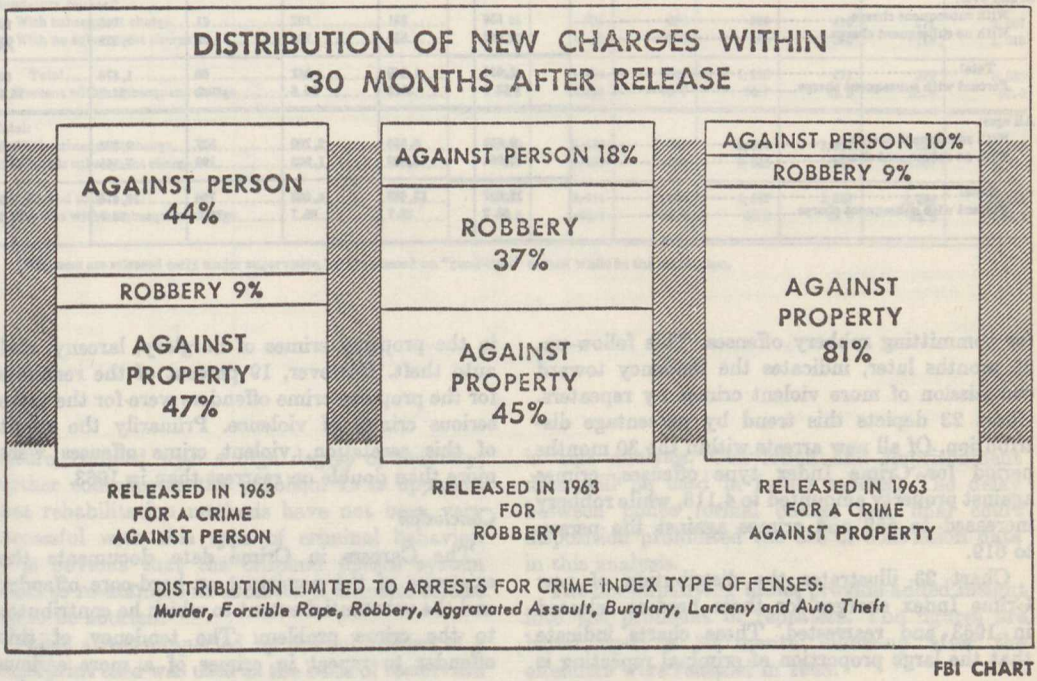
Criminal Progression

During 1963, 5,761 persons were released for various crimes coming under the general categories of (1) crimes against the person (murder, forcible rape, and aggravated assault), (2) crimes against property (burglary, larceny, and auto theft), and (3) robbery. These persons, during the next 30 months, accumulated 13,180 new charges or an average of over 2 new arrests per person.

The figures were broken down to determine the existence of any trends regarding the type of crime committed by known repeaters. Of those persons released in 1963, 258 were rearrested after a conviction for a crime against the person, 5,291 for committing a crime against property, and 212

Chart 23





FBI CHART

Table D.—30 Month Follow-up of Persons Released in 1963 by Age, Race, and Sex

Age	Total	White	Negro	Other	Male	Female
Under 20:						
With subsequent charge	1,180	868	202	110	1,145	35
With no subsequent charge	641	470	127	44	580	61
Total	1,821	1,338	329	154	1,725	96
Percent with subsequent charge	64.8	64.9	61.4	71.4	66.4	36.5
20-24:						
With subsequent charge	2,539	1,813	580	146	2,376	163
With no subsequent charge	1,405	1,111	256	38	1,216	189
Total	3,944	2,924	836	184	3,592	352
Percent with subsequent charge	64.4	62.0	69.4	79.3	66.1	46.3
25-29:						
With subsequent charge	1,758	1,136	524	98	1,657	101
With no subsequent charge	1,224	886	311	27	1,077	147
Total	2,982	2,022	835	125	2,734	248
Percent with subsequent charge	59.0	56.2	62.8	78.4	60.6	40.7
30-39:						
With subsequent charge	2,501	1,495	873	133	2,360	141
With no subsequent charge	2,066	1,444	577	45	1,835	231
Total	4,567	2,939	1,450	178	4,195	372
Percent with subsequent charge	54.8	50.9	60.2	74.7	56.3	37.9
40-49:						
With subsequent charge	1,316	853	394	69	1,250	66
With no subsequent charge	1,551	1,113	412	26	1,408	143
Total	2,867	1,966	806	95	2,658	209
Percent with subsequent charge	45.9	43.4	48.9	72.6	47.0	31.6
50 and over:						
With subsequent charge	559	391	127	41	545	14
With no subsequent charge	1,097	858	220	19	1,025	72
Total	1,656	1,249	347	60	1,570	86
Percent with subsequent charge	33.8	31.3	36.6	68.3	34.7	16.3
All ages:						
With subsequent charge	9,853	6,556	2,700	597	9,333	520
With no subsequent charge	7,984	5,882	1,903	199	7,141	843
Total	17,837	12,438	4,603	796	16,474	1,363
Percent with subsequent charge	55.2	52.7	58.7	75.0	56.7	38.2

for committing robbery offenses. This follow-up, 30 months later, indicates the tendency toward commission of more violent crimes by repeaters. Chart 23 depicts this trend by percentage distribution. Of all new arrests within the 30 months period for Crime Index type offenses, crimes against property amounted to 4,116, while robbery increased to 558 and crimes against the person to 619.

Chart 23 illustrates the distribution of new Crime Index charges for those persons released in 1963 and rearrested. These charts indicate that the large proportion of criminal repeating is in the property crimes of burglary, larceny, and auto theft. However, 19 percent of the rearrests for the property crime offenders were for the more serious crimes of violence. Primarily the result of this escalation, violent crime offenses were more than double on rearrest than in 1963.

Conclusion

The Careers in Crime data documents the existence of the persistent or hard-core offender and the substantial extent to which he contributes to the crime problem. The tendency of this offender to repeat in crimes of a more serious

Table E.—30 Month Follow-Up by Age Group and Type of Release in 1963

Disposition	Under 20	20-24	25-29	30-39	40-49	50 and over	Total
Probation and suspended sentence:							
With subsequent charge	607	923	620	811	403	171	3,535
With no subsequent charge	411	785	600	977	744	490	4,007
Total	1,018	1,708	1,220	1,788	1,147	661	7,542
Percent with a subsequent charge	59.6	54.0	50.8	45.4	35.1	25.9	46.9
Fine:							
With subsequent charge	63	213	148	252	187	88	951
With no subsequent charge	27	70	77	138	138	108	558
Total	90	283	225	390	325	196	1,509
Percent with a subsequent charge	70.0	75.3	65.8	64.6	57.5	44.9	63.0
Fine and probation:							
With subsequent charge	8	48	43	62	47	23	231
With no subsequent charge	15	81	60	123	130	134	543
Total	23	129	103	185	177	157	774
Percent with a subsequent charge	34.8	37.2	41.7	33.5	26.6	14.6	29.8
Acquitted or dismissed:							
With subsequent charge	84	168	174	226	105	49	806
With no subsequent charge	14	25	32	42	26	25	164
Total	98	193	206	268	131	74	970
Percent with a subsequent charge	85.7	87.0	84.5	84.3	80.2	66.2	83.1
Parole:							
With subsequent charge	323	966	418	341	158	57	2,263
With no subsequent charge	151	389	322	382	258	192	1,694
Total	474	1,355	740	723	416	249	3,957
Percent with a subsequent charge	68.1	71.3	56.5	47.2	38.0	22.9	57.2
Mandatory release:*							
With subsequent charge	95	221	355	809	416	171	2,067
With no subsequent charge	23	55	133	404	255	148	1,018
Total	118	276	488	1,213	671	319	3,085
Percent with a subsequent charge	80.5	80.1	72.7	66.7	62.0	53.6	67.0
Total:							
With subsequent charge	1,180	2,539	1,758	2,501	1,316	559	9,853
With no subsequent charge	641	1,405	1,224	2,066	1,551	1,097	7,984
Grand total	1,821	3,944	2,982	4,567	2,867	1,656	17,837
Percent with a subsequent charge	64.8	64.4	59.0	54.8	45.9	33.8	55.2

*Prisoners are released early under supervision by laws based on "good-time" earned while in the institution.

nature, coupled with a high degree of mobility, further complicates the problem. It is apparent that rehabilitation methods have not been very successful with this type of criminal behavior. It is obvious that the criminal justice system needs to re-examine its methods if criminal careers are to be aborted.

Police arrest supported by the submission of a fingerprint card was used as the basis of recidivism in this analysis. Conviction and imprisonment data will be used in future studies. The delay between police formal charge and final court disposition prohibited the use of conviction data in this analysis.

The accompanying tables provide added insight into the problems of repeaters. The figures are based upon a 30 month follow-up after the offenders were released in 1963.

Table F.—30 Month Follow-up by Age and by Specific Charge on Which Released in 1963

Offense	Under 20	20-24	25-29	30-39	40-49	50 and over	Total all ages
Assault:							
With a subsequent charge	18	30	21	25	10	4	108
With no subsequent charge	8	11	11	15	7	5	57
Total	26	41	32	40	17	9	165
Percent with a subsequent charge	69.2	73.2	65.6	62.5	58.8	----	65.5
Burglary:							
With a subsequent charge	67	63	49	39	15	6	239
With no subsequent charge	30	23	16	21	12	4	106
Total	97	86	65	60	27	10	345
Percent with a subsequent charge	69.1	73.3	75.4	65.0	55.6	----	69.3
Larceny:							
With a subsequent charge	122	303	175	275	111	40	1,026
With no subsequent charge	103	215	143	233	161	56	911
Total	225	518	318	508	272	96	1,937
Percent with a subsequent charge	54.2	58.5	55.0	54.1	40.8	41.7	53.0
Auto Theft:							
With a subsequent charge	673	1,004	408	426	233	61	2,805
With no subsequent charge	260	307	137	138	64	21	927
Total	933	1,311	545	564	297	82	3,732
Percent with a subsequent charge	72.1	76.6	74.9	75.5	78.5	74.4	75.2
Robbery:							
With a subsequent charge	24	42	27	58	21	8	180
With no subsequent charge	12	27	18	52	25	22	156
Total	36	69	45	110	46	30	336
Percent with a subsequent charge	66.7	60.9	60.0	52.7	45.7	26.7	53.6
Narcotics:							
With a subsequent charge	21	130	182	316	86	28	763
With no subsequent charge	6	47	74	211	124	69	531
Total	27	177	256	527	210	97	1,294
Percent with a subsequent charge	77.8	73.4	71.1	60.0	41.0	28.9	59.0
Gambling:							
With a subsequent charge	----	6	4	28	29	25	92
With no subsequent charge	1	4	12	38	72	80	207
Total	1	10	16	66	101	105	299
Percent with a subsequent charge	----	----	----	42.4	28.7	23.8	30.8
Forgery:							
With a subsequent charge	38	215	227	354	184	59	1,077
With no subsequent charge	30	142	124	213	140	59	708
Total	68	357	351	567	324	118	1,785
Percent with a subsequent charge	55.9	60.2	64.7	62.4	56.8	50.0	60.3
Liquor Law Violations:							
With a subsequent charge	36	101	138	251	184	140	850
With no subsequent charge	67	169	179	354	328	336	1,433
Total	103	270	317	605	512	476	2,283
Percent with a subsequent charge	35.0	37.4	43.5	41.5	35.9	29.4	37.2
Fraud:							
With a subsequent charge	3	25	37	87	59	12	223
With no subsequent charge	1	22	54	131	98	68	374
Total	4	47	91	218	157	80	597
Percent with a subsequent charge	----	53.2	40.7	39.9	37.6	15.0	37.4

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

TUESDAY, NOVEMBER 7, 1967

RESPECTING

The subject-matter of Bill C-4,

An Act concerning reform of the bail system.

APPEARING:

Mr. Barry Mather, M.P., sponsor of Bill C-4.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27239—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, November 2, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Ryan on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,
The Clerk of the House of Commons.

27239—1½

ORDER OF REFERENCE

THURSDAY, November 2, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Ryan on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,
The Clerk of the House of Commons.

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Guay,	Mr. Otto,
Mr. Brown,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Scott (*Danforth*),
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Graffley,	Mr. Nielsen,	Mr. Whelan,
		Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

27259—1½

MINUTES OF PROCEEDINGS

TUESDAY, November 7, 1967
(6)

The Standing Committee on Justice and Legal Affairs met at 11.05 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Brown, Cameron (*High Park*), Cantin, Forest, Gilbert, Goyer, Latulippe, MacEwan, Otto, Pugh and Mr. Woolliams (11).

Also present: Mr. Barry Mather, M.P.

The Chairman read the Order of Reference dated June 29, 1967, which referred the subject-matter of Bill C-4 *An Act concerning reform of the bail system,* to the Committee.

The Chairman advised the Committee that he had been in touch with three prospective witnesses concerning the subject-matter of Bill C-4, as agreed at a meeting of the Subcommittee on Agenda and Procedure, held on October 19, 1967. The first of these, Mr. Henry H. Bull, Q.C., Senior Crown Attorney for Metropolitan Toronto, County of York, Ontario, has agreed to appear at the next Committee meeting on November 9, 1967, if the Committee concurs. An invitation was extended to Mr. A. M. Kirkpatrick, Executive Director, John Howard Society. He declined the invitation, noting that he had no testimony which would be helpful at this time. The third prospective witness who was contacted is Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto. Professor Friedland has agreed to appear at a time convenient for the Committee.

The Committee proceeded to the consideration of the subject-matter of Bill C-4, *An Act concerning reform of the bail system.* The Chairman introduced Mr. Barry Mather, M.P., sponsor of this Bill.

Mr. Mather made a statement and was questioned thereon.

The Committee agreed to table the following document presented by Mr. Mather during his testimony (Exhibit C-4-1):

Public Law 89-465
89th Congress, S. 1357
June 22, 1966
An Act

To revise existing bail practices in courts of the United States, and for other purposes.

In addition to the persons mentioned by the Subcommittee on Agenda and Procedure, some Members suggested that one or two Magistrates should be invited to appear in connection with the subject-matter of Bill C-4. This matter was left with the Subcommittee to consider further.

Following an announcement regarding the next meeting, on motion of Mr. Gilbert, seconded by Mr. Forest, it was

Resolved,—That reasonable living and travelling expenses be paid to Mr. Henry H. Bull, Q.C., who has been called to appear before this Committee on November 9, 1967, in the matter of Bill C-4.

The Chairman thanked Mr. Mather for his presentation.

The Chairman then introduced Mr. Hugh Stewart, the new Clerk of the Committee, replacing Mr. Fernand Despatie.

At 12.10 p.m., the Committee adjourned until Thursday, November 9, 1967 at 11.00 a.m.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

• (11.05 a.m.)

Tuesday, November 7, 1967

The Chairman: Gentlemen, we now have a quorum. I have no doubt that other members will be here later on.

Our Order of Reference is that the subject matter of Bill C-4, an Act concerning reform of the bail system, be referred to the Standing Committee on Justice and Legal Affairs.

At the suggestion of the Steering Committee, I have been in communication with Mr. Henry H. Bull, Q.C., Crown Attorney for the County of York and for the metropolitan area of Toronto. Mr. Bull has kindly consented to appear before the Committee on Thursday of this week. He is an acknowledged expert on the subject, and is the chairman of an ad hoc committee which is dealing with bail bonds.

I wrote to Mr. Kirkpatrick, Executive Director of the John Howard Society, who, although honoured at the invitation, does not feel he could be helpful to the Committee. Professor M. L. Friedland of the University of Toronto, who has written on the subject matter, has indicated that he is willing to appear before the Committee and that his timetable is such that he could come at any time we wish. I think that is all which arises out of the meeting of the Steering Committee.

I would now like to introduce a gentleman who, of course, needs no introduction, Mr. Barry Mather, M.P., sponsor of Bill C-4, and ask him to make his statement on the subject matter.

Mr. Barry Mather (Sponsor of the Bill): Thank you, Mr. Chairman.

It is a source of satisfaction to me to have this opportunity of bringing the subject matter of Bill C-4 to the attention of the Justice and Legal Affairs Committee of the House of Commons.

The principle of the Bill aims at a more liberal code in respect to the present system of bail, and seeks to give us legislation which would better reflect the traditions of British justice than does our present practice in Canada.

As I suppose hon. members well know, I am not a lawyer, and there may well be weaknesses in what I propose, or how I propose it.

However, my aim in presenting the Bill is to underline the need for action and to encourage reform of the present bail situation.

As the Chairman has indicated, there may be a number of people coming before the Committee at a later date to give their opinions on what is proposed. My understanding is that they will be persons with a practical knowledge in this field, who, from one side of the courtroom or another, have dealt with the results of granting or withholding bail. In that way you should get useful information before coming to any decision.

• (11.10 a.m.)

For my part my intention this morning is to present the aims of the Bill and to quote from some statements in support of the principles involved in it. But, first let me tell hon. members that the proposal which I am making would have the same effect in our country as had the law signed by President Johnson last year in the United States.

In signing that measure, the President said:

> It is a move to begin to ensure that defendants are considered as individuals and not as dollar signs.

That our Canadian scales of justice are sometimes weighted not with mercy but with money has been apparent in the matter of before-trial detention. A detailed study of our bail system, made a few months ago by Professor Friedland of the Faculty of Law, University of Toronto, found:

> In the setting of bail, there is an undue pre-occupation with its monetary aspects. The tragedy is that a large percentage of persons are unable to raise the bail that is set. The ability of the accused to marshall funds or property in advance determines whether he will be released, and may have an effect on the outcome of his case.

The professional bondsmen and money lenders operate more or less openly. Actually the system does not do too much to ensure the appearance of the accused in court and the people who lend the money may reap substantial profits.... Some accused, in order to raise the money, have been known to commit further offences while waiting trial. The system tends to favour the professional criminal who is more likely to know, and be trusted by, the bondsmen. It seems to me that here is a field requiring study and possible reform. I would say that if money, rather than character, is not to determine justice the accused should be released, if he is to be released at all, on his own recognizance, or in appropriate cases with recognizances by sureties in reasonable amounts recoverable if the accused fails to appear.

The Bill which I am proposing as a means to meet and reform the existing bail system, states:

> Notwithstanding anything in the Criminal Code or any other act or statute of the Parliament of Canada, any person charged with an offence under an act of the Parliament of Canada, other than an offence punishable by death or imprisonment of life, shall, at his appearance in court, be ordered released pending trial on his personal recognizance or upon the execution ot an unsecured appearance bond in an amount specified by the court, unless the judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.
>
> When a judge makes such a determination, he shall, either in lieu of or in addition to the method of release referred to, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any of the combination of the following conditions:
>
> Place the person in the custody of a designated person or organization agreeing to supervise him;
> place restrictions on the travel, association, or place of abode of the person during the period of release;
> require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
> require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
> impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.
>
> Further, any time spent in custody at the prison, penitentiary, reformatory or jail previous to the pronouncing of the sentence shall be credited to any person convicted of an offence."

I believe or at least I hope, that hon. members will agree that the proposed legislation gives the judge adequate discretionary powers and powers of compelling appearance of the accused, while, at the same time, providing greater authority than is now the case for the court to judge the character rather than the money of the accused in determining justice.

Mr. Chairman, I was very much encouraged at the time the Bill was being considered at Second Reading to find support from two notable sources—one the then Leader of the Official Opposition, the Right Honourable John G. Diefenbaker, whom I would like to quote a little later, and the other from the government side of the House, the Honourable Member for York-Scarborough.

I feel this actually, on reflection that both these gentlemen made a better case for sending the Bill to your Committee than I did.

I would like to quote Mr. Robert Stanbury, the Honourable Member for York-Scarborough:

> What the sponsor of this bill does attempt to do is to put the emphasis on the release of prisoners rather than on their detention. The general effect of the present sections of the Criminal Code is that the court may release an accused on bail on his recognizance with or without a deposit or with or without sureties. Aside from the special case of offences punishable by death or life imprisonment, the proposed bill would make it the general rule that an accused must be released without having to find sureties or deposit money. Second, the conditions under which sureties, cash deposits or other restrictions could be imposed would be limited to the case where the judge considers that release without bail

will not assure attendance of the accused at trial.

Certainly, Mr. Speaker, there have undoubtedly been abuses under the present system.

I am still quoting Mr. Stanbury:

In a submission to the Canadian Committee on Corrections the John Howard Society had this to say:

This is Mr. Stanbury quoting the John Howard Society's submission:

The practice of allowing bail is obviously to put the accused at the least inconvience until his guilt or innocence is established. However, there is a crucial problem related to the establishing of the amount of bail. A bank robber might be willing to forfeit a large amount put up through the receipts of his crime whereas a $50 bond may be an impossibility for a married man on a low income. Thus the poor, the homeless and the friendless may be discriminated against. If unable to face the economic and social distress of incarceration while awaiting trial the accused may borrow money for bail which might leave him without funds to retain a lawyer, putting him at an immediate disadvantage in court.

The John Howard Society recommends: a much broader use of an accused's own recognizance; bail set at a minimum amount consistent with the likelihood of his appearing in court; consideration of the accused's economic situation in determining bail; use of bailbondsmen to be discouraged as the part payment put up by the accused is probably sufficient in itself; and the establishment of an investigation bureau in large metropolitan areas, where the accused is not likely to be well known, to establish quickly his economic position.

Similar recommendations were made by the John Howard Society to the McRuer royal commission

Mr. Chairman, to quote further from Mr. Stanbury, he says:

I think that the sponsor's proposal, for the committee on justice and legal affairs to study this problem, is reasonable. There should be an examination of the other side of the coin. The association of police chiefs should be given an opportunity to make representations to members of parliament so that the difficulties, as seen by the police, can be explored. Members of the legal profession and other interested groups should be given an opportunity to express their opinions. It seems to me that this problem ought to be attacked by parliament at this session if possible, and when changes are introduced in the Criminal Code I hope that bail will be one of the subjects of change.

Mr. Chairman, that is the conclusion of the quotation from Mr. Stanbury.

• (11.20 a.m.)

An editorial appearing in the Toronto *Daily Star* of April 28, 1967, put this problem and proposed solution in very good words, in my opinion, and I am quoting from it:

The futility of the bail system in Canadian courts was perfectly illustrated by the case of James Royal here this week.

This is in Toronto.

Royal was charged with rape and committed for trial in the Supreme Court. Bail was fixed at $3,000. A friend of Royal's persuaded a Scarborough couple to post it for him, although they did not know the accused.

Royal failed to appear for trial, and has apparently left the province. His bail was accordingly forfeited. Chief Justice Gale reduced the forfeiture, but the Scarborough couple will still have to pay $2,000.

What purpose did this whole procedure serve?

The posting of $3,000 did not prevent Royal from fleeing the jurisdiction. It will not make it any easier to track him down and arrest him.

The only effect has been to subject a couple, whose sole offence was to be too trusting, to a heavy penalty.

Yet, at the same time many people who are charged with much less serious offences and who have no intention or likelihood of fleeing to escape trial, are kept in jail, sometimes for months, because they or their relatives cannot raise the required cash or property bail.

Would it not be simpler and better when a man is committed for trial for the magistrate to consider whether he can safely release the defendant on his

own recognizance—that is, on his undertaking to appear before the court on the day set?

In the majority of cases, release on these terms would be quite safe. The average defendant, especially if he has a job and a family, is not likely to take to flight and become a fugitive from justice for the rest of his life.

There are instances where because of the extreme seriousness of the charge, or the defendant's past record, or for some other reason, there is real cause to fear that he will skip out.

In that case it may be necessary to keep him in jail until the trial. In the James Royal case, for example, it might have been wiser to keep the accused behind bars.

But, the decision to hold or release the accused should be based on the circumstances of the case and the man's position and reputation—not, as it is now, on whether he can raise a specified amount of money or persuade someone else to put it up for him.

I would like to conclude, Mr. Chairman, by one further quotation from a notable source, that is from Mr. Diefenbaker, who said on the second reading of this bill:

> Mr. Speaker, this is the first occasion in many, many years that I have spoken on a private member's resolution, or bill. I do so because of my impression, gained over years at the bar, that in the field of bail there has been a series of shortcomings that all of us should have looked into long ago.
>
> Too often the possession of great riches or the ability to put up a large amount of bail places certain people in an advantageous position while the poor must remain in custody.

Under the proposed legislation,

> The judge has wide discretion. The safeguards are here. The trend in criminology today is not to imprison in cases where it is possible to be reasonably assured, following a first offence, that the ends of justice will be met without the imposition of imprisoment. No one should be sent to prison for any period of time if the judge before whom an application for bail is made can be given a reasonable assurance that the person concerned will turn up . . .
>
> I say to the hon. member who introduced this bill that strong criticism can be levelled against all of us for not having brought about years ago the implementation of the plan he presents. There may be shortcomings in certain parts of it; there may be alterations which should be made. But the principle deserves to be accepted . . .

In conclusion, Mr. Chairman, I repeat that the aim of the Bill is to ensure that all persons, regardless of their financial status, shall not be needlessly detained pending their appearance to answer charges under acts of the Parliament of Canada when detention serves neither the ends of justice nor the public interest.

The Chairman: Thank you very much, Mr. Mather, for your clear and comprehensive statement of the principles of your Bill. You are now subject to the usual questioning on your statement. I note that Mr. Otto has a question, and I have no doubt that other members will have some questions to ask.

Mr. Otto: Mr. Mather, I agree with the principle of your Bill, but when you say that you are going to leave it to the discretion of the judge you are talking about puisne judges or magistrates in most cases. I am sure you will also agree that magistrates hear 30 or 40 cases a day. You are aware that at the present time they have the discretion to release a person on his own recognizance. I know that you will not hear this from Mr. Bull, who will probably deny it, but invariably the judge follows the advice of his administration.

What makes you think that the administration is going to advise the judge to release a person when the administration, of course, loves nothing better than to have him present at all times so that it will not spoil the order of cases? What change do you think will be brought about by the introduction of this Bill, if you leave it to the judge's discretion?

Mr. Mather: Mr. Chairman, if we adopt the principles which I have tried to put forward in my Bill we would change a permissive act on the part of the magistrate to one in which the emphasis would at least be put on release. If the changes that I have suggested were made I think you would find that the administration would change with them.

Mr. Otto: As I said, you already have the discretion in the judge. Have you considered

writing into this Bill a series of mandatory conditions; that, for instance, in the case of a first offender, or a person who has had a good record of employment, or who has a family and so on, the judge must arbitrarily allow bail on his own recognizance? Have you considered putting in regulations which would at least take away a portion of the discretion?

Mr. Mather: I think your suggestion is a very good one. If the principles I put forward were approved, no doubt the Committee or the Justice Department might consider spelling out mandatory conditions. I have no quarrel with what you say.

Mr. Otto: Consider the professional bail bondsman. I hope I have the opportunity to examine Mr. Bull on this, but you understand that they actually encourage the professional bail bondsman because if he provides the bail there is no doubt in the world that the man will appear, one way or another. It is not a question of money, because these people are not in the business of losing money. They have their own methods of ensuring the appearance of an accused.

How are you going to change the present emphasis on the professional bail bondsman? You mentioned the Scarborough couple. When you have amateurs involved, so far as the administration is concerned, you have the question of equity—whether to be fair, or have these people lose a lot of money. How are you going to switch the emphasis from the professional bail bondsman?

Mr. Mather: Mr. Chairman, the Bill is very similar to that adopted by the American administration last year. They had found—and I think you will hear argument in support of this later—that in too many cases far too much emphasis was put upon the actual monetary value.

I have quoted people far more learned than I who support me on this point, but it is my contention that there is no need for such a condition in a great many cases. Economic conditions and the character of the accused should, I think, be given more weight than they have now on the question of bailing or releasing without bail.

• (11.30 a.m.)

Mr. Woolliams: With the greatest respect, and with no wish to interrupt, I have a supplementary. Mr. Otto is absolutely right. The discretion is there. It is something that a magistrate or judge uses. I am not being critical. I am just pointing out weaknesses that Mr. Otto has put his finger on. This discretion is something that a judge may or may not use and in common law he has all these things at his disposal in any event. The big problem, as Mr. Otto has pointed out, is first of all that there are too many cases where the police arrest people they do not need to arrest; if they were on summons they would appear. You may have 2,000 or 3,000 cases on the docket and they all appear after they are let out on bail. It is the one that does not appear who receives all the publicity and the rest of the accused suffer because of this one exception. You can never have perfection in any law. I do not want to interrupt Mr. Otto's present thought but I wish to say that I agree with him in regard to the magistrates who are trying all these cases. The high court judges only have possibly one per cent of the cases to try and they have more time, but the poor magistrates do not have much time.

They used to be called police magistrates and I have often wondered why they used the name "magistrates" because they were too close to the policemen and they became brainwashed. They dined together and they talked together and they had it all dished out. That is why the courts have now given them respectability in same if not in other fields. They now call them judges in some provinces. Let us make no mistake about it, they were called police magistrates. It was not their fault; they were thrown in the same building with the same offices and this affected the granting of bail. The police arrest these accused, not because they think they will not appear at trial, they arrest them because they can improve their investigation, they can conduct a more thorough interrogation, and a few other things that go on behind the scenes, and when a young fellow is locked up in jail he is likely to squeal a little faster than if he is on the street outside. This has been my practical experience.

Mr. Mather: Mr. Chairman, if I may I would like to briefly reply to Mr. Woolliams. I think what he has said is not a criticism of that which I propose but rather of the court system. I am trying to improve it.

Mr. Woolliams: I know you are.

Mr. Otto: Mr. Chairman, I think that Mr. Woolliams and I are arguing on the realist —you might say cynical—side but I think

with some experience you will realize, and I want Mr. Mather to understand this, that when you leave it to the discretion of the judge, as questions are left to the discretion of the minister, let us say, in the House of Commons, the fact is that it is in the discretion of the administration of the judge or, in this case, the deputy minister. When anyone leaves something to the discretion of the minister what is really meant is that it is left to the discretion of the deputy minister because the minister has no discretion and the judge has none. He has to contend with all of these people and therefore the judge will ask the prosecuting attorney what he thinks. This is the question.

I would now like to go on another tangent and I want you to follow me. Have you considered or done any research on the cost of apprehension and the likelihood of re-arrest? I have been told and I have read a great deal about the very highly computerized police systems throughout North America and I understand that very few accused who have not shown up for trial have gone free for any length of time. Even if one gets a traffic ticket these days it is computerized and therefore the arrest follows very, very quickly. I wonder, getting at the whole question of the bail system, whether you have any facts or figures to show that we do not really need a bail system at all? In other words, if the accused does not show up, under our police organization he will definitely be found within a very few months, and he will show up again.

The whole question here is the emphasis which should be put on the bail system, which was really devised for a prisoner or an accused who may have escaped and would never show up. However, the situation is much different today. Do you have any facts on the likelihood of an accused skipping bail and actually getting away with it?

Mr. Mather: I tried to present some argument that in a great many cases there is very little likelihood of a person being released without bail or skipping out. However, if I understand your remarks correctly, I wonder what you would say to this argument by Mr. Stanbury (York-Scarborough) who, in speaking of my Bill, said:

> I think that the hon. member who sponsored this bill did not go as far as the hon. member for Rosedale (Mr. Macdonald) went, because as reported at page 306 of *Hansard* for May 16 last there is a recommendation by the hon. member for Rosedale in these terms:
>
> My recommendation, therefore, is that the provisions of the Criminal Code requiring that an accused person be taken into custody for a broad spectrum of offences should be sharply curtailed and that many offences should be exempted from the necessity of custody and therefore of bail.

Do you agree with that principle?

Mr. Otto: I would agree, Mr. Chairman and Mr. Mather, that it may be a good idea for us to first get some facts on the likelihood of, we will say, a permanent disappearance. This may possibly be a first offence and the man may go along for twelve, fifteen or twenty years without ever getting into trouble at all, and it is possible that he might not be required to appear. On the other hand, it seems to me that these days with the very sophisticated methods of tracing and with the very computerized methods of transferring knowledge from city to city, we might try to get this information from people who are in this field and find out what injury would be caused if we did not have a bail system.

In other words, if the only result would be to delay the trial for two or three months, then the whole question of the bail system might be examined a little more carefully. I do not know these figures, I am only recalling some of the things that I have read, but it seems to me that bail or no bail the accused is apprehended within a very short time through some other method of tracing. When you use the phrase "restriction on travel", how would you restrict his travel?

Mr. Mather: I think it would be part of the terms of release that the accused should not leave a certain area which is within the jurisdiction of that court.

Mr. Otto: In other words, you have no other method of restricting his travels, it is just a warning?

Mr. Mather: That is one of the conditions that are proposed here. Or it would be a combination of similar conditions, as cited in the Bill. In connection with your question concerning facts and figures regarding the number of people and the cost, and so on, I am very confident that people whom I think will appear before the Committee later, including Professor Friedland, will have those figures. Professor Friedland has made a study of this matter. If your idea is that we

do not need a bail system, I do not want to dispute that. What I am trying to do this morning is open the door to a reform of the existing conditions.

Mr. Gilbert: First of all, Mr. Chairman, I agree with the principle set forth by Mr. Mather. Mr. Otto and Mr. Woolliams may be clouding this issue and I want to set it straight. At the moment the magistrates have jurisdiction at their discretion with regard to determining bail. The problem arises in the emphasis of this discretion. At the moment they consider the monetary factor as being of prime importance in determining whether a person should be released or not. Mr. Mather is reducing this question of the amount of money that an accused has with regard to bail.

This is very important in Toronto. Toronto lawyers assume that magistrates in other jurisdictions act the same way, but in Toronto when a person is charged the magistrate looks at Crown counsel and asks him, "What is your opinion?" and Crown counsel usually says $1,000 or $500 bail. He determines his release according to a monetary scale because he wants to assure his re-attendance in court. Under Mr. Mather's scheme that emphasis will be taken away. I say that the magistrate must have discretion. Surely my friends Mr. Otto and Mr. Woolliams would not disagree with that. These men must have discretion because of the varying factors with regard to the charge, with regard to the character of the accused, with regard to previous convictions and so forth. So the discretion must be with the magistrate.

• (11.40 a.m.)

Mr. Otto: It is now.

Mr. Gilbert: What I am saying is that the emphasis with regard to discretion has been on the money factor in the past. Mr. Mather's Bill is a good one because it is taking away from this emphasis. It is looking to the character of the person and to his previous convictions and so forth. It is quite true that magistrates in the past may have done that but they did not do it exercising judicial discretion. What they did do is that they looked to the Crown counsel for direction. I think that the magistrate must exercise his judicial discretion. This Bill gives him the opportunity so to do. This is why Mr. Mather's Bill is so important. It takes away from the financial stress and looks at the other factors in determining whether the person should be released on bail or not.

I am sorry that was a long remark. Now getting on to the question.

Mr. Chairman: Yes, getting on to the question.

Mr. Gilbert: That is right. I thought I had better set forth my agreement in principle with regard to Mr. Mather's Bill. Now the thing that concerns me, Mr. Mather, is that in your opening clause 2 you state:

> ...other than an offence punishable by death or imprisonment for life, shall, at his appearance.....be ordered.....

One of the problems that worries me is that you get offences other than murder that are subject to imprisonment for life; things like rape and manslaughter and even robbery or treason.

I do not know what your opinion on it is but at the moment there is a certain protection afforded the accused whereby on a rape charge he applies for bail to a Supreme Court judge after commitment for trial. I hope you would want to retain this provision with regard to certain offences.

Mr. Mather: In answer to that question, yes. I do not think the Bill takes anything away from the accused, whether he has committed a capital crime or not, that he now possesses. The Bill states that the court will do certain things for...

> other than an offence punishable by death or imprisonment for life

...the accused...

> shall, at his appearance in court, be ordered released pending...

and so on.

> unless the judge determines...

The Bill does not withdraw anything that the accused person now has no matter what his crime is. But it would not extend to the perpetrator or accused of capital crime the further moderation or the liberalization of the bail system.

Mr. Gilbert: There is one other point, Mr. Mather. At the moment—this is the practice in Toronto, although it may not be the practice elsewhere—you get certain offences such as impaired driving, which is an offence committed quite often these days. You have bail magistrates that make a circuit of the jails in Toronto. The bail magistrate releases the accused a short while after he has been charged and then he appears the following

morning before the magistrate. This practice should continue because it saves a great deal of time and a great deal of expense. I was just wondering if you were aware of that and whether you would wish this practice to continue?

Mr. Mather: I was aware of it, Mr. Chairman, and I do not think there is anything in what I propose that would change or curtail that.

Mr. Gilbert: You see, you have the word "magistrate". These are really justices of the peace that release the accused prior to his attendance before the magistrate in the morning.

Mr. Mather: This may be a good point. It certainly is not the intent of what I propose.

Mr. Gilbert: There is a difference between a justice of the peace and a magistrate. That is all at the moment, Mr. Chairman.

Mr. Otto: I have a supplementary question on what Mr. Gilbert has said. I know that Mr. Gilbert has had more experience than Mr. Stanbury and Mr. Macdonald before the bar, especially in criminal cases. But with these bail magistrates are you sure, Mr. Gilbert, that they exercise their discretion? Or do they take their direction from some prosecuting attorney who will tell them: "Well, take it easy on this fellow" or "Now, let that fellow sit there". Even though we have a procedure, how sure are you, or are you certain at all, that the bail magistrates themselves exercise any discretion whatsoever?

Mr. Gilbert: Well, they exercise their discretion, Mr. Chairman.

The Chairman: They are supposed to.

Mr. Gilbert: It is based on the information and the direction they receive from the Crown counsel. This is why I like Mr. Mather's Bill, Mr. Chairman; it takes away from the Crown counsel this direction, this almost complete direction to the magistrate.

The Chairman: You do not like the magistrate who says "bail" and the Crown says "$1,000"? Two words.

Mr. Gilbert: That is quite right, without looking into the factors that Mr. Mather suggests. Mr. Mather says that this shall be mandatory. He says "shall, subject to".

Mr. Woolliams: "Unless".

Mr. Gilbert: "Shall . . . unless" there are certain . . .

The Chairman: It is pretty close to mandatory.

Mr. MacEwan: I think your justices of the peace in Toronto are tougher than that. I used to be one myself. I must say I exercised discretion much more leniently, I think, than perhaps in Toronto because in a smaller area, Mr. Chairman, you know people better. But at three in the morning I have bailed people out. The Crown prosecutor was a deep sleeper and I did not go to him. Actually the police, if they are willing to grant it, will do it. But I can see the point in larger areas where you do not know people and where there are thousands of people and so on.

Mr. Woolliams: I have not really much. First of all, so far as the Bill is concerned, it should . . .

The Chairman: I think they should congratulate you on your speech on the estimates of the Minister of Justice and your particular reference to this subject matter.

Mr. Woolliams: Well, thank you. But I was going to say . . .

Mr. Mather: Did you say there was one law for the rich and one law for the poor or something?

Mr. Woolliams: I am quite confident that that is true. I like the fact that the Bill is here.

Mr. Mather: You like that?

Mr. Woolliams: Yes.

Mr. Mather: I am glad to hear that.

Mr. Woolliams: It gives us a chance to discuss it. But I would like to back Mr. Otto in this regard. It might be helpful to spell out what the discretion should be.

But first of all I think you have oversimplified the matter. There are summary convictions or summary offences where people are arrested and they have to apply for bail. Then there are indictable offences over which the magistrate has sole jurisdiction and an application is made for bail in those indictment offences. Then there are those indictment offences which may be categorized in which the magistrate has not absolute jurisdiction. Then you have the preliminary hearing and his committal for trial. There is bail prior to committal and bail

afterwards. It seems to be somewhat oversimplified.

This is one thing we overlooked. I think that is why Canada is superior to the United States. I am a little worried about codifying everything. Great Britain put very little emphasis on codifying the law. Their law is pretty simple in reference to the code itself. Then you go to the common law.

If you look at the authorities at pages 614 to 652 in Crankshaw's code—it is the same in the Tremeear's code—you will find that common law really does exactly what Mr. Mather says. The magistrate has this discretion. When the accused has a good lawyer like my good friend sitting over there he would go before the magistrate and say: "This boy is from a good family. He has never been in trouble before. He lives in the city. There are unusual circumstances in this case which will be brought out in evidence. His family are people with little means." And the magistrate, when that is presented, will exercise, and has in the past, and will continue to exercise, discretion. But it is still a discretion and I think the big problem is that this is a good start maybe. If you have not read about the investigation of crime by a commission in the United States that has just reported to the President, read the book entiled, The Challenge of Crime in a Free Society. I have just finished the book. It deals with the same problems we have in Canada. First of all, magistrates are overworked. Higher court judges are not overworked to the same degree because whereas they may have ten criminal cases, the poor magistrate may have 100, 200, or even 500, as a result of which he has very little time to go into the facts and to exercise proper judicial discretion.

• (11.50 a.m.)

So when we are dealing with this or any other subject under the Code, first fundamentals must deal with the reform of the Code itself. We should increase the number of magistrates or cut down their jurisdiction so they will have more time. Perhaps we could put a little heavier load on some of the other courts. Basically, they use their discretion but, unfortunately, in practice, in a big city like Toronto—to a lesser degree in the City of Calgary—where police do not know the people, discretion is exercised pretty brutally because they want them to appear at trial. They want to set bail high enough to ensure their appearance and, in some cases, they set it high enough to keep them in jail. It is not really an application for bail at all because bail is set so high that they know they can never get out. That is what really goes on in practice in the big cities.

Therefore, all you are doing is saying "I hope" in this Bill—it is not mandatory—that magistrates will listen to these things and use their discretion. But they have that right in common law. Look at the various cases starting the top of page 642; it says the same thing. It has been laid down that the sole purpose of bail is to ensure the accused's appearance for trial and that in fixing the amount a judge should reject all other considerations from his mind, since the accused is presumed innocent until he is proven guilty. And it goes on to say that he will exercise his discretion and take into consideration these very factors which you have just said. We have that law. You know, this may be one of the weaknesses—and I mean no disrespect—in Mr. Diefenbaker's Bill of Rights. The courts have criticized it and, in some respects, they may be right, although I think they carry it much too far. They say all we really did was to codify what the law really was; that after all we had it, it was there in common law, and most judges, if they were learned enough, would recognize those rights and spell them out. Sometimes it pays to spell them out. That is the problem here. I think the reform has to go deeper, that we have to get to the root of the problem, the overworked magistrate; and we have to make certain that these magistrates are separate and apart from the police so they do not discuss problems or hear crumbs of evidence before a hearing.

One of the great problems is that police magistrates always have their offices in the police barracks; the courthouse is in the police barracks; they have breakfast, tea, coffee, lunch and supper together. They cannot help but get brainwashed, and no disrespect is intended the magistrate. I do not think I would want to be one because they have a very hard and difficult life. If I might make a recommendation, I would like to have as witnesses here one magistrate from Western Canada and one from the East to say why, in their experience, they exercise this discretion. I think you would find that they would throw quite a bit of light on some of our problems.

An hon. Member: I would like to ask a supplementary question.

Mr. Mather: Mr. Chairman, before the supplementary question is put I would like to reply to the comment made by Mr. Woolliams.

I welcome the suggestion of trying to get magistrates here to hear their point of view because I think this is what this whole thing is about. We are opening up a field which needs to be looked at. But in the meantime let me say that much as I feel for the overworked magistrates, my feeling for them is not quite as sympathetic as it is for the many poor people presently incarcerated because they cannot raise bail under the prevailing system.

Mr. Woolliams: I agree with you; my sympathy goes out to them too. But if a magistrate takes the length of time that your Bill spells out, which we already have in the common law, there would be a hundred people rotting in jail while he is deciding three cases. Now that is the trouble. Let us be practical; the fellow has only so many hours in a day and so many nerves in his body, and it is quite a hectic job. He has to set bail in the morning for 70 to 80 people; he has four of five trials before four o'clock on some very important matters; if he takes the kind of time that the high court can afford to take then he is going to leave a hundred in jail on Monday, and by the time he gets to Friday they are not going to have enough housing. Let us take a practical approach.

This is the sort of thing that goes on, as witnessed by Mr. Otto and other practising lawyers who have had experience; the poor magistrate is overworked.

Mr. Mather: Perhaps we should reform the setup for magistrates but my statement here says that two-thirds of the people in the Toronto study were unable to raise bail and were incarcerated as a result, which is truly a shocking situation. It is no argument to say that the magistrates are overworked.

Mr. Woolliams: But here is where the problem is; magistrates may have set bail much lower and the accused persons could have raised bail if they had had time to consider the circumstances. They might have set bail at $100 instead of $1,000 had they known all these boys and girls were from great homes, of good character, and that this was a misadventure to start with.

Mr. Otto: Or put them on their own recognizance. I am sure Mr. Woolliams did not want to lead the witness or the Committee by saying that the only purpose of setting bail is to ensure attendance at trial. I am sure Mr. Woolliams will also recognize that another purpose the police have is to question the accused in the environment that they like—in jail—to get other information from him which has nothing at all to do with his case.

Mr. Woolliams: Of course that is acting legally but with illegal discretion.

Mr. Otto: Yes, but you must admit that this is the purpose. So there are now two quasi legal purposes; one, which is strictly legal, to ensure attendance at trial, and then the illegal purpose, which is certainly very practical so far as the police are concerned.

I have introduced evidence on a man's first offence showing that he is a worthwhile citizen and everything else, then there was a whispered conversation between the Crown and the judge and bail was set at such a figure that it could not be raised. Later on I found out that they wanted to question him about some of his friends and they thought it would be much better to question him in a prison environment rather than at home. So now we have those two things to contend with.

Mr. Mather: Mr. Chairman, I would like to comment on that. I am here not to make things easier for the prosecutor but to make things fair for those people who cannot raise bail, and what I am trying to do is precisely what was done last year in the United States. If the Committee wishes, I will leave a copy of the new United States legislation with the Committee for incorporation in its records (*Exhibit C-4-1*).

Mr. Woolliams: If I might just interject, we have to watch this, too. One of the great problems, and that is the information this commission came up with, is that 90 per cent of the cases are ordinary cases but the other 10 per cent are extraordinary, and it is this 10 per cent that the police have the most trouble with. Crime has been on the increase—and Nixon made a tremendous speech on this—not because people are any worse than they were back in 1928 but because the Supreme Court of the United States has made it too difficult for a policeman to get a statement out of an accused —these gangsters—and to administer the law, as a result of which the real crime gangsters are getting off scot-free and causing the rest of society a lot of trouble. I made

a speech about a law for the poor and a law for the rich, and I agree with you, but still we have to be very careful. Our problem is this 10 per cent that give the police the most trouble—the gangsters, the syndicated criminals that invest in legal enterprises and illegal enterprises both in Canada and the United States, and this commission deals with this problem. They have money because they have invested their money properly, and with that money they can afford the best lawyers. They are going to be well represented and they are going get more out of the law than the fellow who is poor because he will not be able to afford the same calibre of lawyer, or he may not have a lawyer at all.

Mr. Mather: He will not have the money to get out anyway. The point I am trying to make is that the wealthy criminal . . .

Mr. Woolliams: You have my sympathy in that regard, but I think you are oversimplifying it a little.

Mr. Mather: Well, we are just starting with this and no doubt we will hear many other witnesses much more knowledgeable than myself. I am not even a member of your fraternity but I have what I think is a good idea.

The Chairman: Are there any more questions?

Mr. Pugh: Mr. Chairman, I am sorry that I had to leave for a broadcast but I could not miss it.

• (12.00 noon)

I heard Mr. Otto commence his statement and I was struck right away by the validity of his question: What are you asking for that we do not have now? At that stage I believe our witness said that because of this the judge and magistrate would tend to emphasize the importance of getting a man out on bail. However, very little trouble in this regard is experienced in small towns because the magistrate or judge knows nearly everyone and the ones that he does not know too well, the police do.

I see no difficulty in a small town under the present Act, because the magistrate is going to bend over backwards to help anyone who is held for bail, whether he has any money or not; but in the larger cities, where people are not known, the only thing that can be produced before the magistrate or the judge is the actual knowledge of those on whom he has to depend, namely, policemen and the prosecutor, who has probably a little to say on bail. This would seem to me to be the great difficulty.

The only question I have for the witness now is: Have you got over that difficulty, which is the one actually raised by Mr. Otto?

Mr. Mather: Mr. Chairman, the question is raised again: What would this proposition do that is not already done by the existing legislation? I think this was answered very well by Mr. Stanbury when he spoke in support of sending this Bill to this Committee.

Mr. Pugh: Read that into the record.

Mr. Mather: I have read it in.

Mr. Woolliams: There is one question I would like to ask before you read it. With no disrespect to Mr. Stanbury, he may be in the same position—and I think he is a very intelligent man—as a professor who has never really seen the practical approaches used in the police court. Therein lies the difference between many of my friends and Mr. Stanbury. I mean no disrespect to him. Words are beautiful, but it is when one gets down to cold practice that one can differentiate between what will work and what will not.

Mr. Mather: Mr. Chairman, I am trying to answer approximately three questions.

Mr. Pugh: I have had the answer to my question. There must have been a diversity of opinion here when I was out of the room. My only suggestion, Mr. Chairman, is that we call as witnesses those who will represent both sides. The top police association people are absolutely necessary, and also someone such as a judge. I guess we could call Mr. Woolliams as a witness, but I am thinking of somebody who has had a good deal of experience.

The Chairman: We might get one of the magistrates in Ottawa, for example.

Mr. Pugh: Yes; that would be an excellent idea; and there were others mentioned, such as the John Howard Society. This would bring out the real difficulties of the man who should be getting bail but does not get it because he does not have enough money.

Mr. Mather: That, of course, is part of my submission. But these people should be called and I believe they will be called.

Mr. Woolliams made the comment about Mr. Stanbury that he might be a very good

man in a professional or theoretical way. I have just one question for Mr. Woolliams: Would he agree with Mr. Diefenbaker about Mr. Stanbury's comments on this Bill, when he said:

> The hon. member for York-Scarborough has made a perfect case for this bill and I feel sure he must have been speaking for the Liberal party in what he had to say. This matter should not be dropped but sent to the Justice Committee.

Mr. Woolliams: I always answer forthrightly. You must remember that Mr. Diefenbaker was one of the most outstanding defence counsels of our time. Just as a crown prosecutor acquires a certain built-in mechanism, so does a defence counsel. I remember once seeing Mr. Diefenbaker asleep between two murder trials. Somebody said, "That is going to be a pretty costly performance". What I am driving at is that he is a very highly skilled defence attorney and he may look at it just a little differently. Had he practised as a Crown prosecutor in Toronto, Montreal or Vancouver, where you get the different calibre of criminal—that 10 per cent I am talking about—they have to be handled in an entirely different way from the 90 per cent.

Mr. Mather: There is no doubt about that. Mr. Diefenbaker says that the possession of wealth by that very 10 per cent of the criminals you mention is a factor which brings about the injustice to poor people.

Mr. Woolliams: I agree with him 100 per cent.

Mr. Mather: You are not disputing what Mr. Diefenbaker says?

Mr. Woolliams: Oh, no; certainly not.

The Chairman: Have you any other questions of Mr. Mather?

Mr. Gilbert: For the information of members, I have read, as you know, that the basic premise is that bail guarantees the attendance of the accused at the trial. The figures show that three per cent do not turn up for the trial—which is very low—and in other jurisdictions, where a law similar to Mr. Mather's has been passed, there has been no increase in the rate; it has remained around the three per cent figure.

This, again, is why I appreciate Mr. Mather's bringing this forth. Magistrates feel that by setting bail at a high figure they are deterring the accused from not attending, and yet experience has shown that when the tests as set forth by Mr. Mather are applied in other jurisdictions the accused person appears; even though he is released he still comes back.

Mr. Pugh: Is that three per cent of the actual applicants, or is its three per cent of the total amount of bail put up?

Mr. Gilbert: I really do not know.

Mr. Pugh: I can well remember, in Vancouver, long before I was a lawyer being phoned in the middle of the night and asked, "Dave, for goodness' sake get 20 bucks down here right away. They have got me". You go down and you find four or five men. They have all phoned up. The $20 goes in. They have absolutely no intention of being in court. They have been picked up because they were perhaps a little rowdy in a cafe or had had too many drinks, or something like that. The bail was $20 to let them out. They never come back to answer the charge. This is what happens. You never see them again. The police would laugh at the man who came back into court.

Mr. Gilbert: I am sure that you are referring to offences under the Liquor Control Act, which have no bearing on the criminal law.

An hon. Member: It has happened.

Mr. Pugh: But would these be included in the bail figures?

Mr. MacEwan: I like Mr. Pugh's recommendation. I have heard counsel for both sides and I am not satisfied with either of them. If you do not mind, Mr. Chairman, I would like to hear specialists on this subject in order for me to make up my mind on Mr. Mather's Bill. I think it is an important bill and I am going to withhold my judgment until I hear further evidence.

The Chairman: Mr. Bull and Professor Friedland are specialists.

An hon. Member: Yes; that will be fine.

The Chairman: And if we get a magistrate we would then have all three facets of the problem.

If there are no more questions, and before I thank Mr. Mather, would someone move and someone second that reasonable living

and travelling expenses be paid to Mr. Henry H. Bull, Q.C., who has been called to appear before this Committee on November 9, 1967, in the matter of Bill C-4. Have I a mover?

Mr. Gilbert: I so move.

Mr. Forest: I second the motion.

The Chairman: Is it agreed?

Motion agreed to.

The Chairman: You do not want to discuss it, do you, Mr. Otto?

Mr. Otto: No.

The Chairman: I would like to introduce the new Clerk of the Committee, Mr. Hugh Stewart. Mr. Despatie, who was our Clerk for two or three meetings, is also the Clerk of the External Affairs Committee. I understand that the volume of work there has increased so heavily recently that he has been assigned almost exclusively to that Committee. We welcome Mr. Stewart as Clerk of this Committee.

• (12.10 p.m.)

In conclusion, Mr. Mather, I wish on behalf of the Committee, to thank you for your presentation, for your facility in answering questions and for your humaneness in bringing this problem to the attention of this Committee and of the people of Canada generally.

Mr. Mather: Thank you, Mr. Chairman.

The Chairman: The meeting stands adjourned until Thursday at 11 o'clock.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

THURSDAY, NOVEMBER 9, 1967

RESPECTING

The subject matter of Bill C-4,
An Act concerning reform of the bail system.

WITNESS:

Mr. Henry H. Bull, Q.C., Crown Attorney, Metropolitan Toronto and County of York, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27555—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Scott (*Danforth*),
Mr. Brown,	Mr. Latulippe,	Mr. Stafford,
Mr. Cantin,	Mr. MacEwan,	Mr. Tolmie,
Mr. Choquette,	Mr. Mandziuk,	Mr. Wahn,
Mr. Gilbert,	Mr. McQuaid,	Mr. Whelan,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Grafftey,	Mr. Otto,	
Mr. Guay,	Mr. Pugh,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 8, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Honey on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,
The Clerk of the House of Commons.

27155—1½

ORDER OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 8, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Honey on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,
The Clerk of the House of Commons.

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Scott (*Danforth*),
Mr. Brown,	Mr. Latulippe,	Mr. Stafford,
Mr. Cantin,	Mr. MacEwan,	Mr. Tolmie,
Mr. Choquette,	Mr. Mandziuk,	Mr. Wahn,
Mr. Gilbert,	Mr. McQuaid,	Mr. Whelan,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Grafftey,	Mr. Otto,	
Mr. Guay,	Mr. Pugh,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 9, 1967.

(7)

The Standing Committee on Justice and Legal Affairs met at 11:25 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest, Gilbert, Stafford, Tolmie, Wahn, Whelan and Woolliams—(8).

In attendance: Mr. Henry H. Bull, Q.C., Crown Attorney, Metropolitan Toronto and County of York, Ontario; Mr. W. Bruce Affleck, Crown Attorney, Ontario County, Ontario.

The Chairman welcomed the teacher and students of a Grade 12 Commercial class at the Sir Wilfrid Laurier High School, Ottawa, who attended the meeting as observers.

The Committee agreed to continue its consideration of the subject-matter of Bill C-4 during the week of November 13th. The Chairman announced that Magistrate Glenn E. Strike, Q.C., Chief Magistrate of Ottawa will be the witness on Tuesday, November 14, 1967. Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto will appear on Thursday, November 16, 1967. The possible appearance of Mr. Peter K. McWilliam, Crown Attorney, Halton County, Ontario, is being considered by the Subcommittee on Agenda and Procedure.

The Chairman introduced Mr. Henry H. Bull, Q.C., Crown Attorney for Metropolitan Toronto and the County of York, and Mr. W. Bruce Affleck, Crown Attorney for Ontario County.

Mr. Bull read a prepared statement, copies of which were distributed to the members, stating his views and those of the Ontario Crown Attorneys Association on the subject-matter of Bill C-4. At the conclusion of his statement, Mr. Bull was questioned by the members for the remainder of the meeting.

On motion of Mr. Stafford, seconded by Mr. Tolmie,

Resolved,—That the report attached to Mr. Bull's statement entitled *Ontario Crown Attorneys Association, Interim Report of the Committee on Bail* be appended to this day's Minutes of Proceedings and Evidence (*see Appendix C*).

The Chairman thanked Mr. Bull and Mr. Affleck. At 1:00 p.m., the Committee adjourned until Tuesday, November 14, 1967 at 11:00 a.m. when the witness will be Magistrate Strike of Ottawa.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 9, 1967

The Chairman: Gentlemen, we will commence our meeting.

• (11:25 a.m.)

I would like to welcome the teacher and the students from Sir Wilfrid Laurier High School who are here to hear our eminent witness discourse on the subject matter of bail, a very, very important subject.

For the benefit of the Committee, Magistrate Glenn E. Strike, Chief Magistrate of the City of Ottawa will be here next week to explain how bail is handled in the Ottawa Police Court. On Thursday we will have Professor Friedland, Associate Professor of the Faculty of Law, University of Toronto. It has also been indicated to me that Mr. Peter K. McWilliam, Crown Attorney from Halton County, is willing and available to come if we desire to call him. This will be considered by the Steering Committee.

We now have a quorum and I would like to take this opportunity of introducing to the Committee and to the teacher and students of Sir Wilfrid Laurier High School our distinguished witness, Mr. Henry H. Bull, Q.C., Crown Attorney for the County of York and Metropolitan Toronto since 1961. Mr. Bull is a native of the City of Windsor. To those of us who come from Toronto, Mr. Bull is of course extremely well known. I do not think I need go any further by way of introduction. He has with him Mr. W. Bruce Affleck, the Crown Attorney for Oshawa, Whitby and the County of Ontario. Mr. Affleck is the Chairman of the Ontario Crown Attorneys' Association. As you will recall, that Association prepared an interim report to the Committee on bail.

Without any further preliminaries, I will call upon Mr. Henry H. Bull, Q.C.

Mr. Henry H. Bull Q.C. (Crown Attorney, Toronto): Thank you very much, Mr. Chairman. May I express my appreciation to you, first of all, for that introduction, which was all too flattering, and my appreciation to you and to members of this Committee for the opportunity to present my views on a matter which I consider to be of vital importance.

It may be appropriate and I hope not immodest to introduce myself with a brief reference to my experience in matters of bail in order to qualify for the submissions which are to follow.

I was first appointed to the Crown Attorneys' office for Toronto and the County of York in 1939 and served as an Assistant Crown Attorney both before and after the war until 1961 when I succeeded the late W. O. Gibson as Crown Attorney in the office which I now hold. In these capacities I have necessarily had daily contact with matters of bail, its administration and its shortcomings and abuses. Shortly after my appointment as Crown Attorney in 1961 I was asked by Professor Martin Friedland to assist in the conduct of a research exercise by students of Osgoode Hall Law School into the field of bail by making available to them material for the compilation of statistics. It was this exercise and these statistics which were the basis for his subsequent book "Detention before Trial", which was published in 1965.

In May, 1964, at the invitation of the then U.S. Attorney General, Robert Kennedy, I attended the National Conference on Bail and Criminal Justice in Washington. Professor Friedland was the only other Canadian in attendance. There I had the opportunity of a comprehensive examination of the American bail system enabling me to compare it and its problems with our own.

Later in the same year I was appointed a member of a committee set up by the Ontario Crown Attorneys' Association under the Chairmanship of Mr. Affleck, who is sitting to my right, to study the bail system in Ontario towards the end of making recommendations for changes in legislation or practice, for its improvement and to provide a basis for standardization and uniformity of procedures. Its interim report is available for this Committee, and has been attached to this submission which you have before you. It is

not marked as appendix "A". I did not know how the Chairman wished to deal with it.

In 1965 I was directed by the Attorney General for Ontario to work with the committee of the Downsview Rotary Club in connection with the Toronto Bail Project proposed by them. In this connection I went to New York and examined the Manhattan Bail Project after which the Toronto Bail Project is patterned. I saw it in operation and had discussions with those in charge of it. At present I am on the Advisory Board of the Amicus Foundation which finances and administers the Toronto Project.

• (11:30 a.m.)

I have had numerous other contacts with bail through the medium of the Conference of Commissioners on the Uniformity of Legislation, of which I am a member, in panel discussions in the Canadian Bar Association and other like bodies and less formal exchanges with other persons concerned with the subject. Recently I was invited to present a brief to the Canadian Corrections Committee under the Chairmanship of Mr. Justice Ouimet, where I was pleased to have a most sympathetic reception.

I come before you today at the request of your Chairman and the proposers of Bill C-4 and speak not only as Crown Attorney for Metropolitan Toronto and County of York but as well for the Ontario Crown Attorneys' Association who have authorized me to do so.

It is an obvious and perhaps platitudinous principle, with which there is no disagreement, that it is desirable to release on bail as large a number of accused persons as possible.

It is equally obvious that the practice in the present bail system prevalent in some places fails to achieve the optimum result in the pursuit of that purpose, either in the numbers released or in the elimination of the undue prejudice or hardship caused to some accused. It follows that there is need for reform of the present system as demonstrated by the extensive and intensive studies in Canada, England and the United States and the new legislation which has been enacted in the latter two countries.

It falls to be determined whether there is present need for legislative action in Canada and if so the extent to which it should go and the form it should take, or whether the desired reforms can better be accomplished by other means.

Although Bill C-4 purports by its title to reform the bail system and by its explanatory notes to achieve the purpose of assuring that all persons regardless of their financial status shall not needlessly be detained, it is respectfully submitted that it fails to do either.

Objection to the Bill is taken on general as well as specific grounds. Among the general grounds the following may be noted:

1. *Such legislation is premature in Canada*

Several studies on the whole question of bail are in progress and are not yet concluded. The first, and most important among them, the Canadian Corrections Committee under the Chairmanship of Mr. Justice Ouimet, is still working, but is expected to make its report in the near future. I have personal knowledge that it will contain valuable recommendations with regard to bail. Secondly, the royal commission in Ontario inquiring into civil rights under the Chairmanship of former Chief Justice J. C. McRuer has bail as an item of its agenda. Its report is expected within a year. Thirdly, the Toronto Bail Project, to which reference was made earlier, is just now completing the first year of its two-year trial period. It is too early, and would be unfair to the Project, to try at this stage to analyse its statistics or evaluate its experience. Various other studies and procedural programs stimulated by the current interest in bail reform are going forward throughout Canada. The Bail Reform Act, 1966, in the United States, upon which Bill C-4 is predicated, and the Criminal Justice Act, 1967 in England, have not been in force long enough to produce sufficient results for critical analysis and comparison.

In the light of the foregoing it would be most unfortunate if any legislation were enacted without the benefit of all these studies which have engaged the minds and experience of very intelligent and knowledgeable people and whose efforts might well go for nought if the legislation was incompatible with their findings and recommendations.

2. *Bill C-4 is not designed to deal with the bail system in Canada*

This Bill is copied from the Bail Reform Act, 1966, in the United States with some minor variations in language and some major deletions of vital provisions. The American Act quite properly is designed to correct defects in the American system, one of the principal of which was, until the Manhattan

Bail Project made a breakthrough, that the concept of the release of an accused on his own recognizance was not universally accepted as a practice and the vast majority of accused were required to furnish security, that is, put up cash or collateral to obtain their release. The Bail Reform Act, 1966, in effect gives legislative sanction to the procedure of release on recognizance which the Manhattan Bail Project demonstrated could be followed in many cases with impunity.

In Canada since 1869 it has been the law, derived from England, that an accused, in the discretion of the Court, could be released on his own recognizance without sureties and without security. At the time Professor Friedland wrote his book, *Detention before Trial*, his statistics showed that between 40 and 50 per cent of all accused in Toronto were so released on their own recognizance; and I can say from my own investigation since that time that the number has increased substantially.

Even when an accused is required to find sureties there is, contrary to popular belief, no requirement in the law for security or collateral to be put up by the accused or by his sureties. It was not until the revision of the Criminal Code in 1954 that provision was made for a cash deposit, which provision was for the benefit of an accused who could not or did not wish to find sureties. The evils that exist in the Canadian bail system are abuses of administration and not a fault of the law.

To adopt in one jurisdiction the legislation of another which is designed to meet the indigenous problems of the latter is like using someone else's pills because the symptoms are similar—a dangerous thing to do because they may allay the symptoms without curing the cause, and may even aggravate it.

Any reformative legislation must be designed to meet the problems, factual, psychological and philosophical, which are peculiar to the jurisdiction for which it is intended.

3. *Bill C-4 is not integrated with the existing law*

The law regarding bail is contained in the Criminal Code where it belongs as part of the codified law of criminal procedure and has been considered, and by many is still considered, to be sufficiently comprehensive to achieve the purposes of this proposed legislation. Bill C-4 instead of being built into the Code lies outside like a legislative excrescence which is a retrograde step from the desirable principle of codification. That it is not correlated with the existing law but rather is divorced from it is emphasized by the opening words and I quote from clause 2: "Notwithstanding anything in the Criminal Code..." etc. This is not just a question of tidiness of legislative drafting but a serious defect leading to insurmountable anomalies which will be seen when we come to a more detailed examination of the specific provisions of the Bill.

Among the specific objections to the Bill might be noted the following:

1. Although the Bill purports to assure that all persons shall not needlessly be detained it immediately makes an arbitrary distinction between accused based on the nature of the crime thereby excluding from the benefits of the Bill persons accused of some 22 crimes ranging from capital murder to perjury and abortion. Under the Criminal Code such accused enjoy the same right to reasonable bail as any other accused, the common criteria for all being the assuring of appearance and the interests of the public.

• (11:40 a.m.)

2. Although in the Explanatory Note the Bill purports to take cognizance of the fact that detention may serve the ends of justice and the public interest as well as assuring the appearance of the accused, as required, only the latter criterion, that is, the appearance of the accused, is carried into the provisions of the Bill.

3. There is no discretion in the court to refuse bail even where the court is convinced that the accused would not appear or in cases where there is a clear and apparent danger to the state, to individuals or to the administration of justice if the accused were released.

4. No provision is made for setting bail before appearance in court. One of the strongest criticisms of present practice is that accused are detained unnecessarily pending their first appearance in court.

5. The words "at his appearance in court" do not specify which appearance or in what court.

6. No provision is made for any variation of bail after a committal for trial when the court is in a better position to consider some of the factors which are set out in clause 3(2).

7. No provision is made for variation or modification of the conditions if the accused is unable to meet them nor for any appeal from the imposition of the conditions.

8. It is not clear what is meant by supervision in clause 3(1)(a) and whether there is an obligation on the supervisor to assure attendance of the accused.

9. No sanctions are provided for failure to observe any of the conditions either by the accused or any other person.

10. There is no definition section to define "court", "judge", "offence", "unsecured appearance bond", "registry of the court", "appearance bond", "bail bond", "solvent sureties" some of which are terms of art in the United States but not in Canada.

11. The evils of professional bondsmen not only are not excluded but are invited by clause 3(1)(c) and (d).

12. In clause 3(2) the judge is limited to taking into consideration only the factors therein set out and no others.

13. The Bill deals with "any person charged with any offence" whereas in reality it is only applicable to persons in custody.

14. Clause 4 is defective in not specifying that the time spent in custody must be in relation to the offence charged and that it is to be credited to *any prison sentence imposed*. It could not be credited in the case of a suspended sentence or monetary penalty.

15. The bill in brief does not provide for the release of any person who could not be released on the same terms under the existing law. It in brief does no more than spell out conditions which may be imposed by the court. It is probable that the court has that power now although it is seldom if ever exercised. It spells out the matters to be taken into consideration by the court which are those now considered in dealing with bail. It provides that time spent in custody shall count against sentence. This is the general practice in the courts of which I have knowledge.

To summarize it is my respectful submission that this Bill should not be enacted on the grounds that it is untimely, and does not meet the problems of bail in Canada; that if it should be enacted it should be incorporated and integrated with the provisions of the Criminal Code; that the Bill does not materially alter the existing law and practice. As presently drafted it is not capable of certain interpretations and by substantial omissions creates more problems of administration than now exist.

May I conclude by saying that none of the foregoing criticisms are intended as any reflection upon the conscientious and good intentions of the proposers of this legislation. All sincere efforts at reform of the administration of justice are commendable. It is hoped that given the time and opportunity it can be demonstrated that the view taken by the Ontario Crown Attorneys' Association is the correct one. I quote from their interim report, the appendix to this submission:

> that the provisions of the Criminal Code regarding the setting of bail before trial need no revision. Many of the difficulties real or apparent have been due to a misunderstanding of them. An intelligent appreciation of the law and a strict adherence to the letter of it will substantially eliminate many of them. The rest then becomes a matter of the application of principles underlying the granting of bail and an efficient and realistic maintenance of balance between the due administration of justice on the one hand and the desirability of having the accused at large on the other. This we consider to be a matter of education.

All of which is respectfully submitted.

The Chairman: Thank you very much, Mr. Bull. Mr. Affleck, do you wish to add anything to what Mr. Bull has said?

Mr. Bruce Affleck (Chairman, Ontario Crown Attorneys' Association): No, I have no comment to make.

The Chairman: Mr. Bull, I note that the Interim Report of the Committee on Bail is attached to your statement. I would like to have the Committee's opinion whether this should be made an appendix to today's proceedings or filed as an exhibit. It would seem that the importance of it is such that it should be made an appendix and then it will be printed.

Mr. Stafford: I so move.

Mr. Tolmie: I second the motion.

Motion agreed to.

The Chairman: Mr. Bull, you will now be exposed to questions by members of the Committee. Mr. Stafford, Mr. Tolmie and Mr. Gilbert have indicated their desire to ask questions.

Mr. Stafford: Mr. Bull, this is my first day on this Committee and I have not been in my

criminal practice for two years, but I see that on page 5 you have noted in your summation that the law itself is as lenient as Bill No. C-4. Is that right?

Mr. Bull: That is my assessment at the present moment.

Mr. Stafford: Could you give the Committee any idea of the total number of charges laid in metropolitan Toronto in a year.

Mr. Bull: The last figure that I looked at was for the year 1966 and in that year the new charges appearing in the Magistrates Criminal Courts and other miscellaneous courts totalled 58,057, which excludes common drunks, vagrants and minor traffic offences.

Mr. Stafford: And if one added the common drunks, vagrants and minor traffic offences to that the figure would be much greater?

Mr. Bull: About 600,000.

Mr. Stafford: About 600,000 charges?

Mr. Bull: That is taking in everything down to parking tags.

Mr. Stafford: Yes.

Mr. Bull: Everything of any criminal procedure whatsoever.

Mr. Stafford: And that is in Metropolitan Toronto?

Mr. Bull: That is right.

Mr. Stafford: Would you have any idea of the total number of charges laid including the drunks, the vagrants and traffic charges in the whole of Ontario in one year?

Mr. Bull: No, I do not have those figures.

Mr. Stafford: But the figure would be much greater than the 600,000 which is mentioned.

Mr. Bull: Yes. There have been rough estimates made that Toronto has something like 65 to 70 per cent of all criminal business in the province.

Mr. Stafford: How many people do not appear on court day in the run of one year? If you have it for the year 1966, it would help.

Mr. Bull: In the year 1966 for Metropolitan Toronto there was a total of 4,212 persons who failed to show up for trial.

Mr. Stafford: I take it then that that would probably be out of the 600,000 and not the 58,057?

Mr. Bull: That would be out of the 58,057 because in an astronomical figure like 600,000 there are always parking tags and all the summons offences that you get from minor traffic where there is no arrest. The only time there is an arrest is for a very limited number of traffic offences under the Provincial statute and a certain number of offences under the Provincial Liquor Control Act, and other than that there are no arrests under the Provincial Statutes. I should qualify the 58,000. It is the total number of new charges, it is not the total number of people arrested. Those who failed to appear were people who had been granted bail after being arrested. The 58,000 embraces those people who appeared on summons, as well as being arrested, with or without a warrant, so you do not relate the 4,212 to the 58,057. I do not have a breakdown of the 58,000 between arrests and summons.

• (11:50 a.m.)

Mr. Stafford: Do you have any reason to believe that the percentage would be much different if everyone were let out on their own recognizance?

Mr. Bull: Oh yes, there is no question about it.

Mr. Stafford: What percentage of the 58,000 would be allowed out on their own recognizance?

Mr. Bull: Of those who are allowed out on bail, half of them are allowed out on their own recognizance. At the time the Friedland book was published 43 per cent of all persons who had been arrested were permitted to leave on their own recognizance. Since then that percentage has increased. I do not know what it is now but I would guess that it is certainly between 50 and 60 per cent. Because of the impact of his book and the impact of these other studies, the present tendency of the courts is to allow people to go on their own bail. Therefore the figures for those arrested and who go on their own bail must exceed 50 per cent.

Mr. Stafford: Would the percentage of those who do not appear and are allowed out on their own recognizance be any greater in relation to the whole than those who are allowed bail? In other words, would the percentage of people who do not appear be

greater among those who post bail or among those who are out on their own recognizance?

Mr. Bull: I find it hard to answer that question categorically because I do not have the statistics.

Mr. Stafford: I am interested in knowing whether you think it is the person's own conscience or the money that is posted that ensures they come back to court when they are let out on their own recognizance or on bail?

Mr. Bull: First of all, let me qualify that. Money is not necessarily posted.

Mr. Stafford: Or property bail.

Mr. Bull: Property is not even posted.

Mr. Stafford: Or a surety by two other people.

Mr. Bull: May I explain something for the benefit of the Committee. Some of you may have fallen into what I consider to be the error that Professor Friedland fell into, as many other people have, that there is some requirement for furnishing by way of collateral either cash or property security, whatever it may be.

There are three ways of setting bail and in each of them the accused must enter into his own recognizance. I am reversing the order in which they are set out in the Criminal Code but perhaps you could put it that this is in order of preference, and it is taken out of the order of section 451, but in every case he provides his own recognizance. In one case he provides nothing else, and that is merely a promise to appear in court and if he does not appear he will be liable to an estreat of his bail, which is never done because it is a nugatory action. He is arrested, brought into court and charged with skipping bail.

The second way of setting bail, in order of importance, is that he is required to furnish one or more sureties. In that case the surety must satisfy the court and the crown attorney that it is sufficient, and in order to do so he may say, "I own a piece of property, I own Black Acre. I will acknowledge that I am indebted to Her Majesty in the sum of $5,000, and in the event this person does not appear it will have to be paid and I will pay it." In order to show that he is worth $5,000 he may say, "I own Black Acre, in which I have an equity of $5,000 or more", or he may say, "I do not own any property. My name is E. P. Taylor. I live in an apartment house and I live in Nassau. I am a responsible citizen and I am good for $5,000. If you do not believe me, there is $5,000 right there and you can hold it." It is an assurance of vouching for his sufficiency when he says, "I own property" or, "Hold my cash and my negotiable bonds or securities until this event occurs". However, there is no requirement that he do so, it is only to prove his sufficiency.

The third situation, which is rarely used and has only been the law since 1954, is that the court may order or allow the accused to make a deposit. This is not satisfying a surety. The accused may say, "I do not know anybody in Toronto. I come from Chicago and I do not know anybody in Toronto who would go surety for me", or he may say, "I would rather not bother my neighbours or my relatives but I have $5,000 and I will deposit that." The court then says, "All right, make a deposit", and that is a deposit of cash bail. It seldom occurs that the court actually orders a cash deposit.

I have given this information as a preface to answering your question. Mind you, there are people who go out and buy bail, rent bail, pay six for five and pay 1,000 per cent interest on the money in order to get some shyster to put up bail for them. These are people who have been unable or unwilling to find someone who will vouch for them. That is all they do, vouch for them, and undertake to pay if they fail in their conditions.

Mr. Stafford: Continuing on from that, is it not difficult for an accused to be released on his own recognizance if he lives in another county or jurisdiction within the province of Ontario?

Mr. Bull: Certainly, because I think if anyone on this Committee had to decide whether or not that person was likely to appear, the further that person first of all moves from the jurisdiction of the metropolitan police into another county, or into a remote part of the province, or into another province or into another country, the likelihood of his appearance as you proceed in those various steps begins to diminish and there must be a point at which the court says, "Yes, we will let the man from Ontario county, which is contiguous to York county, go on his own bail". But if he is from Kootenay, B.C., that is a horse of a different wheel base.

Mr. Stafford: But is it not correct to say that modern intercommunications have short-

ened distances and this is especially true from county to county in the province. For instance, OMSIP, social security cards, drivers' licenses, memberships in clubs and other means of identification have made it very easy to find people today when compared to what it used to be like. Is that not correct?

Mr. Bull: On a comparative basis I would not say it is very easy, I would say that it is...

Mr. Stafford: No, much easier.

Mr. Bull: I will not even say much easier. I will say that it is easier, and I think this is a question that perhaps could be better answered by a police officer than by myself. Even within the confines of a city of 2 million people if somebody decides not to come to court and on Thursday morning at ten o'clock his name is called and he does not answer, a bench warrant is issued for his arrest but where do you go to find him? He is not going to be at home or at work because he did not want to come to court. He is hiding. You have the situation where, in a city of 2 million people, 3,000 policemen who should be doing other things are searching for him. It is quite true that means of communication are easier but you must remember that if he is on his own bail, and it is not done through sureties with whom you might be able to work, all you have is the address he gave you at the time he entered into the recognizance, and if he departs that address where is he? To add to that, the vast majority of people are arrested without a warrant either in the commission of the offence or immediately after the commission of the offence and if the police are on the spot in the ordinary course of their duty of patrolling the streets or checking the doors of a factory and they find a man hiding behind a packing case, it is easy and inexpensive to arrest that man and bring him before the court. If he is permitted to go on his own bail, the cost of finding him and returning him from wherever he may be is far, far in excess of what the cost of the original arrest was.

• (12:00 noon)

Mr. Stafford: Was it not Professor Friedland who said that there is a positive ratio between those admitted to bail and those acquitted, and that being in jail inhibits the accused from locating his witnesses and investigating the particulars of the charge in preparing his defence?

Mr. Bull: He said that; I do not agree with it.

Mr. Stafford: For a person who cannot afford, even under legal aid, all the investigation necessary, surely being in jail would inhibit an investigation, would it not?

Mr. Bull: I agree with it in part. I agree with the statement that a man who is in jail is not able to go out as freely as a person who is out of jail. That is self-evident.

Mr. Stafford: But a person who is accused, though.

Mr. Bull: Well. he is the only person there.

Mr. Stafford: But the person accused is the only one who can really go out and investigate the case.

Mr. Bull: I suppose the most important case of a man having to find witnesses for himself would be a murder case and almost invariably bail is refused in murder cases.

From the majority of cases with which I have had experience over the years, I do not know just what witnesses he would be seeking that he could not find through the medium of his own counsel, because if there are people that he knows could give valuable and credible evidence to the court—not somebody that he is going to dig up to give a phoney alibi but who could give valuable and credible evidence to the court—he already knows about it and it is a matter of communicating that knowledge to his counsel and those agencies which could seek that witness out, even to the extent of enlisting the assistance of the local police, which we have done in many cases in Toronto. When they say to the court: "I need a witness; he is a material witness; I am in jail and cannot get him, I need help", it is granted.

Mr. Stafford: It certainly makes it much easier for defending counsel, though, to have the accused out digging up his own witnesses, or does it not?

Mr. Bull: The object of the exercise, Mr. Stafford, as I understand it, is to see that the accused gets to court; that the interests of the state are not infringed by allowing him at large; and it is not designed as a convenience for defence counsel. Nowhere in the principles of bail have I understood that bail was being granted in order to assist defence counsel in their work.

Mr. Stafford: Oh, I realize that. I just said that as an offshoot bit.

Do you feel that the Code, where it sets out somewhere that it is obstructing justice to indemnify a bondsman, is a rather ridiculous part of our law?

Mr. Bull: No.

Mr. Stafford: Why?

Mr. Bull: Because to indemnify the bondsman makes the whole bail nugatory. I have examined hundreds and hundreds of bondsmen, and one just last week where the bail was set at $15,000 and the man came in and said: "I am prepared to go bail." I said: "What do you do?" He told me he had a business—a small confectionery store. We inquired into that and I said: "Do you know that happens if he does not show?" He said: "I am not worried about that." I said: "How much of this bail are you putting up?" He said: "$10,000." I said: "Why are you not worried?" He said: "Well, he (the accused) has already given me $5,000 and he has promised me he will give me the other $5,000 the day he gets out." So that the bondsman would have received his indemnification, $10,000, on the day the accused got out of jail and there would be no bail at all.

That is what indemnification means. This is different from consideration. Section 119 talks about indemnifying, that is saving the bondsman harmless in whole or in part. In other words, the bondsman is not going to suffer by being a bondsman. This does not mean an appropriate charge for the rental of the money or for the services provided in being a bondsman. If a person is going to put up cash bail, he does not necessarily have $5,000 in his pocket. He borrows it from a friend or he may borrow it from the bank at 7½ per cent. Now, the 7½ per cent that he pays to the bank is interest for the money; it is consideration for the use of it. It is not indemnification.

Mr. Stafford: But why not permit the accused to get, say, insurance from a licensed bondsman who could insure the Crown's cost of apprehension?

Mr. Bull: Because in such a situation, just as in the case of casualty insurance or life insurance, a fidelity bond is covered by actuarial protection just as much as in any other field; and again, the bail does not mean much. Insurance companies are protected from loss by their actuaries. Another thing is that they do not have any personal interest in the accused being there. And a third thing, as is the case in the United States, is that even with government control, it then becomes the insurance company or the fidelity company that decides whether an accused should be at large instead of the courts. They have the overriding say as to whether they are going to give the insurance, just as car insurance. A man may have an accident and then he finds himself uninsurable; then he has to proceed on an assigned risk basis. So that is the evil of the professional bondsman, the principal evil, which has been found in the United States and which was discussed in great detail at the national conference in 1964, where they had professional bondsmen there to speak for themselves.

Mr. Stafford: But you are looking at a difierent aspect of it from what I was thinking about because even talking about the automobile insurance which you mentioned, insurance never makes a driver any better or any worse, does it? Is not the accused just as liable to turn up?

Mr. Bull: No, that is the point. I think you have made your own point there—that insurance with a stranger company does not make the accused liable to turn up any more than if he were allowed to go on his own bail. It has no meaning to him, whereas if Aunt Susie is going to lose her home or a friend is going to lose his business or is going to be hurt by this, there is some psychological effect, if nothing else, on the accused. Now, mind you, if a person is going to skip bail he is going to skip anyway, but there are some people who will be deterred from skipping because they do not want their mother to lose the family homestead.

Mr. Stafford: Here are a couple cases which took place when I was in court in St. Thomas this summer. There were four fellows from Quebec working in tobacco in Elgin County. While I was on another case over there, I noticed that they appeared and that the charge was I think, unlawful possession by one of them of a small transistor radio. I think they had been in jail. One of the boys was a little angry in court because he said he had already been in jail I think, for a week or so. No interpreter could be found so the case was adjourned for another week. And here we have, for a comparatively minor offence, four young people detained, kept in jail, say, from Montreal. Do you feel that our bail

system or administration is fair when things like that can happen?

Mr. Bull: I think the system is fair. I do not know that the application of the system in a particular instance is necessarily fair.

Mr. Stafford: But you do agree, do you not, that in smaller areas, for instance where a magistrate may only have court once a week or once every two weeks, applications like this are even more frequent. People are kept in jail and on many occasions they are found not guilty.

Mr. Bull: I agree. I agree that it presents problems of administration in those sparsely settled parts of the country where courts do not sit frequently. Where a court is sitting every day or in Toronto where we have bail services available, as far as we are able to provide them, 24 hours a day, certainly there is a great likelihood of some undue prejudice or hardship upon an accused. This is a matter of administration, not a matter of law.

Mr. Stafford: But you have mentioned the Criminal Code. Also under the Summary Convictions Act of Ontario—I am not too familiar with it now,—but around section 24 does it not say something to the effect that an officer in charge may admit a person to bail himself?

Mr. Bull: That is correct, for provincial...

Mr. Stafford: For provincial offences. But there are numerous occasions when it is not done, is it?

Mr. Bull: Well, I cannot answer that.

Mr. Stafford: In your experience, do you not find that under dozens of offences under the Highway Traffic Act of Ontario, such as making false statements, failing to notify of change of address, careless driving, or racing on a highway, many people are arrested that the officers could ordinarily let out?

Mr. Bull: And do.

Mr. Stafford: There seems to be no way of discriminating; or maybe it is discrimination by the officer. But some are arrested and others are not for exactly the same offence under very similar conditions.

• (12:10 p.m.)

Mr. Bull: I do not accept the word "discrimination".

Mr. Stafford: No. I meant...

Mr. Bull: There is distinction and he exercises a discretion in the particular circumstances. In all of these things there is a discretion whether to charge at all. An officer may not even lay a charge. He may forget the offence. If he does, he may proceed by way of summons, he may arrest, he may apply for a warrant and the man may be released on bail by the police officer in the station, or he may be released by the justice of the peace who is frequently available at the station. All of these things are discretionary matters.

Mr. Stafford: Do you not feel that something could be done about the administration to clear up points like this much more effectively?

Mr. Bull: I could not agree with you more and that is the whole point of my brief, that it can be done by an improvement of administration. I think each of us in the Ontario Crown Attorneys Association is aware in a very lively way of the need for this, and efforts towards that end are being made in each jurisdiction. We are autonomous in our own county at the moment, and we have the endorsement and the guidance of the Attorney General's Department in our own province where we are doing the utmost to improve the administration by instruction to justices of the peace, the police, and our own staff memoranda as to principles and giving guidance in exercising the discretions which lie within us. We hope all these things will achieve the optimum result. We are not going to achieve it in every case and we will not achieve perfection but that is what we are working toward. It is administration. We believe that when we have tidied up the administrative area in our own house and when people understand what the law now says about bail there will be no need for a major amendment. There may be some collateral matters that need some tidying up to give effect to the administrative improvements.

Mr. Stafford: May I just mention a murder trial that I once had, the Witherow case. There were three trials, two hung juries, and finally he was found not guilty and released in Toronto after having spent almost a year in jail. Do you not think, even in a case like that of non-capital murder, that something could be done?

Mr. Bull: I think that it is preferable that that man was ultimately found not guilty and entirely freed from further prosecution,

arrest or stigma of the charge of murder than that he be a fugitive accused murderer for the rest of his life.

Mr. Stafford: I know we should not discuss cases coming up before the courts but even the Horsburgh case—I understand he spent 104 days in jail—if he is found not guilty, will be another indication that for some reason or other the administration of justice is not perfect.

Mr. Bull: It certainly is not perfect but it is impossible for the jury to give a verdict at the time you are setting bail, or to anticipate that he is going to be acquitted.

The Chairman: Mr. Tolmie, Mr. Gilbert and Mr. Forest are next.

Mr. Tolmie: Mr. Bull, I just have a couple of short questions. You seem to stress the fact that abuse of administration is the main concern and I agree. I found that it is most difficult to get bail on the week-ends and holidays. Have you any suggestion how this could be made more efficient as far as justices of the peace are concerned?

Mr. Bull: I do not know that I have a panacea for it but I think that an extension of the powers of the police to grant bail in certain lesser offences, what they call 'jail-house bail', is a partial answer to it. I think, where it is feasible to do so, the availability of justices of the peace can be extended. Mind you, I do not agree with the thought that many people seem to have, that JP's are the handmaidens of the accused to be Johnny-on-the-spot immediately that an accused is arrested, but I think, for instance, in a large jurisdiction such as Toronto, we are moving in the usual ponderous fashion that public affairs usually do, towards centralization of courts, central lock-ups, a 24 hour service for bail, remands, examinations, legal aid and all the other aspects of the administration of justice—sitting around the clock, in other words. We are trying to do that now. We have two justices of the peace who are peripatetic throughout the night. There are over 30 lock-ups in Toronto and they cannot be at 30 lock-ups all at the same time or come back again 10 minutes after they have left. The JP is there to deal with the prisoners that are there at that time and then they move to another lock-up. There is a limit to what you can provide. As I say, I do not subscribe to the saying that there should be a JP sitting on his hands all night long in every lock-up in the event that some prisoner might be brought into that lock-up who is entitled to apply for bail and receive it. There is no doubt that there are people held longer than they should be. Although we are trying to find ways and means to keep that to a minimum, we cannot eliminate it.

Mr. Tolmie: You did mention perhaps a greater participation by the police themselves.

Mr. Bull: I think there is room for this, There is another area which was dealt with by uniformity commissioners at their last meeting in Newfoundland and a recommendation went forward to the Department of Justice. From the way it was received by the representatives of the Department I take it that it will form part of the Criminal Code amendment bill. It was to clarify that where the police had arrested a person, let us say for impaired driving and taken him to the lock-up; they could release him when he is in a fit state to be released—he may be so drunk that he should not be allowed to go out the front door—after having completed the necessary investigation and after having told him that they would proceed by summons. Now, that is one area where we have had difficulty and one in which the greatest complaint is. We do not get complaints from the professional criminal who is kept until 10 o'clock the next morning to go before the magistrate. We get it from the otherwise responsible, respectable citizen who has had one over the eight and is picked up for impaired driving. He screams: "I want to get out". The machinery is not there to let him out. The police have held him because on the one hand they felt that to release him would be a reflection on their evidence that he was too drunk to drive—too impaired, and on the other hand they felt that the provision of the Criminal Code, which says that the accused shall be brought before a justice of the peace within 24 hours, was mandatory and that they must bring him before a JP. To clarify that we have recommended an amendment which will not make it mandatory that he be brought before the JP but that he must not be held longer than 24 hours, which is the original intent. That is one area.

Another area for amendment, and this lies outside the Criminal Code, is the Identification of Criminals Act which provides for photographing and fingerprinting of all persons charged with an indictable offence who are in legal custody. You cannot photograph

and fingerprint a person who is brought in by summons. Now if the Identification of Criminals Act, which provides for the same very necessary procedures by the police in their law enforcement duties, were extended, in appropriate cases, to summons cases, they would not have to arrest so many people. They arrest people today just so they can take them into the fingerprinting bureau and have their prints taken when, for any other reason, they would proceed by summons; and once having arrested them the police are then under the impression, despite any advice that has been given to them, that if they were to release the accused they might be sued for a false arrest if they did not pursue their original arrest to the point where a judicial officer released the accused. So if you put those two things together you would materially reduce the number of people who are either arrested in the first place or who are detained to appear before the courts.

Mr. Tolmie: You mentioned the evils of professional bondsmen. Who are these people and what are the actual evils involved?

Mr. Bull: You ask who they are.

Mr. Tolmie: What type of individuals?

Mr. Bull: Some of them are solicitors, members of the Bar. We in the Ontario Law Society, of which I am a bencher, found it necessary to issue an opinion in the Professional Conduct Committee inveighing against that, which was published in the notes. They range from there to criminals, the six for five boys who charge $6 for $5. Whether it be for one day, one week, or two weeks one could calculate just what the rate of interest would be on that racket. The exorbitant battening on the unfortunate few by these people is the principal reason. The professional bondsman, who is also under the table, we are not going to find out about very easily. He is being indemnified. He is in breach of section 119, and getting his money back. He gets the collateral and he says: "I will put up your bail, but I want your right eye."

An hon. Member: A mortgage on a house.

Mr. Bull: That is right. He gets collateral security and he is completely indemnified. Superficially, he puts it up. Mind you, he may be putting it up by handing the cash to the accused and saying: "Here, go and make a deposit." This is usually where they are acting, not so much in property bail. Property bail is usually obtained from a friend, neighbour, or relative who will say: "I will go surety for you, and I can justify myself because I own this property." But he does not actually put it up. He does not mortgage his property when he says that although all people in common terminology talk about it as being property bail. The professional bondsman seldom comes forward and says,"I own Black Acre," because he is going to have to come before a Justice of the Peace or a Crown Attorney and say: "Look, I am going bail." I would say: "Wait a minute, buster, you are already bail for 10 other people." You know the "Lefty Thomases" and the people who are in the rackets—and this is a racket. This is part of organized crime.

We stumbled over this in the case of Klegerman who was handling some $4 million worth of "hot" stolen jewellery from all over the world. He was using some of that money for the six-for-five racket. He was putting this up in bail rackets. This is part of organized crime in the United States, Switzerland, France and Belgium.

Mr. Tolmie: You mentioned the Toronto Bail Project. What exactly is that?

Mr. Bull: The Toronto Bail Project is copied from the Manhattan Bail Project. Again, unfortunately, the enthusiasm of the Downsview Rotary Club carried them into a field of some error.

To go back, the Manhattan Bail Project was to provide a procedure for release on the accused's own recognizance, which was not acceptable in New York at all; it was never done. The accused actually had to put up cash or have a bondsman put it up, for which he paid. He actually had to put his hand in his pocket and produce money in order to get out on bail. The Vera Foundation showed that the law did permit ROR—release on his own recognizance—and they undertook to provide a service of interrogation of the accused, before he went to court, on his stake in the community—his residence, his connections, his work, his past record; all the things which would make him likely to show in court—and they scored it with a certain points score which they developed by trial and error: three points for having worked for 10 years, 2 points for having worked for 5 years, one point for having worked for one year and zero for anything less than that. They add this up. It is almost an informal data processing. They verify this. They go from the cells, where they have

made this inquiry, to the telephone and call the landlord, the neighbour and the employer and check these things out. If they do not check out, he is "out" so far as they are concerned. If they do check out then they report this to the court. If he gets a score of 16 verified he is fit to supply his own bail and it is ROR; but it is still within the discretion of the court whether that is done.

As I say, that was done because there had not been any ROR before. The Toronto Bail Project, the product of the Downsview Rotary Club, lifted the Manhattan Bail Project holus-bolus, gave it the name "Toronto Bail Project" and put it to the Attorney General of Ontario. He said: "We will give it a try. We are not satisfied that this is necessary; we do not know how valuable it will be in this jurisdiction, but we will try it." We are having our annual review of it next Tuesday in Toronto. It has not been nearly on the scale of New York. This is not just because of numbers, but because it was found to be not as necessary.

It has value in that it verifies the same information which we already obtain through other means when the police make the arrest. They make an inquiry into the man's background, where he lives and, what he does; they must necessarily do that. That is supplemented by the inquiries that a magistrate or a crown attorney may make. He asks: "Where do you live? Do you support a wife?" The fellow says: "Oh, yes, I am married". The Crown Attorney happens to know that there are warrants out for him for non-support. He says: "You are not working at it." These bits of information are now to some measure verified by the Toronto Bail Project and to that extent it is valuable.

Mr. Tolmie: Thank you very much.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Mr. Chairman, my first question of Mr. Bull is really supplementary to Mr. Stafford's.

You told us that roughly 4,200 failed to answer. What is the percentage who skip bail?

Mr. Bull: Because I do not have the figures on how many are actually released on bail, as opposed to those who are detained in custody, I cannot answer on what the proportion would be. It would not be more than the between 1 or 2 per cent that Friedland talks about in his book. I have read his statistics—the ones we worked on together, in a way—and I find that they are a little dangerous to follow in that they were drawn from cold documents some years after the period for examination took place and none of the accused involved was questioned. They were taken from the blue information forms that are found in the court record, where you see a small notation "No bail". That is somewhat meaningless to a person who has not worked in a court as, unfortunately, Professor Friedland has not.

Mr. Gilbert: Would this percentage increase if we were to incorporate the provisions of Bill No. C-4?

Mr. Bull: Let me say, first of all, that Bill No. C-4 does not grant bail to anyone who is not entitled to get it today. It is whether or not the court grants it. Bill No. C-4 does not extend; as a matter of fact it limits. It restricts the provisions for a person putting up his own bail: it does not extend them.

With that in mind, I would say that in Metro Toronto...

Mr. Gilbert: Let us assume that it does extend it, Mr. Bull.

Mr. Bull: I cannot assume that because the provisions just do not do so. They do not provide any provision for a person putting up his own bail which is not in the Criminal Code right now. As a matter of fact, it restricts. It does not extend the plain words...

Mr. Gilbert: If you are referring to the words, "notwithstanding anything in this act..."

Mr. Bull: I am talking about what is said in the Criminal Code section 451, where it is stated:

> (iii) upon the accused entering into his own recognizance in Form 28 before him or any other justice in such amount as he or that justice directs without any deposit;

That is just as wide a provision for the person's own bail as it is possible to make. And in summary conviction matters the accused may be permitted to be at large without a recognizance.

• (12.30 p.m.)

Mr. Gilbert: Am I right in assuming that section 451 with regard to the granting of

bail is under part 15 and it is really incidental to a preliminary inquiry?

Mr. Bull: And it is applicable to parts 16 and 17.

Mr. Gilbert: That is right but it is not a consequence, you know, of arrest. It is incidental.

Mr. Bull: It is incidental, too, but as far as practice is concerned it is a consequence of arrest. That is the point that is made by Mr. McWilliams in his article in the Criminal Law Quarterly. I agree with him that it would be more appropriate to relate it to arrest rather than to a preliminary inquiry but from a practical point of view it certainly is a consequence of his arrest.

Mr. Gilbert: Well, is it discretionary or is it mandatory under section 451?

Mr. Bull: Discretionary.

Mr. Gilbert: Discretionary.

Mr. Bull: Is it mandatory under Bill C-4?

Mr. Gilbert: No, it is not; you are quite right. They tell me that in the United States law in many jurisdictions it is mandatory.

Mr. Bull: Under United States law bail is a constitutional right which is mandatory. There is no discretion in the court at all to refuse it. There is quite a different situation in the United States. That is not the law of Canada. The law of Canada as to bail contained in the Bill of Rights does not say that at all. There is no absolute right to bail in Canada.

Mr. Gilbert: We have taken away an application under habeas corpus with regard to bail.

Mr. Bull: That is right, and substituted provisions for discretionary use and appeals.

Mr. Gilbert: What appeal, if any, has an accused when he is denied bail?

Mr. Bull: He may appeal to a Supreme Court judge.

Mr. Gilbert: How often would you say that is used, Mr. Bull?

Mr. Bull: Quite frequently.

Mr. Gilbert: Quite frequently?

Mr. Bull: Yes, if he thinks he has any grounds for his appeal. Most of those who are refused bail realize that they would not get it in any event because it is quite proper that they have been refused the bail.

Mr. Gilbert: I think it is fair to say that the test with regard to determining bail is the assurance of the accused at trial subject, they tell me, to three questions; the nature of the offence, the probability of conviction and the severity of the penalty. Is that the test?

Mr. Bull: Not entirely, no.

Mr. Gilbert: What would you say the test is then?

Mr. Bull: I would say in broad terms it is the assurance that the accused will appear for trial and that if released there will be no danger to the state or to the public interest. When I say the "state" I am saying it in its broadest terms. There are individuals, for instance, the man who is charged with attempted murder and has professed his intention to finish the job if he gets the opportunity. That has nothing to do with his appearance at all. He says: I will be back for trial as soon as I finish the job. Or he may have just threatened. It may be a charge of threatening to murder. We have such a case coming before the court on Monday of a man who threatened to murder a magistrate, a psychiatrist, the Superintendent of the Mimico Reformatory and me. He is in custody.

Mr. Gilbert: That is where he should be.

Mr. Bull: Thank you.

Mr. Gilbert: Is it the practice of magistrates, also sometimes at the direction of Crown counsel, to impose a high bail so that the accused cannot raise it?

Mr. Bull: It probably has been done and that is an abuse; there is no question about that at all. It is one of the things we are trying to eradicate by educating magistrates that that is wrong. The Magistrates Associations are meeting and discussing these things. That is patently wrong. Crown attorneys have been instructed against this sort of thing and Justices of the Peace are continually instructed against it.

Mr. Gilbert: Well, Mr. Bull, referring to Toronto cases as you said 65 to 70 per cent of all cases come before Toronto magistrates. The usual procedure when the accused comes before the court is that the magistrate looks to the Crown counsel and the Crown counsel says: $1,000 property or $500 cash without

paying too much attention to the other facts that may be concerned, the facts of his family background and employment, and so forth. This has been my experience in practising law.

Mr. Bull: It has been mine, too.

Mr. Gilbert: I am not criticizing Crown counsel for it because when he comes up for the first time in the majority of cases he has not counsel. What would you recommend to help clear up that problem?

Mr. Bull: First of all the situation, I think, has improved. Perhaps your duties here have denied you the privilege of seeing legal aid in action with duty counsel, where all accused in custody whether they are indigent or affluent have duty counsel available to advise them of their rights and to make the application for bail on their behalf, and to inform the court of their circumstances, their stake in the community and make the application. That may account for the fact that we have a backlog at the end of October of close to 4,000 cases in the Magistrate's Court of Toronto waiting to be tried. These are cases on remand.

Now, this is in part caused by more time and more care being taken in assessing bail applications. The other thing is more courts, more magistrates, more justices of the peace, more Crown attorneys and more pay for all of them.

Mr. Gilbert: I like that last suggestion.

Mr. Bull: We should have had it first. It is ever present in my mind.

Mr. Gilbert: I notice that in the Manhattan Project that sometimes probation officers and other court officials gather this data that is now taken.

Mr. Bull: Originally the data was gathered by law students in New York. After each trial period it was taken over when it was accepted by the powers that be in New York as being a valuable procedure. It was taken over by the probation services. There was not any continuity with law students and also the probation officers were better qualified as interrogators. Law students are sort of dewey-eyed and not quite as hard-bitten as court officials who have been around, and it was an easy thing for the accused sometimes to pull the wool over their eyes. So now it is under the probation services who conduct the investigation and do the verification.

Mr. Gilbert: I was just wondering whether duty counsel in Toronto courts could assume part of this responsibility. You have mentioned the Rotary Club and there is a formula that seems to apply and I am just wondering whether duty counsel could assume this?

Mr. Bull: What we have done in Toronto is a modification since the inception of the Toronto Bail Project. It started out with inquiries being made by law students. We are going to lose those law students when Osgoode Hall moves.

The Chairman: Mr. Whelan wants to ask questions too.

Mr. Gilbert: I am sorry, I have just one short question to ask.

Mr. Bull: It is being done now by police in their original history sheet and that data is then passed over to trial bail project for verifications. The inquiries are made by police officers.

Mr. Gilbert: You pointed out that there is no absolute requirement in the Code to put up cash or property—

Mr. Bull: Subject to that one section about the cash deposit.

Mr. Gilbert: Yes, but in actual practice this is what is required; in most cases cash or property is required to be transferred.

Mr. Bull: Property never is.

Mr. Gilbert: It is not transferred but at least it is deposited.

Mr. Bull: No. Are you relying on Mr. McWilliams' article?

Mr. Gilbert: I have read Mr. McWilliams.

Mr. Bull: Yes, well he is wrong.

Mr. Gilbert: He is wrong?

Mr. Bull: The title deeds are not deposited in Toronto. He is patently wrong on that. They are produced for inspection by either the Crown attorney or the Justice of the Peace and they are returned to him.

He said he had a bulky file there with title deeds in it and could not get them sorted out. I have no doubt he could not get them sorted out; I think he is in a hell of a mess.

Mr. Gilbert: This must be the practice in Halton County.

• (12:40 p.m.)

Mr. Bull: Well, apparently it is. I had better check and find out what he is doing. He said it is the practice in Toronto and I can say flatly and categorically it is not.

Mr. Gilbert: I think you are right from my experience also.

Mr. Bull: I do not think you ever left a deed in a J.P.'s office.

Mr. Gilbert: You are right. I understand that they do not have this practice in England.

Mr. Bull: No, that is right. They do not even go to the extent that we do in examining the sureties but the average Englishman seems to have a little higher regard for the law, a little more respect for the law, than the average surety of Canada has. It is unfortunate that I have to say so, but it is true.

Mr. Gilbert: Mr. Chairman I will yield to the next questioner.

Mr. Forest: Mr. Chairman I agree entirely with our distinguished guest that Bill No. C-4 does not change anything that does not presently exist or that might create problems. You mention in your brief that there is need for reform of the present system and that extensive studies have taken place in Canada, the United Kingdom and in the United States concerning reforms and that new legislation has been passed. Would you care to comment generally on the reforms which you would propose to the bail system in Canada other than improvement in the administration section of it?

Mr. Bull: There are certain reforms of the system which might require some legislative action on the fringes of it. A beefing-up of the provisions for skipping bail, that is, putting teeth into the skipping bail section so that there is a real deterrent against people skipping bail. If you did that you would have some threat over them and a lot more people would go on their own bail or on some lesser type of sufficient surety than they presently do.

There is another matter I would like to discuss and I do not know whether this could be made legislation because it is a discretionary matter, but this concerns what county court judges are doing with the estreat of bail. As it now stands when there has been a default and bail is noted for estreat the bondsman can appear before a county court judge—certainly this is the case in my jurisdiction—and by entering a plea for relief from estreat be excused the whole thing. The bail may be set at $10,000 but they do not lose the family homestead. The judge says, "How much did it cost to bring the man back from British Columbia?" and if it cost $500 that will be the estreat of the bail. That is hardly a penalty; all they have done is pay his railway fare. Nothing has been done to put some beef into those punitive provisions in order to make bail effective when it is granted.

There is provision in the bill for the cancellation of bail although there is presently no provision for this. If a person is granted bail and he does something which practically disentitles him to being at large but it is not the commission of another offence he can be rendered by his sureties, the man who enters bail can say, "I am afraid this fellow is going to skip", but if we find him standing at the international airport with a one-way ticket for Australia there is nothing you can do about it. It might even be Brazil, with which we have no extradition treaty. There is not sufficient provision for making the bail which is granted really effective. In many cases it is a matter of going through the motions and, as Mr. Gilbert says, the magistrate turns to the crown attorney and says, "What about bail?" The crown may say, "One, two, three thousand." I could pick a figure out of the air, as we have been doing, which is not good. It is meaningless. It is just a formula, a ritual, and it should be approached realistically. This is procedure now. The crown attorneys have the opportunity to find out what should be the correct bail. Perhaps in certain areas there should not be as much bail granted. Perhaps more people should be kept in custody, more professional criminals who are going to go out and either finish the crime which they were committing, destroy the evidence that would prove their guilt, commit more crime to lay up store in heaven for themselves when they get out, pay their counsel or for any other reason or because that is their way of life. He does not have a job and he goes out. What is he going to do? He has to have bread and butter while he is waiting for his trial, so he steals. It makes the work of the law enforcement agencies useless and what we are trying to do is protect the public from the predatory actions of anti-social persons. We should be more realistic about this and, as I mentioned, tidy

up the fringe matters such as releasing a man on summons after he has been arrested, more use of the summons procedure and a broadening of the Identification of Criminals Act. These are the things I am talking about, the necessity for reform. First of all, you must consider whether a person should have bail or not and that is a matter of education. Everybody is entitled to apply for it; everybody is entitled to have it except for just cause. That is the language of the Bill of Rights. If you can establish just cause why a person should not have it then there should be no bail but having said there is no just cause why he should not have bail then we should set a bail which is realistic in the circumstances and which will assure his attendance in court. We are then not dealing with danger to the public because if there is danger to the public he should not have bail at all. If you have eliminated the danger to the public interest, then the only reason for bail is to ensure his attendance. Bail should be measured by the criterion and by no other because, if a man is going to skip, $5,000 or $50,000 will not hold him any more than $500. We should eliminate bails of $50,000 and $100,000 except perhaps in very rare circumstances such as cash bail in the cases of extradition, where you do not have any tie and the man is already a fugitive.

Mr. Whelan: I have a couple of questions, Mr. Chairman. When Mr. Bull was answering Mr. Stafford he mentioned the law was all right but the officials were, I gathered, enforcing the law of exercising the rights of the law incorrectly on these people. Would you care to say who these officials are?

Mr. Bull: I will start out by saying, *mea culpa, mea culpa, mea maxima culpa.*

Mr. Whelan: Would you explain that?

Mr. Bull: I am guilty myself. I think the officials include anybody who has anything to do with bail; crown attorneys, police, justices of the peace, magistrates and judges. Since the year "dot" it has been treated too much as a perfunctory procedure or ritual and without enough people giving it sufficient thought. Although I do not agree with Martin Friedman on many of the points that he makes—in fact, I find myself violently in conflict—and I have expressed myself to this effect on public platforms on which we both appeared at the same time, but I must take my hat off to him for having brought out in a very forceful way the fact that we are far from perfect in our administration of bail. It has stirred Mr. Cassells, Mr. Affleck, Mr. Mather, myself and many, many others to turn their minds to this matter and give it some thought.

Mr. Whelan: The other question I have concerns what you say on page 6:

> Bill C-4 instead of being built into the Code lies outside like a legislative excrescence which is a retrograde step...

Do you mean that...

Mr. Bull: When you break down criminal procedure into separate statutes which start out as this one does—notwithstanding something in some other statute—it is bound to create bitter confusion and make it harder for an ordinary police officer in a lock-up to interpret the law. If you hand him the Criminal Code although he is not a lawyer he can struggle through it and he can find a certain provision between the two covers. It is a code. However, in England you may have to refer to the Criminal Law Act, the Criminal Justice Act, the Children and Young Persons Offenders Act, the Indictable Offences Act and the Summary Act, which is a vast welter of legislative bumpf.

Mr. Whelan: You mean that Bill No. C-4 is legislative bunk?

Mr. Bull: I did not say "bunk"—I said "bumpf" B-U-M-P-F.

Mr. Whelan: I thought you said "bunk".

• (12:50 p.m.)

Mr. Bull: No, not bunk—bumpf. I do not know how that translates.

Mr. Whelan: Thank you, Mr. Chairman.

Mr. Stafford: In the total of 4,212 instances where I think you said that people did not show up for bail in Metropolitan Toronto in the year 1966, how many were easily located by the police within the course of a few days or how many turned up after that stating that they just missed the day of the court?

Mr. Bull: No survey has been made of that and I do not have any statistics. At the moment we have at the county level—that is, General Sessions of the Peace and County Court Judges' Criminal Court—in Toronto out of a total of 300 cases pending at the moment, we have been unable to locate 45 through all efforts. These are not people who

just did not turn up today and we can find tomorrow; these are people who have been committed for trial. As a matter of fact, 300 is not the proper figure. It would be better to say 200 because 100 of the 300 are new cases which will come up in the next session. We have 200 cases pending and 45 of them are lost completely. We do not know where they are.

Mr. Stafford: But the 45—to be fair to these prisoners, too—would be carried over from other years. They did not all happen in the last few weeks.

Mr. Bull: No, that is true. You ask, how long is it? Some of these are old dogs we have had for a long time. In other words, once gone our changes of getting people on a bench warrant are rather slim. It is interesting and we do not know the results of these yet, but I had them, in anticipation of this meeting, find out how many of those who were granted their own bail were lost. I do not know how many were granted their own bail in the month of October, but we lost 168. In the last two weeks of September we lost 103.

Mr. Stafford: Out of how many?

Mr. Bull: As I said, I cannot tell you that. I am just saying that the police are now looking for 271 people in addition to arresting the people who are committing offences. They have already arrested those persons once and they are now going out—not only the Metro police but the police in St. Thomas and the police in Victoria, British Columbia and Halifax, Nova Scotia—because it has gone out over the teletype—"We want this body." Every police officer in Canada is now taking time to look for those 271 people.

Mr. Stafford: Some of them—let us say prostitutes—the police would be just as glad to see go anyway. These are people you really want? Is that correct?

Mr. Bull: I cannot answer that. They are people who just did not show up for court. We wanted them—the magistrate wanted them back. If he had thought it was just as well they did not show up he would have said so.

Mr. Stafford: I know that in my part of the country—in London, St. Thomas and other places—sometimes in these cases of someone living off the avails or a prostitute if they disappear you do not lose too much sleep over it.

Mr. Bull: Perhaps that is not an offence in Elgin county. Do not print that.

Mr. Stafford: I have just one more question I would like to ask you. It has something to do with what you said about those arrested. To sum this up a little better, is it correct that under section 463 even those who are committed for trial—applying that section of the Criminal Code and with what you said—for offences other than those punishable by death as capital murder—those people who are waiting trial under sections 50 to 53 of the Criminal Code having to do with assisting a state at war or intimidating Parliament, acts of sabotage or acts of mutiny and non-capital murder—could be released on his own recognizance without surety and without security as you mentioned on page 5?

Mr. Bull: That is correct.

Mr. Stafford: Is that correct?

Mr. Bull: Under the Criminal Code that is correct.

Mr. Stafford: Under the Criminal Code?

Mr. Bull: Yes. It is not under Bill C-4 but it is under the Criminal Code.

Mr. Stafford: The point I am getting at is this: with your great experience that is correct, is it not?

Mr. Bull: Yes. The power is there to let a person go on his own bail on a charge of capital murder but I do not think it would be a wise practice.

Mr. Stafford: No, but it has happened.

Mr. Bull: I will not say it has in the case of murder. All murder was capital until recently and none of it may be after today.

An hon. Member: Print that fast.

Mr. Stafford: After they are committed for trial, though, there are those exceptions in section 463.

Mr. Bull: The exceptions there are merely exceptions as to the jurisdiction, that is, the status or qualifications of the judicial officer who can set the bail. That has not anything to do with right to bail. It says that in those specified cases the only person who can set it is a judge of the Supreme or the Superior Court. The criminal jurisdiction just takes it out of the hands of a justice of the peace or a magistrate or a country court judge, but he

has the identical right to bail when he appears before the Supreme Court judges.

Mr. Gilbert: Mr. Chairman, I have one short question for Mr. Bull with regard to the powers of the justice of the peace. As you know it is now a practice in Toronto, for the justice of the peace to go around to the stations during the night and releasing men. Do you think they have the power to do this?

Mr. Bull: Yes, I distinguish here, if you look at the language of Bill C-4 which says:

...at his appearance in court,

It is specific. You say "in court", whereas in the Criminal Code it says "when brought before a justice of the peace". Now, it does not say where he is brought. It does not say in court. He could be brought before him, as one magistrate did, in the back seat of an automobile in Ontario county. He granted bail—I think he tried the whole case in the back seat of an automobile. He is now a Toronto magistrate. It may be straining the words to say: "When brought before a justice of the peace." We bring the justice of the peace to him because it is a safer thing. You could cart the accused down to some central spot and have him dealt with but it is more convenient and it seems to suit the pressures of public opinion to have the justice of the peace go to the jail. That is why I say he becomes a hand maiden of the accused.

The Chairman: Are you advocating another question?

Gentlemen, that concludes today's meeting. Next week we will be dealing again with the reform of the bail system. As I mentioned at the beginning Magistrate Glen E. Strike, Q.C., will be our witness on Tuesday and Professor M. L. Friedland will be our witness on Thursday.

Before we adjourn may I, on behalf of the Committee, thank you Mr. Bull for your very interesting and very instructive discourse on this subject. It has been a real seminar and we have all benefited from it.

I would also like to thank you, Mr. Affleck, for your presence here today. I take by your silence that you confirm everything Mr. Bull says.

Mr. Affleck: I will not argue, Mr. Chairman.

The Chairman: The meeting stands adjourned.

APPENDIX "C"

ONTARIO CROWN ATTORNEYS ASSOCIATION

Interim Report of the Committee on Bail

The current interest and concern in many quarters, official and unofficial, in the press and in the public at large in the administration of bail procedures together with a desire on the part of the Association to maintain a lively interest in the improvement of the administration of Justice has led to the appointment of this Committee to make a study of the situation with regard to bail for the following ends:

1. To make recommendations for changes in legislation or practice for the improvement of the bail system.

2. To provide a basis for the standardization and uniformity of practice so far as it is feasible and practicable throughout Ontario.

3. To furnish information to the Attorney General for use in replying to questions and criticisms directed at the system.

Your Committee has studied the legislation, jurisprudence and literature pertinent to the subject; its members have attended conferences and have taken part in group and panel discussions; consideration has been given to the published opinions and criticisms of the system; and insofar as it was able without travelling abroad has made comparisons with other systems.

In addition your Committee has circularized the members of the Association for their problems and comments. The majority responded (it was assumed that those who did not reply had no problems) and their comments were carefully considered and analyzed. It was found that many problems were more apparent than real and arose out of particular complex situations. Those that were of substance were usually encountered in more than one jurisdiction and were common with those encountered in Metro Toronto where the administration of the system has been the subject of most criticism. These could be classified under two general headings:

(a) Ignorance of the law, appropriate procedures and principles governing the ordering of bail on the part of some or all of those concerned with it (i.e. Crown Attorneys, Judges, Magistrates and Justices of the Peace)

(b) A lack of personnel and facilities for the setting and accepting of bail after Court and office hours, e.g. nights and week-ends.

There being little if any criticism of bail procedures after committal for trial or pending appeal and a cursory examination disclosing no substantial need for reform the Committee has given no serious consideration to that area and has directed its attention to the question of bail before trial.

The Committee is of the opinion that the provisions of the Criminal Code regarding the setting of bail before trial need no revision. Many of the difficulties real or apparent have been due to a misunderstanding of them. An intelligent appreciation of the law and a strict adherence to the letter of it will substantially eliminate many of them. The rest then becomes a matter of the application of principles, underlying the granting of bail and an efficient and realistic maintenance of balance between the due administration of justice on the one hand and the desirability of having the accused at large on the other. This we consider to be a matter of education and have accordingly set out in the following various matters for consideration and discussion.

BACKGROUND

ENGLAND. Bail originated in mediaeval England as a device for releasing prisoners who were awaiting trial. In the early stages of English history, disease-infested prisons and delayed trials necessitated an alternative to holding persons in pre-trial custody. In the beginning Sheriffs exercised their discretion to release a prisoner on his own promise or that of an acceptable third party that he would appear for trial. The third party surety was given custodial powers over the accused and if the accused escaped was required himself to surrender into custody.

Bail literally meant the bailment or delivery of an accused to "gaolers" of his own choosing. Eventually those gaolers or sureties were permitted to enter into a recognizance i.e. to bind themselves in specified sums of money which, instead of themselves, would be forfeit if the accused failed to appear.

That the sureties might be sufficient towards this end it was usual that they be land owners. In earlier times in England when land was held by the few and infrequently changed hands, the land-owner was a man of substance, stability and responsibility within the community. When entering into a recognizance by showing that he was a land-owner the surety was not mortgaging, pledging or "putting up" his land but was rather demonstrating a measure of his worth. He was assuring the authorities that in the event of the necessity of an estreat of the bail there would be no difficulty in recovering the debt from him. This was commonly known as property bail.

It was permissible for a surety in lieu of showing that he was a land-owner to deposit a sum of money or other negotiable security as a measure of his worth. However it was entirely within the discretion of the person taking the bail to accept or reject this deposit. This was commonly known as cash bail.

In neither of the foregoing cases was the surety required to furnish security in advance other than his recognizance i.e. the acknowledgement of his debt. The property or cash was only the measure of his worth and sufficiency.

Originally in England the power to grant bail rested with the Sheriff. Eventually however due to abuses and excesses it was transferred to the Justices of the Peace. Now it can be said as a general rule that any persons who have the power to judge crime have the power to admit to bail. The exercise of the power has always been and still is discretionary and in general is based upon the nature of the charge, the character of the accused and the weight of the evidence. The principal consideration is to ensure the appearance of the accused. However the discretion is sufficiently flexible to permit the denial of bail in cases where the accused is likely to obstruct or pervert the course of justice or commit new offences if released.

UNITED STATES. In the United States the bail concept has followed a different course. The United States Constitution does not specifically grant a right to bail. However, in the Judiciary Act of 1789 a proviso was inserted to make bail available in all criminal cases except where the punishment was death. This absolute right to bail called for the development of new techniques to supplement the private surety who would personally guarantee to produce his bailee. As a result, the institution of the bondsman arose to take over the function of posting bail. In return for a money premium he guaranteed the defendant's appearance at trial. In the event of non-appearance, the bondsman stood to lose the entire amount of his bond. For this reason, bondsmen in many jurisdictions required indemnification contracts or collateral from the defendant or his relatives to protect themselves from forfeiture losses. Selling bail bonds became a thriving commercial adjunct to the judicial function of setting bail.

In 1961 the Manhattan Bail Project was launched enabling a defendant who had, according to a pretrial study, a stake in the community, to be released on his own recognizance. At the present time, several American cities in addition to New York have implemented similar projects. Furthermore, the concept of bail is the subject of a comprehensive study by various interested groups throughout the entire United States.

CANADA. The bail system in Canada has developed from the English system and is still generally parallel to it maintaining as its fundamental concept the release of the accused upon his own recognizance or to "gaolers" or sureties of his own choosing. The use of licensed professional bondsmen finds no place in Canada and unlicensed professional bondsmen are looked upon askance as sufficient sureties and in fact in some quarters are held to be illegal. "Security in advance" as it is known in the United States for the most part, is not a requirement. Since the revision of the Criminal Code in 1955, however, provision has been made for the ordering of a cash deposit as an alternative procedure to the release of the accused on his own recognizance with or without sureties. The appropriate use of this procedure will be discussed further at a later stage.

Other than this relatively new procedure no person is required to "put-up" any form of property as bail. The terms "Property bail" and "cash bail" have been traditionally used but they in actuality are only descriptive of the measure of sufficiency of the sureties. It is quite conceivable that a surety might satisfy as to his sufficiency without proof of

the ownership of real property or the depositing of cash.

In Canada, all offences are bailable and there is an unequivocal right to apply for bail. The Canadian Bill of Rights provides:

No law of Canada shall be construed or applied so as to

(a) authorize or effect the arbitrary detention, imprisonment or exile of any person

(f) deprive a person charged with a criminal offence of the right to *reasonable* bail *without just cause.*

However there is no absolute right to bail and the granting of it, the manner of entering into it and the amount of it are discretionary matters to be judicially determined by a judicial officer. (Note: Bail may be taken by senior police officers in the case of offences under Provincial Statutes which of course are not criminal offences.)

ORDERING OF BAIL

The provisions for the ordering of bail prior to trial in *all* offences whether indictable or summary conviction are identical to the provisions relating to preliminary inquiries found in Section 451 of the Criminal Code. (Note: Section 710 empowers a Summary Conviction Court to allow a defendant to be at large without recognizance) *451 (a).* A justice acting under this Part may order that an accused at any time before he has been committed for trial, be admitted to bail

(i) upon the accused entering into a recognizance in Form 28 before him or any other justice with sufficient sureties in such amount as he or that justice directs

(ii) upon the accused entering into a recognizance in Form 28 before him or any other justice and depositing an amount that he or that justice directs, or

(iii) upon the accused entering into his own recognizance in Form 28 before him or any other justice in such amount as he or that justice directs without any deposit.

It is clear that the ordering of bail is a judicial act. Contrary to some popular misconceptions the Crown Attorney does *not* set the bail. It is proper however that he as well as the accused or his counsel should be heard in the matter. The information he can supply as to the nature of the offence, the weight of the evidence, the character and background of the accused, the likelihood of his appearance and other relevant factors referred to hereafter will assist the judicial officer in exercising his discretion which must not be done perfunctorily.

It will be noted that there is no reference in clauses (i) and (iii) to any requirements for furnishing security in advance or for putting up property real or personal. It cannot be said that an accused is held in gaol merely because he is indigent or impecunious. It may be that he cannot find persons who will be surety for him or who are acceptable as sureties. That however is a different consideration.

The provision in Clause (ii) for a cash deposit as mentioned earlier was introduced into the Code at the time of the revision in 1955. It has inherent in it some of the shortcomings of the American System requiring security in advance and might lead to the unjust detention of the indigent accused if used indiscriminately.

There are however certain specific situations where the order of a cash deposit may be appropriate, e.g.

(a) where an accused from a foreign country or another province is charged with a non-extraditable offence or a minor offence not justifying public expense in returning him for trial if he flees. Allowing him to go on his own bail will be ineffectual and it will be unlikely that he can find sureties. A cash deposit in a reasonable amount but in excess of the likely penalty if it does not ensure his attendance at least affords funds to return him or stands in lieu of penalty;

(b) in extradition cases the fact that the fugitive has already fled militates against any bail on the mere recognizances of sureties. A cash deposit in a substantial amount would be appropriate deterrent to flight.

It is to be noted that it is not clearly specified whose deposit it is. A plain reading of the Clause would appear to indicate that it is the accused's. However as cash cannot be identified it is open to an interpretation that it could be anybody's money. This opens the door to the professional bondsman.

The following passage from the Annotation on Bail in Criminal Cases 47 C.C.C.I. by Eric Armour K.C. former Crown Attorney, Toronto, is illuminating:

"There are however practical objections to "cash bail". To accept from a

prisoner himself, cash or securities for bail is often, in effect, to permit him to purchase his freedom and to escape punishment for his crime. Where there are no sureties financially interested in seeing the prisoner will answer the charge and who, if they have any doubts about it can render him into custody, the chances of the accused appearing to stand trial are very greatly lessened. On the other hand, cash bail, if accepted from sureties may lead (as it often does) to indemnification of bail and other irregularities."

PURPOSE OF BAIL

It has frequently been said by some authorities that the only purpose of bail is to ensure the appearance of the accused at his trial. That this is too narrow a view has been held by other authorities. In order to test its validity one may look to the reasons for arrest to see how the ordering of bail will affect them.

An arrest is made

1. As the first step in bringing a suspected offender to justice, to prevent his flight and ensure his appearance in Court;

2. To prevent the continuation or repetition of the offence;

3. To protect persons and property from harm;

4. To protect the accused from harm
(a) from others
(b) from himself;

5. To permit investigation
(a) of the accused—interrogation—search—examinations physical and mental
(b) of premises and place—search—photos fingerprint and scientific examinations
(c) of persons—victims—witnesses—associates
(d) of other possible occurrences;

6. To prevent the interference or tampering with witnesses or demonstrative evidence by the accused or any other attempt to pervert the course of justice;

7. To permit the photographing and fingerprinting of accused in indictable offences.

If the ordering of bail or the premature ordering of bail will frustrate any of the reasons for arrest and render the arrest ineffectual the Court should exercise its discretion with great care and would be justified in refusing bail entirely.

REASONS FOR OPPOSING BAIL:

The following are among the reasons for opposing bail and on which a judicial officer might act:

1. Likelihood of flight and non-appearance
2. Gravity of the offence
3. Strong prima facie case
4. Bad character of accused
5. Lack of any stake in the community
6. Previous bad criminal record
7. Previous record for skipping bail
8. Wanted in another jurisdiction
9. Likelihood of continuation or repetition of crime
10. Likelihood of obstructing justice
11. Danger to the community, the victim or himself
12. Necessity of examination, physical (V.D.) or mental
13. Further investigation—interrogation—line-up—examination of scene of crime
14. Indemnification of bondsmen
15. Offence committed while on bail for another offence.

AMOUNT OF BAIL

At Common Law it was a misdemeanour to exact excessive bail. By the Bill of Rights the right to bail is the right to reasonable bail. Reasonable however means reasonable in the circumstances. While the bail must not be prohibitive nor punitive it must be of sufficient amount to ensure his appearance. If possible it should be within the means of the sureties he is likely to find. However if the accused himself is indigent and his sureties impecunious that may be indicative that he is a poor risk.

The amount of the bail should be in excess of the fruits of the crime and in excess of the penalty, otherwise there may be a temptation to purchase freedom by indemnification of the sureties.

In any event the amount of the bail must be realistic and have some logical basis. The traditional practice of picking some nice

round sum which is largely unrelated to anything, does nothing but invite distrust and criticism of the system.

SURETIES

The choice of sureties lies with the accused. However they must be sufficient sureties, i.e. of an ability sufficient to answer the sum in which they are bound. In addition, since they are in a sense "gaolers" of the accused with same responsibility to see that he appears when required, they must be of a character to assume and carry out conscientiously that responsibility. Although no justification is requisite, it is necessary that they satisfy the person by whom the bail is to be accepted that they are sufficient. Under the provisions of the Crown Attorneys Act they must also satisfy the Crown Attorney as to their sufficiency. This can best be done by the making of an Affidavit of Justification, a pro forma for which is set out in Eric Armour's Annotation in 47 C.C.C.I.

If the surety justifies himself by means of real property and the amount of the bail set is substantial, he should be required to furnish satisfactory proof of ownership, the value of the property or equity held and the extent of any encumbrances and that there are no prior claims by way of execution or tax default. The following persons should not be considered as sureties:

1. A person who has been indemnified or who has received or been promised consideration for going bail;
2. A non-resident of Ontario;
3. Counsel for the accused;
4. Anyone under 21 years of age;
5. An accomplice;
6. A person in custody or on bail awaiting trial;
7. A person with a previous record for a serious offence;
8. A person who has gone bail for someone other than the accused. (Note: a surety for more than one accused in the same case may, in proper circumstances, be acceptable.)
9. A married woman, unless she has separate property;
10. The spouse of the accused.

The Role of the Crown Attorney

As previously stated, the function of ordering bail is a judicial one to be exercised in criminal offences by a judicial officer. The functions of taking bail is a ministerial one to be exercised by the Justice of the Peace. Under the provisions of the Criminal Code, the Crown Attorney has no statutory position in these procedures. However, it is proper that the Crown Attorney should inform himself as to the circumstances in each case of an application for bail so that he may make representations to the judicial officer as to whether bail is proper in the circumstances and whether or not the accused should furnish sureties or whether he should make a cash deposit. He should also assist in the event that bail is to be ordered by recommending a proper amount.

The Crown Attorneys Act provides:

> "Where a person is in custody charged with, or convicted of, an offence and an application is made for bail, enquire into the facts and circumstances and satisfy himself as to the sufficiency of the surety or sureties offered and examine and approve of the bail bonds where bail is ordered"

It is not clear in this provision what course the Crown Attorney should take in the event that he is not satisfied with the sufficiency of the surety. There is no power for him to refuse the acceptance of bail. It would seem that his position would be to advise the justice accepting the bail that he has examined the sureties and is not satisfied as to their sufficiency.

Under the Bail Act R.S.O. 1960 Ch. 28, the Crown Attorney has a duty to see that a Certificate of Lien is registered with respect to the land mentioned in the bail. It should be noted that in the case of an estreat, recovery of the bail is not limited to the land mentioned or against which a lien has been registered and therefore the effect of this Certificate does not limit the bail to that specific piece of property. It would seem therefore that the only purpose of the lien is to ensure that there would be at least enough property from which to realize the bail, even in the event of a transfer or alienation of the property by the surety.

ESTREATS

The matter of the estreat of bail is still under consideration by the Committee and no comment is made at this time.

RENDER AND CANCELLATION

A preliminary examination of the provisions in this area indicate that there may be need for legislative amendment. Further study is being given before any recommendations are made.

Your Committee in submitting this interim report has included matters which are basically educational in nature. They have been offered, not as an attempt to dogmatise to the members of the Association, who are equally familiar with them, but as a basis for discussion directed towards a synthesis of thought and standardization of procedures. It is hoped that they will be accepted in this spirit.

This report does not exhaust the subject matter under consideration and your Committee is continuing with its studies.

October, 1965

W. Bruce Affleck, Chairman

Lloyd K. Graburn, Q.C.

Henry H. Bull, Q.C.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

RESPECTING

The subject-matter of Bill C-4,

(An Act concerning reform of the bail system).

WITNESS:

Magistrate Glenn E. Stribbs, Q.C., Chief Magistrate, City of Ottawa, Ontario.

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

TUESDAY, NOVEMBER 14, 1967

RESPECTING

The subject-matter of Bill C-4,
(An Act concerning reform of the bail system).

WITNESS:

Magistrate Glenn E. Strike, Q.C., Chief Magistrate,
City of Ottawa, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27557—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 14, 1967.
(8)

The Standing Committee on Justice and Legal Affairs met at 11.15 a.m. this day. The Vice-Chairman, Mr. Forest, presided.

Members present: Messrs. Aiken, Brown, Choquette, Forest, Gilbert, Goyer, McQuaid, Pugh, Stafford, Tolmie, Whelan, Woolliams—(12).

Also present: Mr. Mather, M.P.

In attendance: Magistrate Glenn E. Strike, Q.C., Chief Magistrate, City of Ottawa, Ontario.

The Vice-Chairman introduced the witness, Magistrate Glenn E. Strike, Q.C., Chief Magistrate, City of Ottawa.

Before Magistrate Strike's opening remarks, on motion of Mr. Pugh, seconded by Mr. Choquette,

Resolved,—That reasonable living and travelling expenses be paid to Professor M. L. Friedland, who has been called to appear before this Committee on November 16, 1967, in the matter of Bill C-4.

Magistrate Strike addressed the Committee, stating his views in relation to the subject-matter of Bill C-4 (*An Act concerning reform of the bail system*). The witness noted that the Sentencing Committee of the Ontario Magistrates Association has been considering the subject-matter of Bill C-4. He was authorized by its Chairman to say that representatives of the Association would appear as witnesses if they were invited.

At the conclusion of his opening remarks, Magistrate Strike was questioned by the Members, for the remainder of the meeting.

The Vice-Chairman thanked the witness for his appearance before the Committee and for his assistance in connection with the Committee's consideration of the bail system.

At 12.30 p.m., the Committee adjourned until Thursday, November 16, 1967 at 11.00 a.m., when the witness will be Professor M. L. Friedland.

Hugh R. Stewart,
Clerk of the Committee.

27557—1½

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Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 14, 1967

• (11:15 a.m.)

The Vice-Chairman: Gentlemen, we now have a quorum. Your Chairman was detained in Toronto and he asked me to take over this morning.

Before starting the hearing I would like to mention that next Thursday, November 16, Professor Friedland is going to appear before the Committee. May I have a motion that reasonable living and travelling expenses be paid to the professor?

Mr. Pugh: I so move.

Mr. Choquette: I second the motion.

Motion agreed to.

The Vice-Chairman: This morning we will continue consideration of the subject matter of Bill C-4 which is sponsored by Mr. Mather and it is an Act relating to reform of the bail system. Last week we heard from Mr. Bull, the Crown Attorney from Toronto, and this morning we are going to hear from the Bench.

We have the honour and pleasure to have with us this morning the Chief Magistrate for the City of Ottawa, Magistrate Glenn Strike. Magistrate Strike has been a member of the Bench since 1931 and he was appointed King's Counsel in 1944. We are glad to have you with us, Magistrate Strike. I presume you will make some comments on Bill C-4 and you will then be available for questioning by members of the Committee. This is the usual procedure. Without further delay I will ask our distinguished guest to comment on Bill C-4.

Magistrate Glenn E. Strike (Chief Magistrate of Ottawa): Mr. Chairman and gentlemen, I have not really had an opportunity to go into this matter in too much depth because I just received a copy of the Bill the other day and, as I see it at the moment, the Bill is altogether too short in that there must be a great many more definitions and there must be a number of other provisions in such a bill as this. I would suggest, if we are going to have a bill which deals exclusively with bail, that it should cover the whole subject.

I knew that you had heard from Mr. Bull and I had a reasonably good idea of the recommendations which he might make because the local Crown Attorney has been in consultation with me on the recommendations that his department might have with respect to Bill C-4. I may say, Mr. Chairman, that the magistrates of Ontario have a very active organization and this Bill has recently been presented to our sentencing committee and they are making a study of it and of the whole question of bail. If at any time you desire them to make some representations to your Committee they would be very happy to do so. I have been authorized by the president of our organization to tell you that.

• (11:20 a.m.)

Mr. Pugh: Are your views in line with theirs, sir?

Magistrate Strike: Up to a point, yes, and I do not think I need repeat anything that the Crown Attorney from Toronto has said. One of the things I am particularly interested in, which was also mentioned by Mr. Bull, is the question of bail prior to appearance in court. If I might take a few moments I would like to describe what happens in the court over which I preside with respect to matters of bail.

In my opinion it is very important that the first person who has anything to do with bail be a highly qualified justice of the peace. In our office we have six such qualified men who are specially trained with respect to the matter of bail. They are all senior officials of our office who have been instructed by all the magistrates with respect to bail and they are the people who come in contact with the prisoner the minute he is arrested and brought to the station. One of the first things the prisoner is interested in is the matter of bail. The justice of the peace is there and he knows the policies that are followed by the office. He is the first person who has anything to do with the matter of bail and his instructions are fairly well in line with the suggestions set out in Bill C-4. Those things

that one takes into consideration when setting bail are fairly well codified in Bill C-4. The main consideration, of course is whether or not the person will attend for his trial.

The next step, of course, is that the person comes before the court. By this time bail has either been set or it has been refused by the justice of the peace. When the person appears in court the matter of bail is then gone into by the magistrate. If there are any complaints about the amount of bail that the justice of the peace has set, that is then gone into by the magistrate and if necessary a whole full-scale hearing is held in the magistrate's office. You must understand that the minute a magistrate, judge or any judicial official makes a full investigation into the matter of bail he immediately disqualifies himself from hearing the case because if he goes into that matter as he should he will of necessity know something about the man's record. Of course, a man's record is not evidence in court and once the magistrate knows that he becomes disqualified.

In addition to the man's record, the Crown Attorney must give the magistrate some facts with respect to the type of evidence which will be adduced and whether or not it is a strong case. If there is any dispute as to the amount of bail the magistrate has to go into much of the Crown evidence. If bail is then set at a figure that the accused is not able to raise at the moment or if bail is refused he must be brought back before the court, as you know, every eight days and at that time it is gone into again. The question is always asked by the court, "Why is this man still in custody?", so the matter of bail is gone into again. It therefore seems important to me that all the procedures should be followed and the justice of the peace should be a person who is, first of all, qualified to set bail for the person charged. In the first instance that gives this person a chance to put up bail before he appears in court and while he is awaiting his appearance. In addition, in 95 per cent of the cases it prevents the magistrate from becoming disqualified.

This is not so important in the larger centres but it is very important in the smaller centres because they do not have very many magistrates. It becomes very important in both the larger and smaller centres in the first instance that the justice of the peace is a person who is qualified to set bail. If a person has surety there must be provision for the surety to retire from his position and the person ought to be presented to the court again so that his bail can be changed or to have somebody else put in his place. There must be a number of provisions inserted in order to look after that matter. This was mentioned by Mr. Bull and there is no reason for me to add anything further except to say that I agree with his presentation with respect to these matters.

Mr. Pugh: Are there any questions?

The Vice-Chairman: Yes, I have Mr. Stafford, Mr. Tolmie and Mr. Pugh on my list.

Mr. Stafford: Magistrate Strike, instead of this being a separate Bill, would it not be far more obvious to have amendments made to the existing law?

Magistrate Strike: I would think so. I think it would be just as easy to do it that way. I do not know if it is necessary to codify the reasons for bail or not. They are so general now that...

Mr. Stafford: The point I was getting at, though, is that you would have duplicity; it would be far better to amend the Criminal Code than to have conflicting legislation.

Magistrate Strike: I think it would be simpler.

Mr. Stafford: I do not have my copy of the Criminal Code with me today but I took a look at it when Mr. Bull was here and, without going into all the sections, is it not correct that the Criminal Code actually gives the accused more right to bail than Bill C-4?

Magistrate Strike: I would say so, yes. Under the Criminal Code anyone is entitled to bail except in cases of certain offences where it must be set by a Supreme Court justice rather than a magistrate.

Mr. Stafford: But the point I am getting at is that it does not even go as far as clause 2 of this Bill, which reads:

> ...other than an offence—by death or imprisonment for life...

The Criminal Code would actually allow them out on their own recognizance if the Supreme Court justice who has jurisdiction would permit it.

Magistrate Strike: That would be similar to the offence of housebreaking, where a person could be sentenced to life imprisonment and where it is sometimes not a very serious

type of offence. In fact, you might get a suspended sentence for it.

Mr. Stafford: To make the point clear, then, this Bill is even more restrictive than the Criminal Code and not quite as lenient.

Magistrate Strike: In some ways not as lenient, no.

Mr. Stafford: I suppose you have often heard it said that the important thing about British justice was not so much the laws but the administration of those laws. Is that correct?

Magistrate Strike: I would say so.

Mr. Stafford: Is the complaint here not about the administration rather than the law which exists?

Magistrate Strike: I gather from what Mr. Bull said that the question of bail depends and always will a great deal on the people who administer it. It depends on people like Mr. Bull, myself and others who are appointed to administer it whether the person is dealt with immediately or not or whether he is dealt with too strictly. I think the human element will always enter into it.

Mr. Stafford: Do you not feel that it is much easier for an accused, as I think Professor Friedland pointed out, to prepare his defence if he is out on bail?

Mr. Strike: I would say so, yes.

Mr. Stafford: Is it not correct in smaller places where there is a lock-up that many times when people are arrested the police hate to take it upon themselves to allow them out which, under the Summary Convictions Act, they can do, can they not?

• (11:30 a.m.)

Magistrate Strike: Under the provincial statutes?

Mr. Stafford: Of Ontario.

Magistrate Strike: Yes.

Mr. Stafford: And most of the charges, in numbers, are under provincial statutes?

Magistrate Strike: I would say a great many are, yes.

Mr. Stafford: It is correct, then, that many, many people are arrested under the Highway Traffic Act, and the Liquor Control Act, and other provincial statutes.

Magistrate Strike: That is true.

Mr. Stafford: And officers hating to take this privilege on themselves, if they already have, arrest people sometimes in smaller places and these people find themselves sitting in jail a week, or even two weeks later, waiting until the magistrate gets to that particular part of the country.

Magistrate Strike: I do not know that it would be that long, because there is always a justice of the peace available in the area. As you say, I know that the police do sometimes hesitate to take upon themselves the responsibility of setting the bail, although they are authorized to do it. In the smaller places, I think they should do it; they should be instructed to do it by the presiding magistrate of the area.

Mr. Stafford: But even in Ottawa, is it not common knowledge that some people are arrested and others are summonsed for the very same offences?

Magistrate Strike: It is possible.

Mr. Stafford: At the discretion of the police?

Magistrate Strike: At the discretion of the police, although I may say that nowadays the tendency is more to summons than to warrant. You see, the arrest on warrant is generally done right on the spot, whereas the summons is done after they have discovered that an offence has been committed.

Mr. Stafford: I realize that, but as I say, in my experience in magistrates' court down in Southwestern Ontario, it is a common thing to see some people arrested for impaired driving on the spot, and kept there possibly until the court comes up on Monday morning, and others allowed to reach the court on summons.

Magistrate Strike: I cannot answer that question.

Mr. Stafford: But that happens in all courts, does it not? I mean that the police have a certain discretion?

Magistrate Strike: That is true; yes, they have. As a rule, in a case of impaired driving, you discover that if anybody is willing to come and drive the person home, the police are quite happy to have him come and drive him home. Quite often you discover that when the police get in touch with their

homes, the suggestion is: keep him there overnight; it will do him good. That is sometimes what happens. Then the wife, the next day, does not like to say that she has said that, and the police get blamed for keeping her husband there all night.

Mr. Stafford: Sometimes the attitude of the accused to the police at the time, his animosity or his friendliness...

Magistrate Strike: That can happen.

Mr. Stafford: ...can mean whether or not he goes to jail, which is not a very good yardstick in judging whether a man should be locked up for a couple of days, is it?

Magistrate Strike: I imagine that that could possibly happen in a smaller area, but I cannot conceive of its happening in an area like Ottawa. It would certainly have to be a small area where there were no justices of the peace or magistrates around; they are always available.

Mr. Stafford: But talking about the arrest, it has been my experience that many people are arrested on the spot for impaired driving, and many are allowed to go home.

Magistrate Strike: Do you mean without a charge, or just summonsed?

Mr. Stafford: No, just summonsed later.

Magistrate Strike: That is possible. You see, it is all right to say "allowed to go home", but that is, provided you can get somebody who is going to take him home. It would not be fair for a policeman to arrest a person for impaired driving and then let him drive his own car after that.

Mr. Stafford: Oh, no.

Magistrate Strike: You would have to make some arrangements about it.

Mr. Stafford: Well, when that happens there is usually a good defence to the charge.

Magistrate Strike: One of the best.

Mr. Stafford: I do not want to keep you too long on these smaller points, but I have noticed that it is very difficult for anyone out of the jurisdiction, even out of the county in which you live, and especially when you are from another province, to get out on your own recognizance before at least being in front of a magistrate, and even after you do get before a magistrate if you are say, from Quebec, as I saw a case when I was in St. Thomas last summer, and as I sat there on another case involving, I think, four people from Montreal found in possession of a stolen transistor radio; they had already spent about a week in jail and when they came up to the court for the second time, they still had not had an interpreter. They were told it was going to be adjourned another week, and all four of them were in for what seemed a comparatively small charge.

In this day, when communications are so quick, when people have security numbers, belong to clubs and have all sorts of things from drivers' licences to OMSIP cards, or whatever they have in Quebec, and that it is so easy for the police to identify the people, do you not think there should be far more leniency in the administration of justice to allow these people to go on their own recognizance? Ninety-nine per cent of them would still show up and it would save all this hardship of keeping people in jail, losing their jobs, and all the inconvenience not only to the public but to the prisoners themselves.

Magistrate Strike: When you put it that way, of course it would; I can hardly conceive of its happening, but it must have happened because you say you have seen it.

Mr. Whelan: May I ask a supplementary question? I should properly address my question to Mr. Stafford rather than to the witness. As a federal member representing all Canadians, when he was present in this court, did he not object to the treatment given to these people? With his great legal and parliamentary experience, he should have objected; he failed if he did not.

Mr. Stafford: Well, that is a matter...

Mr. Pugh: Just put in they are both Liberals.

The Vice-Chairman: Are you through, Mr. Stafford?

Mr. Choquette: He must be a potential senator.

Mr. Stafford: Do you not feel that far more consideration should be given in the administration of justice to allow people out on their own recognizance, especially if they are out of their jurisdiction?

Magistrate Strike: The trend, within the last number of years, has been that way. I will say that some years ago it was much stricter than it is now. Nowadays there are more people on their own recognizance than

there are actually on bail itself. You will discover that if you look at the list now.

Mr. Stafford: Well, I will get right to the point that I was going to lead up to. In Ottawa itself, if a man is charged with impaired driving, say, late on Saturday night...

Magistrate Strike: Yes.

Mr. Stafford: ...and he spends the night in jail, and the justice of the peace comes into the jail at 10 o'clock or 11 o'clock, or whatever time it is that they usually come in, does she let all of these residents of Ottawa out on their own recognizance, or does she insist on having the $100 cash bail?

Magistrate Strike: It is not a "she"; it is a "he".

Mr. Stafford: Well, "he" or whatever it is.

Magistrate Strike: As a rule, he likes to have bail, perhaps $25 to $50, but never more than $50; and if they do not have the money but are able to identify themselves, they are let out on their own recognizance.

Mr. Stafford: They are let out?

Magistrate Strike: Yes.

Mr. Stafford: If they are able to identify themselves.

Magistrate Strike: If they are able to identify themselves with any reasonable certainty, yes; we do not have any problem with respect to that. I find that on Monday mornings almost never is there an impaired driver in the prisoners' dock.

Mr. Stafford: But in other cases, in other jurisdictions, I can tell you that the bail that they insist on is much higher.

Getting to my final point, there does not seem to be any conformity in the request or demand for bail across this province.

Magistrate Strike: That could be so.

Mr. Stafford: I know this is an extraneous question, but it is one that goes right down through the whole web of our criminal law. For instance, driving under suspension might go to certain jurisdictions where they fine $50, and others where the magistrate, as Jim Brown will know, fines them a minimum of 30 days for exactly the same offence. On one side of the border of a county the minimum penalty will be 30 days, and right across the border it will be a $50 or $100 fine. Do you agree with that?

Magistrate Strike: Yes.

Mr. Stafford: Actually, almost the same impossible situation rests with the decision of justices of the peace and magistrates in this province as to bail. In some places it is lenient, and in other places it is real hardship. Is that not correct?

Magistrate Strike: It could be; I am not qualified to answer that question because I only know about the bail in my own area and areas that I am familiar with; but I am just familiar with the bail situation in my own area. We have endeavoured in this area, as far as we can, to be as lenient as possible; that is to say, that a person should not be kept in custody unless it is considered necessary because of the variety of circumstances that make it necessary to have bail set. But in cases such as you suggest, more or less minor cases, I think most of us are coming to this business now that they are put out on their recognizance. That is the reason that our association is taking a strong stand on this matter. I think you will find that we are endeavouring, through our association, to have much more uniformity, even in questions of bail.

Mr. Stafford: Then there is such a lack of uniformity...

Magistrate Strike: That is one of the problems.

Mr. Stafford: ...that something should be done?

Magistrate Strike: I can agree with you there.

• (11:40 a.m.)

Mr. Whelan: May I ask a supplementary question concerning justices of the peace? What instructions are they given? For instance, there are a couple of justices of the peace in my area that I do not think have any more legal knowledge than I have, and I am not a lawyer.

Magistrate Strike: Well, the justices of the peace that we have are all senior officers in the Magistrates' Court office. They acquire some knowledge over the years that they are in the office, they are given instructions, and they get more lectures from the magistrates on questions of bail, information, summonses,

and warrants than the magistrate had when he went to law school. They are not given the authority to act as justices of the peace, to accept an Information, to have a charge laid, to issue a summons or make up their mind whether they will issue a summons or a warrant until they are fairly well qualified and instructed. We have regular classes for our justices of the peace, and we have regular classes on the question of bail, and regular classes on the question of receiving of Information, and what to do after you have received it, and whether to issue a summons or a warrant.

Mr. Whelan: There are only certain justices of the peace that can do this, then?

Magistrate Strike: They have to be authorized by the senior magistrate or they cannot do it. If they are not authorized, under our system by the senior magistrate, then they cannot do this job; they cannot put a man on bail, or sit on a minor case.

Mr. Whelan: This is what I wanted to clarify.

Magistrate Strike: For instance, our justices of the peace sit in minor trafic cases. If a fellow wants to come and plead guilty to a minor traffic case, he can do it before any group of justices of the peace, if he wants to do that.

Mr. Whelan: The point that I wanted to clarify is that a lot of people whom we know as justices of the peace are not qualified as such and are not allowed to act in the capacities you mentioned.

Magistrate Strike: That is correct. In Ontario, and I can only speak for Ontario, the Justice of the Peace Act says that no justice of the peace shall do these specific jobs unless he is especially authorized.

Mr. Pugh: Where there is more than one sitting at a time, have certain powers been extended in this province?

Magistrate Strike: No. Two can sit but I do not think it is ever done; I have never known it to be done.

Mr. Pugh: When I went to Osgoode years ago I seem to recall that two justices of the peace equalled the power of a magistrate.

Magistrate Strike: Oh yes, a magistrate has the power of two justices of the peace.

The Vice-Chairman: Mr. Gilbert, do you have a supplementary on the same point?

Mr. Gilbert: Yes, Mr. Chairman. Mr. Strike, if we are agreed that there is a lack of uniformity with regard to the application of bail across the province, would it not be necessary then to codify the basis in the requirements of bail either in Bill C-4 or as an amendment to the Code?

Magistrate Strike: Uniformity relates to the amount that is set by the various justices of the peace or magistrates. One magistrate might say that he is satisfied with $25 whereas another might want $100, and that is the problem. It is difficult to codify that. I think you will find within the next few years that there will be much more uniformity in the question of bail and, as far as possible, sentences, because of the very strong stand that our association is now taking.

Mr. Aiken: I have a supplementary on that.

The Vice-Chairman: Mr. Aiken.

Mr. Aiken: Therefore it would really make it easier for the police, the justices of the peace and others if they started off on the basic premise that a person could be released on his own recognizance unless there were other good reasons for not doing so, as in this Bill?

Magistrate Strike: Well, they can do that now.

Mr. Aiken: But I would think the Bill itself spells it out much more clearly.

Magistrate Strike: Well they have the right now and there would be no particular harm in spelling it out.

Mr. Aiken: But the trouble is that they do not do it.

Magistrate Strike: I can only speak of the area in which I operate.

Mr. Aiken: I come from a rural area; they lock them up every chance they get and there is nobody around to bail them out. This is where the importance of direction comes in that they shall release them.

Magistrate Strike: I think what you mean is that it would be an advantage to the police too if they were given authority under the Summary Convictions Act as well as the federal penal statutes. The only authority they

have now is a provincial penal statute under the Summary Convictions Act.

Mr. Stafford: But the magistrate certainly has the necessary power under the Criminal Code.

Magistrate Strike: Oh yes, of course the magistrate can do this.

Mr. Stafford: The point I was getting at a few minutes ago is that the power is so broad under the Criminal Code today that a person can get out on a capital murder charge on his own recognizance if the judge having jurisdiction wanted to do that.

Magistrate Strike: That is right.

Mr. Stafford: Could you tell me how many charges were laid in the City of Ottawa during the last full year?

Magistrate Strike: What kind of charges do you mean?

Mr. Stafford: The information I want is the percentage of people, as Mr. Whelan might say, that skip bail or do not show up on their own recognizance?

Magistrate Strike: I would say that the percentage is very small. I am speaking off the top of my head now but I would say, in the last year, not more than 10, and that is out of thousands of cases.

Mr. Stafford: Might I say, Mr. Strike, out of many thousands of cases?

Magistrate Strike: Oh yes, many thousands of cases; we would have 60,000 or 70,000.

Mr. Stafford: And out of 60,00 or 70,000 cases...

Magistrate Strike: Yes, but it is not fair to say that, because of that 60,000 or 70,000 you have 45,000 or 50,000 minor traffic offences.

Mr. Stafford: That is right: making an improper left turn, and all such things as that.

Magistrate Strike: Yes.

Mr. Stafford: But it is still a charge. The point I am getting at is this: Do you feel that payment of $50 or even $100 bail, whether the accused pays it or seomeone else, is a guarantee that he will show up?

Magistrate Strike: No. In my opinion, the only thing that is required in these cases is proper identification, and we have so instructed.

Mr. Stafford: That is right.

Magistrate Strike: The older I get, and I do not suppose I will be sitting much longer, I am strongly coming to the view that eventually it will be a question of bail or no bail.

Mr. Stafford: But to get right to the point, if a man is not going to show up the $50 bail he files with the justice of the peace is not going to make much difference, is it?

Magistrate Strike: No. Actually that is only an aid to quick identification. If a fellow pays the $50 the chances are that he is Joe Smith if he said he was Joe Smith.

Mr. Stafford: But it also means that every year they keep many many people in jail a long time because they do not have the $50.

Magistrate Strike: I cannot say that that happens.

Mr. Stafford: I have just one final question. When certain people talk about bail why do they say that within the course of the next few years they are going to try and clean this up? As far as uniformity and administration is concerned, why can not the magistrates, the crown attorneys and everyone else concerned be all brought together to remedy this situation. Let us do this tomorrow and not in the next few years.

Magistrate Strike: That is a good idea.

Mr. Stafford: I have been hearing this ever since I have been in criminal law in Ontario, since 1954, and it is always "within the next few years". That is all I have to say.

Mr. Whelan: On a point of order, Mr. Chairman. I never suggested that these people would ever skip bail. I am a strong believer in the rights of the poor man as well as the rich man, and I am a strong believer in the last statement that Mr. Stafford made. I do not know why he suggested that I would suggest that these people were skipping bail at any time.

The Vice-Chairman: You can take it up with him after.

Mr. Whelan: I just want to make the record straight.

The Vice-Chairman: I recognize Mr. Tolmie.

Mr. Tolmie: Just to get back to the subject, Magistrate Strike, you mentioned that you have available in your area some very competent justices of the peace.

Magistrate Strike: Yes.

Mr. Tolmie: I think the problem in smaller centres, as has been mentioned, is the fact that there might be one justice of the peace who might not be available, particularly on a weekend. You also mention the fact that police officers, within a certain scope, are able to grant bail. Now I would like to know the difference in their power as far as granting bail is concerned, as opposed to that of justices of the peace and what you would recommend to improve the situation?

Magistrate Strike: The justice of the peace has the same power as the magistrate to grant bail; the police officer has only power to grant bail on a provincial penal statute, which would come under the Summary Convictions Act.

Mr. Tolmie: Thank you. You also mentioned in your evidence that generally speaking they were rather reluctant to grant bail.

Magistrate Strike: The police officers?

Mr. Tolmie: Yes.

Magistrate Strike: I do not know why and I have never known why. They just do not seem to want to get mixed up in it, and I do not know why that is so.

Mr. Tolmie: Would you think it would be wise to give some directive to police officers that would enable them to assume this responsibility?

• (11:50 a.m.)

Magistrate Strike: If it is possible. Before we had our present system set up, when I used to have the telephone beside my bed in the early days, it worked perhaps somewhat better than it does now. They would call up and ask for advice. I would ask if they have proper identification. They would say they had and would ask about bail. I would say that I was satisfied. Or in those days we would set bail of $25, $50 or something of the kind, and it would be paid right there, and the police would accept the responsibility because they had this assurance from me. I hope that system is long gone. I would hate to have it return.

Mr. Pugh: I take it, sir, you went on strike!

Magistrate Strike: I did.

Mr. Tolmie: I have one last question. As far as bail is concerned, do you think it would be feasible to increase the jurisdiction of the police in the federal statutes?

Magistrate Strike: I do not see any reason why it should not be done and I do not see any reason why the police cannot very well accept the responsibility. They are actually in the best position to establish the identity that we speak of.

Mr. Tolmie: Thank you.

The Vice-Chairman: Mr. Pugh, you are next.

Mr. Pugh: Sir, I would like to get back to this Bill. I gathered from your remarks that Bill C-4 might well be termed limiting to your present powers.

Magistrate Strike: Anything that is said to codify limits, and the way the Criminal Code is worded at the moment, if it is necessary to amend it, it could very easily be amended. As I mentioned before, if you are going to have a bill which sets out bail, then you should put everything in it. You would have to have quite a long bill. There are so many things that are not in here, as Mr. Bull mentioned, that would have to be in unless you merely wanted to amend the Criminal Code.

Mr. Pugh: But Bill C-4 would almost produce a limiting factor on those powers which you now have and which are held generally?

Magistrate Strike: I would say so, yes.

Mr. Pugh: We heard a lot from Mr. Stafford about the fact that something should be done—and you also mentioned this—in regard to uniformity, and I gathered from your remarks that if this were codified it might put a restriction...

Magistrate Strike: Once you start to limit discretion it presents quite a problem. Up to a point you have to depend on the person who exercises the discretion to exercise it reasonably, and the human element is always there. This is the thing that causes the trouble.

Mr. Pugh: So that uniformity should actually not come about by codification but by a closer contact with all magistrates...

Magistrate Strike: That is right.

Mr. Pugh: Within the jurisdiction; I do not mean within the magistrate's jurisdiction but, for instance, in Ontario, British Columbia or

Alberta, or wherever you happen to be. I am speaking of uniformity as to the people you keep in jail, whether bail should be set at $100 or whether you should keep them in the jug and let them cool off all down the line. However, you do not really think that codification is the answer to that?

Magistrate Strike: I do not think codification is the answer. I think it is too difficult to codify. When people are administering something over which they have some jurisdiction, then you have to depend on those people to do it properly. There is no reason why they cannot be given some direction but when you start to codify there is a tendency to limit.

Mr. Pugh: Mr. Aiken is not here at the moment but he brought up a rather good point when he sort of stressed the fact that bail should or must be granted. Perhaps we could start with the fact that a man must have bail and stress that point and do it in words.

Magistrate Strike: Instead of just paying in accordance with the Criminal Code, he is entitled to it?

Mr. Pugh: Yes. What do you think about that as a first consideration?

Magistrate Strike: It is there now.

Mr. Pugh: That is right, but it is the actual wording I am concerned about. Not that it be mandatory that everyone should have bail but that it be stressed as a prerequisite that it must be examined in the light that he is entitled to bail. This is of first consideration. Do you think there is any wording that could be used...

Magistrate Strike: I do not know that it is going to improve the situation but it certainly would do no harm.

Mr. Pugh: In other words, you feel that setting it out by way of a bill or by amendments to the existing law, or something of that nature, and possibly if we go back once again to the jurisdiction—and I am speaking of provincial jurisdiction—of magistrates that it is a matter of meeting together and saying, "We have to take this attitude, let us start talking along the lines that every person should have bail if at all possible."

Magistrate Strike: We can get together and decide that we are going to do a certain thing but sometimes when you get a group of magistrates together, which is the case in our regional meetings, there can certainly be quite a divergence of ideas because in their particular area they may have a problem I do not have or I may have a problem they do not have, and what on the face of it might look like a bit of injustice in their area may be caused by certain conditions that exist in their area.

Mr. Pugh: It might well be, for instance, that in a town along the border they have to be a little harsher because there probably have been incidents...

Magistrate Strike: I have no doubt that in certain jurisdictions there are a great many warrants of commitment waiting in the offices for people who did not come back. This occurs in minor offences and that is always so.

Mr. Pugh: I have two further points. One thing I want to stress is the fact that I come from a small town in British Columbia and I know that the magistrates are readily available and that no one stays in the cooler overly long. There is rarely a case that does not come up snap, bang, right off the bat. If it occurs on a weekend that is a different thing, of course, because they do not have hearings on Sundays but the magistrates are there on Saturdays.

Magistrate Strike: We have remand courts on Saturdays and we have an extra legal remand court on Sundays to get rid of our social problems, the drunks and vags that we get in on Sundays as well as Saturdays.

Mr. Pugh: And the cases are actually heard?

Magistrate Strike: Oh, yes, we get rid of them. We now have a situation in Ontario in the matter of bail where perhaps we will come to the point that Mr. Stafford mentioned faster. This question of legal aid is really making a tremendous difference in the matter of bail. In Ottawa we have been lucky in that we have had voluntary legal aid for the last four or five years and therefore it has not changed too much, but everyone who now comes into our courts has counsel and every counsel is asking for bail and continues to ask for it. Every time there is an adjournment they continually ask to have it reduced or to have something done about it and it is before us constantly. I think you are going to see a tremendous change in these areas—and I would not like to have Mr.

Stafford repeat what I say—in the next few years.

Mr. Pugh: I only have one further point, Mr. Chairman. I do not want to belabour this but you did go into it very well, and in a manner which I thought resonable, the matter of the first person the man appears before having to be highly qualified.

Magistrate Strike: Yes.

Mr. Pugh: I was just wondering about this in regard to bail. You said that anyone who hears a bail application or grants bail has to have a certain knowledge of the man's record and that that bars him from future participation in the case in any way, shape or form. You mentioned it might work a hardship in smaller places where there are not too many magistrates. Suppose a man appears before you on an actual charge and bail has been turned down. You would sort of be fixed with the idea that this man has had his bail turned down and you would obviously know that it has been turned down for certain reasons.

Magistrate Strike: I know another thing as well, that a great deal is done on this matter of identification because, you see, he has been before the J.P. within the last 10 hours. He then comes before me and by this time the man's record has been made available. This does not apply in the more minor cases, it only applies...

Mr. Pugh: That is what I mean, it applies in the more serious ones.

Magistrate Strike: ...in a serious case where a chap is charged with armed robbery, which is a very serious offence. The chances are that the J.P. is not going to set bail right off the bat, he is going to wait and he will then have a chance to talk to crown counsel and counsel for the accused, and if they cannot agree on something so far as the Queen's counsel is concerned then it will come before a magistrate and there will be a full-scale hearing. As I say, when we do that we become disqualified.

• (12:00 noon)

Mr. Pugh: Yes. I feel reasonably happy about the present system on bail. Woud you say that it is because of the more serious cases that this Bill is before us and we are here talking about bail in this way? I am talking of those cases where a man has not been able to obtain the required amount of money, or sureties, and he is not out on bail; and he is kept in and goes through the various remands until the defence is completed and they are ready to go on. This is really what we are concerned about in this Bill, not the minor cases. In the more serious cases there is less chance of a man getting out because of a prior record, or whatever it may happen to be.

Magistrate Strike: I would agree that that is so. One of the other difficulties we have is that the greater the criminal the better chance he has of getting out, because he may have a syndicate behind him. That is the reason, as I say, that the older I become the more I come to regard it as a matter of either bail or no bail. If from his record, you arrive at the conclusion that a man is a criminal and that apparently his chances are that he is not going to change much, then the solution might be to have no bail at all. One gives bail to people who are entitled to bail because actually they have just been charged with an offence, but the real criminal type who, no matter what bail you set, will raise it, is the fellow who belongs to the...

Mr. Pugh: If no bail was the issue it really would not require a bill such as this. It would be done by an amendment to the existing law?

Magistrate Strike: That is right; and I do not think that will ever happen. As I say, it is just a conclusion that, the older I grow, the more I come around to. That may eventually be the end of it.

Mr. Pugh: I think I have covered all my questions, sir. Thank you.

Mr. Stafford: May I ask a supplementary on what Mr. Pugh quoted me on? Perhaps I did not make myself quite clear. Would you agree, as it stands now, that the discretion of the judge having jurisdiction under the Criminal Code is so broad that even a person charged with capital murder could be let out on his own recognizance?

Magistrate Strike: Yes; I would say so.

Mr. Stafford: Therefore, there is nothing more that we can do here to make bail more lenient than as it already exists?

Magistrate Strike: That is right.

Mr. Stafford: Because the administration of justice is in the hands of the provinces there is nothing that this Committee, or even the Parliament of Canada, can do except recommend; is that correct?

Magistrate Strike: That could be so.

Mr. Stafford: In view of the answers to those two questions the whole fault lies within the administration and is totally under provincial jurisdiction?

Magistrate Strike: As Mr. Bull himself said, the whole thing depends on people like crown attorneys and magistrates and justices of the peace. If the discretion is there it is they who have to exercise it, and that presents a problem.

Mr. Stafford: Because it is a matter of provincial jurisdiction, which is out of our hands completely, and since this Bill makes the conditions for bail even worse than those in the existing Criminal Code—and since they are already lenient—it is for the provinces to get these people together to set out rules.

Mr. Gilbert: Mr. Chairman, I would like to tone down the exaggeration contained in the question that Mr. Stafford asked. Does Mr. Strike know of any person charged with capital murder who has been let out on his own recognizance?

Magistrate Strike: No, never.

Mr. Stafford: I did not say it had happened.

Magistrate Strike: It is possible, but it has never been done.

Mr. Gilbert: No. That clarifies that point. Let us talk about summonses now. I am told that there is quite a contrast in the issuing of a summons in England as compared with Canada. In fact, reports indicate that 35 per cent of persons charged with offences—and I am talking about non-indictable offences—are brought to court by the summons, whereas in Toronto the figure is only 8 per cent. Could we have a more widespread use of the summons in Canada?

Magistrate Strike: Yes; I would say that. Although Mr. Stafford does not approve of it, it is improving. In the last year I have noticed that a great many more summonses are being issued than there were before. It is a matter of Crown counsel coming around to that view, too. They are instructing their police departments and the police departments are issuing summonses instead of warrants. However, that is a matter that is not in the hands of magistrates or judges. It rests in the hands, if you will, of Crown counsel and Crown attorneys who give advice to police departments.

Mr. Gilbert: At the moment you have the accused appearing before a justice of the peace...

Magistrate Strike: It is his discretion whether a summons or a warrant is issued; but in the case of an indictable offence if a justice of the peace is well qualified he will get in touch with the Crown counsel, or the Crown attorney.

Mr. Gilbert: With the exception of impaired driving cases, as Mr. Stafford pointed out, the majority are released on a nominal bail of $50 or $100. However, I notice in a report I have in front of me that for

> Forgery and uttering. In England, 44 per cent of all persons charged...

are charged by way of summons; whereas in Toronto,

> not one person out of 123 prosecuted in Toronto for forgery and uttering was summoned.

That is on forgery and uttering. On indecent exposure, in England, 59 per cent, and in Toronto only 3 per cent.

Magistrate Strike: You will find a larger percentage in this area. I have noticed that quite a number of recent cases of indecent exposure were handled by way of the summons.

The difficulty in forgery and uttering is that we find they are being done in this area by roving bands. They come into an area and have all the equipment to commit the forgery. They have cheque-writing machines. Somebody steals a firm's cheques, and they have the cheque-writing machine. They move from place to place. In a case like that a summons is probably not the answer.

Mr. Gilbert: I think you are right.

Magistrate Strike: That presents a problem.

Mr. Gilbert: Yes.

Magistrate Strike: I have discovered over the last number of years that in this area the forging and uttering are done by gangs which take over the area for a while. That presents a problem. In the case of an ordinary forgery, where a person employed by a company forges the signature of somebody in that same company, I do not see why a

summons could not be issued. But it has not been our experience that that is the type of case we are getting.

Mr. Gilbert: On criminal negligence—and we have had quite a few of those...

Magistrate Strike: You will find that in many criminal negligence cases they are arrested on the spot.

Mr. Gilbert: It says that 93 per cent in England were by way of summons, and that not a single person was summoned out of 48 persons charged in Toronto in 1961.

Mr. Stafford: Do you mean in cases of criminal negligence or the ordinary?

Mr. Gilbert: There is a distinction, as you know, in criminal negligence.

Mr. Stafford: Yes, I know; but there is a section under the Code on criminal negligence. Is that what you are talking about?

Mr. Gilbert: Yes; you are right. As he points out, there is a distinction in England, in this criminal negligence section; and as you know we have had changes here.

All I am saying is that there is more widespread use of the summons in England than there is here.

Magistrate Strike: That is true.

Mr. Gilbert: If we were to give the J.P's the power to summon rather than...

Magistrate Strike: They have it.

Mr. Gilbert: They have it but they do not exercise it.

Magistrate Strike: They do not exercise it because when a J.P. gets the more serious type of offence...

Mr. Gilbert: He seeks direction from the Crown?

Magistrate Strike: He gets direction from the Crown counsel. They are actually instructed, in the more serious cases, to get direction from Crown counsel.

Mr. Gilbert: What are your views on the matter question of security in advance? In England they do not demand security; they do not demand the $100, or $200 or $500; all they ask for is the surety rather than the advancing of the security.

Magistrate Strike: Personally I prefer sureties as a means of getting a person back for his trial if there is any danger that he will not come. I prefer to have two people who are interested in seeing that he gets back. It costs them money if he does not. I prefer surety to cash bail. With cash bail a fellow can skip.

Mr. Gilbert: But the trend, you know, in Ontario—and I am speaking only of Toronto—is more the demand for security in advance than surety.

(12.10 p.m.)

Magistrate Strike: That is true, and I suppose one of the reasons is that it is simpler. It does not create the problems that the other does. Sometimes it is difficult for the person to get the sureties, too. But, as I say, I prefer sureties either with or without security.

Mr. Gilbert: Perhaps I could ask you one more question. At the moment you say that our law or in the determination of bail is on a discretionary basis, with that discretion invested in the magistrate with the hope that he exercises it judicially. Sometimes it is not so exercised because of the direction given by Crown counsel, the magistrate looks down at Crown Counsel and asks: "Well, what is the bail?" and the Crown Counsel usually says: "$1,000 property or $500 cash," without going into the facts of the background of the accused.

Magistrate Strike: That no longer happens. You will find that the legal aid man for the day now goes into it thoroughly. That has been done in our area for some years. It is voluntary legal aid we have because of our own system. I have always insisted that the Crown just do not say to me that is is so much money. If the Crown says to me that it is so much money I ask why. Then we go into the matter of detail.

Mr. Gilbert: It may be because of the volume of cases in Toronto...

Magistrate Strike: It could be.

Mr. Gilbert: ...that they have to do them very quickly. I would ask you to direct your attention to clause 3(a), because the general feeling is that the law as it now stands, is wider than the provisions of this Bill. That subclause reads:

> place the person in the custody of a designated person or organization agreeing to supervise him;

Is that very often done?

Magistrate Strike: I have done it frequently in the cases of younger people brought before the court. I will say: "Are you people prepared to be responsible for this young man?" and we see that he is placed in his own recognizance under those circumstances. So long as somebody is going to be responsible, then, as a rule, we are satisfied.

Mr. Gilbert: This would be a little wider than the practice at the moment?

Magistrate Strike: I do not...

Mr. Gilbert: Let us look at subclause (b) which reads:

> place restrictions on the travel, association, or place of abode of the person during the period of release;

Magistrate Strike: One of the difficulties I see about that one is that of enforcement. I will check on it.

Mr. Gilbert: Yes.

Magistrate Strike: It is difficult, on (b).

Mr. Gilbert: We will examine subclause (c), then:

> require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond...

That is not done at the moment.

Magistrate Strike: That is not done at the moment. I can see some merit in that. That could be done now as a matter of discretion, I would say.

Mr. Gilbert: Yes; I think you are right on that. Then subclause (d) says:

> require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;...

Magistrate Strike: That is done, yes.

Mr. Gilbert: Paragraph (e) is rather a general one, which reads:

> impose any other condition deemed reasonably necessary...

Therefore, there may be a few provisions in this Bill...

Magistrate Strike: May I say that there is contained in clause 4—this has nothing to do with bail—something that is done now, is done in some cases quite illegally, and which we would like to be able to do. I think there are a couple of decisions which say that we can date back, and there are other decisions to the effect that we cannot. It would be interesting to be able to say that we can —that everybody does it. If a person has been in custody, for two weeks and comes up on a minor charge of shoplifting, or something of that nature, you say, "Well, you have been in long enough now. We sentence you to the time spent in jail." That is done now. It is illegal, but it is done.

Mr. Gilbert: I think that that should be made legal.

Magistrate Strike: I think it should be made legal. I believe there exist two decisions that say it is legal and two or three that say it is not. It would be interesting to have it made legal.

Mr. Gilbert: Thank you very much, Mr. Strike.

The Vice-Chairman: Mr. Mather is next.

Mr. Mather: Mr. Chairman, as you know, I am not a member of this Committee, but I am the author of the Bill before you. I would appreciate a moment or two to discuss a question that I would like to ask.

May I say, very briefly, that I was encouraged to bring this Bill forward for two reasons. The first is, that in the United States last year very similar legislation was enacted, and the President, in signing it, said that the whole intent was to put the emphasis on the character of the accused rather than on his property or money in regard to what type of bail he got, or whether he had to put up bail at all.

The second thing that encouraged me was the study made by Professor Friedland of Toronto, in which he found that some 40 per cent of the accused appearing before the courts in Toronto were unable to raise the bail that had been set for them. He also agreed with the idea that more attention should be paid to the character of the accused and the likelihood of his turning up, than to the money he might have.

I also want to say that so far as I can see there is nothing in the Bill that I propose that would take away from the existing legislation, or limit magistrates in deciding the question of bail in these cases. Before I ask my question I want to emphasize that my whole idea in bringing this Bill to the House and getting it through the Committee was to

direct attention to what seems to me a neglected area of justice administration.

I certainly do not think that my Bill is the best possible proposal, but my question is: Would the witness agree that it is perhaps timely for this Committee to study this type of proposed legislation, particularly when, as I understand it, the Department of Justice is working on omnibus legislation, to be presented to the House later this session, which would, for the first time in many years, make amendments to the Criminal Code in different areas? Would it not be a timely thing for your Committee possibly to make some recommendation to the Justice Department on this subject?

Magistrate Strike: I certainly agree that the recommendations would be very timely, Mr. Mather; and I am also of the opinion that it should be stressed that bail should be a matter of character rather than of money.

In my own career I have considered it in that way—that bail is a matter of character. What you are interested in is having a man back for his trial, and also in being reasonably sure that while he is out he is not going to commit another offence. Taking that into consideration, the whole thing in my mind has always been the matter of his character—is he coming back. These other matters have to be considered, but it certainly would be timely, as you say.

This other omnibus bill which is to come before the House is very important, too, and that point should also be stressed in it, so that it can be brought to the attention of we people who take so long to act.

Mr. Mather: I have one other question, Mr. Chairman. Did I correctly understand the witness to say that he saw merit in clause 4 of the proposed legislation, which reads:

> Any time spent in custody at the prison, penitentiary, reformatory or jail previous to the pronouncing of the sentence shall be credited to any person convicted of an offence.

Magistrate Strike: What I was suggesting was that we make legal something that we do now. I would not want it in those words, because, for example, I had a man before me the other day who already had been in custody for some considerable time on another sentence in another court. I had no intention of giving him the amount of the time that he was in jail and had been in jail, in any event. It would make it possible for me to do legally what I now do illegally.

Mr. Mather: I can understand that.

Magistrate Strike: There has been some discussion, or argument, about whether it is legal or not.

Mr. Mather: You approve the principle...

Magistrate Strike: I approve of it in principle, that the person should be given credit for the time he has spent in jail. My own rule of thumb used to be that a person who had been in custody prior to sentence should be given credit for double the amount of the time so spent. I have always thought that a person awaiting trial suffers a little more tension than after the sentence. The rule of thumb used to be if he was in custody for, say a month before sentence, to consider that as two months. Therefore, if we were going to sentence him to a year he would get 10 months.

Mr. Mather: Thank you, sir. Those are all my questions.

Magistrate Strike: That was the system that I used to adopt.

• (12:20 p.m.)

Mr. Woolliams: I shall be brief because most of my questions have been answered. I presume that the lawyers around here have always wanted, sir, to cross-examine a magistrate. I know this is your job but I have some ideas about it. I think one thing we have cleared up. I want to congratulate you for bringing the Bill in, legally clear it up. The law is all right. I do not think there is too much wrong with the law. I agree with you. But I think in administering the law there have been difficulties. I like the idea of summons. I think that the problem does not lie with the magistrate or even the Crown prosecutor. I think in a city like Toronto or Vancouver or Montreal or even Calgary, where I come from, the big trouble is that the police find it much easier to incarcerate a fellow to be able to administer their jobs than to issue a summons, and sometimes are able to get certain statements from him while he is incarcerated so that they can get a conviction.

I think these are practical things. But I think some of the problems that we should look at are these: that the magistrates are too over-worked in most major cities; secondly, when you compare the amount of work they do in the administration of justice in the criminal field, they are underpaid when you

take into consideration the salaries paid county and district court and supreme court judges. I think those are some of the things that must be looked at. After all, the bail, the granting of bail—I agree with everybody here and I agree with you, sir—is a matter of discretion. The law is all right, but if the discretion is not exercised properly, and how can it be exercised properly—I am going to ask you that question—if magistrates are rushed to such a position that they are deciding 200 cases sometimes in a morning? At least two magistrates I know have to do that type of work, so how can they possibly give the time when they are asked to do that amount of work? They are the most overworked judges on the Bench and my sympathy is all with them. I have not always said that when I am before them but basically down deep my sympathy is with the magistrates because they are over-worked and they are rushed. I think this is some of the problem. What do you think of that?

Magistrate Strike: I agree with everything you said, sir, especially about the salary.

Mr. Woolliams: I think that is really why you brought the Bill in; you thought there was something wrong with the law as a layman. The law is good but the fact is the people that are applying the law—it is not always their fault—are not using the kind of discretion necessary that the law provides. It has become a rule of the people and not a rule of the law and when you run into that you always get abuse.

Mr. Mather: Mr. Chairman, may I just say that I am not a lawyer but I have great sympathy for the lawyers.

Mr. Stafford: You include the magistrates.

Mr. Mather: Well, that was already considered.

The Vice-Chairman: Are there any further questions?

Mr. McQuaid: Magistrate Strike, I have just one question. I am surprised, actually, at your suggestion that the jurisdiction of the police in granting bail should be extended. I believe you said that, did you not?

Magistrate Strike: Only in summary convictions matters and some penal statutes, federal as well as provincial. I do not want to have it increased in anything like an indictable offence or anything of the kind but just in minor types of offences.

Mr. McQuaid: Let us take, for example, the case of a man picked up for impaired driving. I would judge from what is said here today that the practice with respect to impaired driving varies very greatly across this country. In the province that I come from, instructions have gone out from the attorney general's department that every man picked up for impaired driving is to be arrested, and every man who is picked up for impaired driving is immediately arrested by the police. This means that that man the next morning has to arrange bail. In this matter of bail, my experience has been that you run up against a certain amount of resistance from the police; the police are inclined to not let him out on bail.

Magistrate Strike: They cannot grant bail on impaired driving. Actually, that is an indictable offence that may be tried summarily at the election of the Crown counsel, so the police are not permitted to grant bail on their own. That is the reason that we have to have these JPs on duty until at least 12 o'clock at night.

Mr. McQuaid: But you would suggest that in cases where the police now have the discretion to grant bail this should be enlarged.

Magistrate Strike: They could enlarge it to some federal statutes.

Mr. McQuaid: I see. Did I understand you to say, sir, that in Ontario there is a law which says that all JPs must be trained before they can be...

Magistrate Strike: No, no. Under the Justices of the Peace Act, it says they may not act in any judicial capacity—this is paraphrasing it—unless they are instructed by the magistrates having jurisdiction over them.

Mr. McQuaid: Is it the practice of the magistrate to make sure that he is trained to some extent before he extends that power to him?

Magistrate Strike: That is our responsibility. Before a JP is appointed, we must train him. He must go before a county judge and be questioned by the county judge as to his qualifications.

Mr. McQuaid: I would take it, then, that every justice of the peace acting in Ontario today in the matter of bail has been trained to some extent.

Magistrate Strike: Otherwise he is not authorized to act. When I say this in the matter of training, I can only give the example of my own area because I know this: that no justice of the peace can grant bail unless the magistrate in that area has authorized him to do it or authorized him to exercise a judicial function.

Mr. McQuaid: But that is a provincial statute which applies all over the Province of Ontario.

Magistrate Strike: That is in the Justices of the Peace Act.

Mr. McQuaid: It is applicable all over the Province of Ontario.

Magistrate Strike: That is right. That is in the Justices of the Peace Act. I have to authorize in writing—I authorize all my JPs in writing—as to what they may do judicially.

Mr. McQuaid: I think if every province would pass a provincial statute of that kind we might get around much of the difficulty that we are experiencing now so far as bail is concerned. I think it is the general consensus here this morning that the provisions with respect to bail are adequate enough, but as somebody has already said, it is the administration of the bail, administration of the law, that we are having difficulty with. I feel that faulty administration, particularly in my area, is due to the fact that JPs are fixing bail who do not know the first thing about it and unfortunately they are influenced a great deal by the police. The police say to the JP: "This man should not be let out unless he puts up $100 cash bail; we will not accept anything else." And the JP follows these instructions.

Mr. Stafford: I have one more question, further to Mr. McQuaid's question and your answer that police officers possibly should be given the right to set bail or that that privilege should be extended. In reality that discretion exists with police officers today because instead of arresting the accused they merely have to summons them.

Magistrate Strike: That is right.

Mr. Stafford: So, it is exactly the same thing. Just one other point about clause 4 of this Bill. Since every magistrate that I have ever seen takes clause 4 into consideration, in reality it would make the penalty of the accused or his record look even greater, would it not, on the face of it, than it does now?

Magistrate Strike: You mean it would look like a longer term?

Mr. Stafford: Yes, it would make it look worse for the accused. Then going on to clause 3, subclause (c) on page 2 of the Bill, those terms used which Mr. Gilbert just read "appearance bond...in the registry of the court" are not defined in either this Bill or the Criminal Code; so that would be another amendment necessary.

Magistrate Strike: I would say so. The way bail is handled now in our court is that it is placed through a separate bail bank account; it is just a bank account for bail, and nothing else.

The Vice-Chairman: Well, gentlemen, if there are no further questions, I shall express the appreciation of this Committee to our distinguished witness for having taken of his valuable time and having consented to appear before this Committee to let us profit from his vast experience on the Bench. It was very interesting and useful and certain to be taken into consideration. We are very grateful to you, sir.

Magistrate Strike: Thank you.

The Vice-Chairman: This Committee will now adjourn until Thursday, November 16.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

THURSDAY, NOVEMBER 16, 1967

RESPECTING

The subject-matter of Bill C-4,

An Act concerning reform of the bail system.

WITNESS:

Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27559—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 16, 1967.

(9)

The Standing Committee on Justice and Legal Affairs met at 11.15 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, MacEwan, McQuaid, Stafford, Tolmie, Wahn, Whelan, and Mr. Woolliams (12).

Also present: Mr. Mather, M.P.

In attendance: Professor M. L. Friedland.

The Committee resumed its consideration of the subject-matter of Bill C-4 (*An Act concerning reform of the bail system*).

The Chairman introduced the witness, Professor Martin L. Friedland, Associate Professor, Faculty of Law, University of Toronto.

Professor Friedland addressed the Committee, stating his views and certain of his own recommendations in connection with the subject-matter of Bill C-4. The witness was questioned for the balance of the meeting.

The Chairman thanked Professor Friedland for his appearance and for sharing his knowledge of the subject with the Members of the Committee.

The Chairman announced that the Committee will be considering the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*), during the next two meetings. On Tuesday, November 21, 1967, the witness will be Dr. Gregory Fraser (Clinic Director—Out Patient), Alcohol and Drug Addiction Research Foundation, Toronto, Ontario. On Thursday, November 23, 1967, the witness will be Dr. J. Naiman, Psychiatrist, Jewish General Hospital, Montreal, Quebec.

On a motion by Mr. Stafford, seconded by Mr. Gilbert,

Resolved,—That reasonable living and travelling expenses be paid to Dr. Gregory Fraser and Dr. J. Naiman, who have been called to appear before this Committee in the matter of Bill C-96, on November 21, 1967, and November 23, 1967, respectively.

The Committee adjourned at 1.00 p.m., until Tuesday, November 21, 1967 at 11.00 a.m.

Hugh R. Stewart,

Clerk of the Committee.

27559—1½

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 16, 1967

• (11:15 a.m.)

The Chairman: Good morning, gentlemen. We have a quorum. The Committee will continue consideration of the subject matter of Bill C-4, an Act concerning reform of the bail system.

I would now like to introduce to you Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto. He is the author of a book entitled *Detection Before Trial.* Without any further remarks on my part, Professor Friedland, the Committee is now ready to hear you discuss the matter.

Professor M. L. Friedland (Associate Professor, Faculty of Law, University of Toronto): Thank you for inviting me to attend the hearing. Perhaps it would be helpful if I make a few general observations to start with and leave to questions the details concerning the bail system.

Mr. Chairman, the principle of Bill C-4, is very sound. It strikes at the heart of the bail problem in Canada, which is the practice of requiring security in advance. However, Mr. Chairman, there are in the Bill a number of deficiencies which require attention, and later, if you wish, I can draw to your attention some of the matters which interest me.

The Chairman: It is the subject matter of the Bill about which we are most concerned. The form of the Bill is one thing, the subject matter is another.

Professor Friedland: Mr. Chairman, there are a number of other very important areas concerning detention before trial, such as the use of the summons, and release before the first court appearance, which should be tackled by the legislature at the same time that they are considering Mr. Mather's Bill.

My general conclusion, Mr. Chairman, is that the Bill should be thoroughly re-worked, and, along with other changes in our pre-trial procedures, should be integrated into the Criminal Code. I can, if you wish, expand on any of those points, and at some time or other I could illustrate the other changes that should be introduced into the Criminal Code as part of a thorough-going revision of this area.

The Chairman: The Committee would like to hear, generally, your views on the abuses of the present bail system and your suggestions about how it might be improved. After you have so expressed your views the members of the Committee will take over and ask questions.

Mr. Woolliams: Mr. Chairman, I think your suggestion is excellent, but there is one question I would like to ask, which I think is in the minds of the members. Our witness is an experienced and educated man. I would like to ask him this question which was so ably put by my good friend here at our last meeting: In any of the problems that arise in reference to bail, or long detention, or the inability of people to get bail, is it the law or the administration of the Code itself that is wrong? I will put it shortly: That the law itself is good in the Code, because you have discretion in common law and the interpretation of the section, but that it is the administration that is wrong. For example, the police can issue summonses; they do not have to arrest you; you can apply for bail on any one of the summary charges or on an indictable offence prior to any trial. The law is there, and a magistrate can let any accused out on his own recognizance under any Act he wants, as was brought out by my friend at our last sitting. Would you agree that it is not so much the law but the administration that needs to be reformed?

Professor Friedland: I think both the law and the administration require a change.

Mr. Woolliams: Could you tell us what is wrong with the law, then?

Professor Friedland: The law requires a number of changes in the areas concerning the summons, release before the first court appearance and in the sections that we are dealing with by virtue of the fact that it is

not being uniformly and properly interpreted across the country.

• (11:20 a.m.)

Mr. Woolliams: Yes; but that does not make the law weak.

Professor Friedland: Under the legislature of Canada the federal government has an obligation not just to enact the law but to ensure, to the extent that it can, that it is properly administered. If, by simple amendments, it can set standards and give direction to those administering the law across Canada I think it should do so. I may be getting into a somewhat broader issue than this particular one, but it is an important issue. There is a large area in which the federal government should move into the administration of the law to ensure that it is properly administered, by setting the standards in the Criminal Code. This is true not just of bail practices but in areas of police practices. It should be setting standards and giving guidance through legislation and by having officials ensure that it is being properly observed. This is true, for example, in legal aid. It may be true in establishing sentencing standards. This is going beyond what we have always thought the Criminal Code should do, which is to establish a section.

At this very moment there is another committee dealing with the matter of abortion which, in a philosophical sense, is very close to what you are dealing with here. Perhaps I am straying too far from the subject matter of the Bill, but many lawyers say that the abortion law does not need reform; that if they only looked at the Criminal Code and understood the cases properly everything would be fine; but that there is this uneven application of the law across Canada. Some hospitals interpret it in one way, and others in another, even although you say that of the interpretation the law is clear.

In fact, the same has happened with the administration of bail across Canada.

Some magistrates interpret it one way and some another way. I agree with you, sir, that on my interpretation of the law—and this is what I argue in my book—the Criminal Code does not envisage security in advance. The provisions of our Criminal Code come from the English law which looks to sureties, and the supervision of sureties, rather than to money, for ensuring that the accused will attend his trial. The introduction of money into our bail system was an unjustifiable gloss on the bail system by using the American technique of security.

But having said that, we still find across the country many magistrates who think of bail in terms of money. It is a case of five hundred dollars' bail for the offence, and they do not care by whom or how it is put up. Bill C-4 has the advantage of telling those administering the law how they should do it. It says that you start without requiring security in advance; that people should be released on their own recognizance, if possible; and then it sets further stages if the first would not be successful.

It really just elaborates what is presently the law under the Criminal Code but is not being properly administered.

Mr. Woolliams: Perhaps we can come to grips with that? You can even apply for bail in the case of an indictable offence where a man is arrested.

Professor Friedland: Even in capital murder you can.

Mr. Woolliams: Yes, that is right; but on an indictable offence, provided you can get a magistrate at the proper time you can always make an application for bail. If a magistrate will not interpret the law properly and I know this is difficult—you can go to a high court and get bail.

I still say that there is nothing wrong with the law. If the magistrate is not interpreting it properly you finally establish a precedent and the magistrate will then start interpreting it according to the high court or the appeal court. I am merely pointing out, as a trial lawyer, of which I have had some experience, and as confirmed by the magistrate who gave evidence of our last session and by one of our very learned Crown counsel from this province, that the law is there. It is a question of administering it.

First of all, these magistrates, as I sure you will agree are overworked; secondly they are sometimes political appointments; and, thirdly, I think they are underpaid. You may think that they are all political appointments. In our province you cannot find lawyers that are Social Credit, so we have to appoint them; but sometimes they are political appointments. Provided they do their work properly the law is all right. It is the administration of the law that is causing the difficulty and has prompted this good member of Parliament to bring in this Bill. That is why I think we should come to grips with the subject.

We could talk for days about this and that weakness, but the law is there. Unless you can say that section such-and-such of the Code should be amended in some way, you are going to have to direct your attention to the administration. There it may be poor interpretation, but, basically, the law is there, whereby a man can walk out of jail on his own recognizance whatever his crime may be—as my good friend pointed out, even that of murder, if they want to interpret it that far.

Mr. Mather: Mr. Chairman, on a point of privilege. It seems to me we would make more progress if we followed your suggestion and had the witness outline some of the situations getting into detailed questions.

The Chairman: Probably the best approach for the benefit of the Committee would be to ask Professor Friedland to address himself to that phase of it, that the law may be all right but that the administration is bad. The law can be proved, because you can in the law give directions to the magistrates, or to the judicial officers who deal with it, on how they should approach the problem of bail. Therefore, I will leave it to you to carry on.

Professor Friedland: Perhaps, Mr. Chairman, I should say something about other areas, connected with this central issue, which require further consideration and change at the same time that you might be considering other changes. This will perhaps illustrate that the law needs to be changed; that it is not wholly adequate, as might be suggested.

An hon. Member: Hear, hear.

Professor Friedland: The first area requiring serious consideration is that of the summons. The summons is not used in Canada with anything like the frequency with which it is used in England. This is central to the bail issue, because if a person is summoned rather than arrested one does not have to get into the whole question of bail. Therefore, as part of the technique for ensuring that people are not being kept in custody unnecessarily we should encourage greater use of the summons to eliminate the later problems. Secondly, we should encourage, and provide techniques for, allowing a person to be released prior to the first court appearance. There are grave deficiencies there. In Toronto we found that on the summons issue 92 per cent of those charged with Criminal Code offences were arrested rather than summoned and the vast majority of those who were arrested, approximately 90 per cent, were kept in custody until their first court appearance, which usually meant a great number of hours, perhaps 10 hours or longer, until their first court appearance. As part of the plan to change our pre-trial procedure, Mr. Chairman, we should look to these areas too because they are all related with the bail problem. If you wish, I could say something on the summons.

• (11:30 a.m.)

The Chairman: Why do you not just proceed in the way that you want to develop the subject matter? We will ask the questions after you have developed the subject on this.

Professor Friedland: There are a great number of changes in the Criminal Code which, if enacted, would encourage and provide for a greater use of the summons.

For example, if an officer has reasonable and probable grounds to believe that an indictable offence has been committed, he may arrest without a warrant, even though it may be unreasonable for him to arrest rather than to summon; and so one major but very simple amendment to the Code would be to amend Section 435 of the Code to make the police officer's right to arrest without a warrant, not only dependent upon his having reasonable and probable grounds for believing that an offence has been committed, but also that it is reasonable for him to arrest rather than to summon. A fair number of other changes could be introduced into the Criminal Code. These are simple changes but yet unless these are made we will find that the summons will not be used extensively.

Fingerprints, Mr. Chairman, are very important for the police. All police officers recognize this. I think most people who have studied police practices realize that police require fingerprints; yet the Identification of Criminals Act, which is the legal authorization for obtaining fingerprints, limits the right to print to persons who are in custody. If the police then wish to obtain fingerprints which they must have, they have to arrest the person. So a simple amendment to the Identification of Criminals Act should be made to provide that if a person is summoned, the police can still obtain his fingerprints by requiring him to appear at a certain time or within a certain period of time in order to give his fingerprints to the police.

There are a great number of minor but crucial amendments like this that have to be made to the Criminal Code before the summons problem can be properly dealt with. At the present time there is no penalty for failure to obey a summons. This detracts from its usefulness. There is no penalty for giving a false name. Again, this detracts from its usefulness. There is no authority for the police to issue summonses without going before a Justice of the Peace. In many provinces they can do this for provincial offences. This would encourage greater use of the summons.

Turning then, Mr. Chairman, to the area of bail prior to the first court appearance. There are a number of changes that should be made there in order to encourage the early release of accused persons. I believe Mr. Bull said in his submission that this is an area which greatly concerned him, and I agree with this because at the present time, before a person can be released prior to his first court appearance, you have to obtain a Justice of the Peace who has to appear at the police station and release the person. In many jurisdictions it is difficult to obtain a Justice of the Peace on short notice.

The solution to this adopted in England and in many of the provinces for provincial offences is the simple technique of allowing the senior police officers to set and accept bail for this brief period, or this period after arrest and prior to the first court appearance. It has operated in England, I believe, since the early 1800's without any infringement on the accused's liberty. It is only to the advantage of the accused because it does not eliminate the Justice of the Peace. It simply provides that a police officer, in addition to the Justice of the Peace, can release an accused person.

Mr. Stafford: With reference to the Criminal Code, sir, what offences did you have in mind?

Professor Friedland: Certainly you would want to have it for summary conviction offences.

Mr. Stafford: But we do that under the Summary Convictions Act already—a police officer without any Justice of the Peace at all—of the province.

Professor Friedland: Yes, but not for summary conviction offences under the Code.

Mr. Stafford: Not under the Code, no.

Professor Friedland: You are quite right. If a person is charged with impaired driving under the Code, before he can be released a Justice of the Peace would have to appear, unless in that particular municipality they work out a semi-illegal scheme, which is not desirable, to allow his release and then document it afterwards.

Mr. Stafford: But the point Mr. Woolliams was getting at here is not that. It was the fact that there is no compulsion in the Criminal Code for the police to arrest a man in the first place; therefore, it amounts to the same thing, does it not? They do not have to arrest him.

Professor Friedland: Yes.

Mr. Stafford: And therefore it is the administration of the province. This is what we cannot quite understand.

Professor Friedland: There may be very good reasons for the police officers to arrest a person. For example, in impaired driving they may wish to remove him from the possibility of continuing his offence, and yet they may wish, after he has sobered up, to release him. Or it may be that they are unsure of his identity and therefore arrest him but yet they wish to release him. There should be authority in the Code either for the senior police officers to release the accused on bail, or else to release him and then summon him. The Code is not clear on this. As in all these matters, you will find that in one province people will argue strongly one way about the interpretation of the Code, and in another province they will argue strongly in another way. On that simple issue, can the police release a person that they have arrested and booked? We turn to section 438 of the Code, subsection (2) and can see why different police officers give different opinions on this. Section 438, subsection (2) states:

> A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall, in accordance with the following provisions, take or cause that person to be taken before a justice...

Many police officers say: If the Code says that having arrested a person without a warrant we shall take him before a Justice of the Peace, and in the previous subsection it uses the word "may", what authority do we have to release a person who has been arrested?" That is not a bad argument. I

happen not to agree with it and I can show a Quebec Court of Appeal case which is otherwise; yet, there is a police manual which raises this particular point and shows that the administration of the law on this point is unclear. I think that there is an obligation on the drafters of the Criminal Code, particularly when there is no legal obligation for magistrates and those administering the law, as you point out, to be legally trained to make it clear what the law means. There is hardly a section in this area that I can turn to in which I cannot give, as all lawyers can, arguments either way which shows that the law is in doubt.

• (11:40 a.m.)

Mr. Woolliams: May I put this to you, and I am thinking of Dean Cronkite of the Saskatchewan Law School: he said—and I think you might agree with me he is a very able Dean—that you cannot draw anything so exact that it is not subject to many interpretations. That is what we have courts for—to interpret what Parliament intended. Now as nearly as possible, we should try to draft our legislation so there is no ambiguity, but is this not almost impossible when one group of human beings look at it one way and another group of human beings look at it another? That is why you have courts.

Professor Friedland: There is an obligation, sir, to enact the law as clearly as possible. There are some laws which are necessarily vague in order to allow courts to interpret them. But this is an area of the law which rarely gets up to a higher court. I do not know of any Supreme Court of Canada decision dealing with this whole area.

The number of cases in which a bail application has been reviewed by the high court amounts in any province to two, three or four a year, and yet there are thousands and thousands of people who are being held in custody pending their trial. So, if you look at the administration of the law, you will find that a large number of people are being kept in custody until their first court appearance.

As I pointed out before, 90 per cent of those charged with Criminal Code offences were arrested, less than 10 per cent were summoned; this is in the sample of over six thousand cases. Approximately 85 per cent of those arrested were kept in police custody until their first court appearance, many for substantial periods of time.

In one division station analysed—it was one of our largest division stations in Toronto—over 80 per cent of all those booked between seven in the morning and midnight were kept in police custody for over 10 hours before their first court appearance. This is a tremendous amount of custody we are using, even though it may be that the law is not as bad as some may make it out to be. If we have a situation in which the law is unclear and the law is not working well; the administration of the law is uneven across Canada; there are those that do not apply the law properly and there are obvious changes that should be made to make the law better, surely the Government of Canada has an obligation to ensure that the Criminal Code is clear even if it does not want to get into the field of the administration of justice by the actual supervision of how police forces and courts operate.

The government—and this has been a pattern for some time—has felt that their obligation ends with the enactment of legislation. Yet, the actual legislation and the administration of the legislation are all one. You cannot separate the two. In no other jurisdiction of the world do we find this division of authority between one enacting the law who says, "Well, what people do with it is not our concern", and another jurisdiction that administers the law and says, "But we have no concern over what the law says". In England the two are interrelated.

In the United States the two are interrelated when you are dealing with the federal structure and when you are dealing with the state structure. But in Canada they are unrelated and in the absence of judicial decisions which set standards—and this is an important consideration—some one has to do so.

The Supreme Court of the United States, has taken a very active role in the administration of the criminal law. In the field of search and seizure, they set standards for all the state courts and the state legislatures to follow. In the field of legal aid, it was a Supreme Court case of Gideon V. Wainwright which established uniform standards throughout the United States. It has been the United States Supreme Court which time after time has said: this is the minimum standard that we want to apply throughout the United States.

In Canada for one reason or another our courts have not taken the same approach to the function of the judiciary, and as a result

no one has done very much about many of these problems. The federal government says: "But the law is there"; the provinces say; "We just administer the law," and the courts stay clear of all these areas. My suggestion, Mr. Chairman, is that the federal government should take a greater interest in how the law is operating, examine the way the law is operating and set out standards for those administering the law to follow.

The Chairman: What about communication between the various law officers of the province and dominion; Crown attorneys, magistrates. Do they not take action along the lines you are suggesting?

Professor Friedland: So far as I know, Mr. Chairman, there is no national magistrate's association. There is a very strong Ontario magistrate's association which is attempting to change practice in this particular area, but there are no meetings of magistrates that I know of from across Canada. The federal government has not become involved in that aspect of it and the individual provinces have done nothing on a national basis. Yet, it is in the magistrate's courts, as we all know that 95 per cent of all indictable offences and all summary offences are tried, a tremendously wide jurisdiction. A magistrate can sentence a person to life imprisonment and yet there is no direction from the federal government, in many of these areas how he is to operate.

Mr. Woolliams: In section 451 (a) (iii) is the power of a magistrate or a justice to grant bail before commitment for trial. This says very clearly, "accused can enter into his own recognizance" and then it also says under section 463 (a) (5): "a justice may issue a discharge under this section". A person can enter into his own recognizance. So basically under both those sections it could be done. Now, what you are suggesting I presume is that it could be spelled out a little clearer so he would exercise more flexibility in his discretion. Is that what you really mean?

Professor Friedland: I do not disagree with your interpretation of the Code. In my book, I say exactly what you say. I say the concept of bail which is advocated here is not a new one; it is the one envisaged by the Canadian Criminal Code and the one presently in operation in England.

The practice in Toronto of requiring security in advance is simply an undesirable and unjustifiable gloss on the traditional concept of bail. I think no harm would come from giving direction and guidance to magistrates that the legislature intends the section to mean this, and it is a legislative direction that to the extent possible security in advance should not be part of our system of justice, and if it is reasonable to do so under the circumstances, a person should be released on his own recognizance. If that is unreasonable, then conditions can be imposed and here are some of the conditions that can be imposed.

• (11:50 a.m.)

I might comment on the Bill, Mr. Chairman. There are a number of criticisms that one could make of the actual Bill which, I think, are inevitable when you take an American bill, an American act, and attempt to introduce it into another jurisdiction. I hope I am not being misunderstood. The principle of the Bill, which is to attempt to do away with security in advance is very sound, and the legislative enactment which states that in some way would be desirable.

One deficiency in the Bill is that it does not appear to allow the magistrate to deny bail. This is understandable in the United States where their constitutional protection provides that, except in capital cases, bail must be granted, but this has not been the legal tradition in England nor in Canada, and so in Canada it has been understood that if it is justifiable, there are cases in which bail may be denied. So, for example, under this Bill, to take a recent case which is still pending—I do not know whether it is proper to mention it—if Mr. Hal Banks is to be tried in Canada for perjury he would be released under this Bill. Conditions would be imposed, but there would be no discretion in that case to deny bail. And yet there are cases in which traditionally courts have denied bail for a person, depending upon certain circumstances.

In any redraft of this legislation, if such is deemed necessary, it might be considered desirable to attempt to set out the circumstances—this is a very difficult task—in which the magistrate can deny bail, and give some guidance to the magistrate on these particular matters.

The Chairman: That is to improve the administration of it?

Professor Friedland: To say in what circumstances bail should be denied. For example, to take one of the more difficult areas; there is uncertainty in many provinces whether a person should be denied bail pending trial

because of his past record. In some provinces they say this is a proper consideration; in some provinces they say this is not a consideration. In England they say you can deny bail under these circumstances. You have a very uneven application of the law across Canada, and it would be desirable with the legislation to meet this problem head-on and decide under what circumstances a person should be deprived of his liberty pending trial because of the danger of his committing offences while he is awaiting trial.

This particular reason for denying bail can easily be abused when you consider that what in fact is being done when the court says: "We will deny bail under these circumstances because of the danger that the accused may repeat his offence," is it assumes he has already committed the offence with which he is charged, which is a denial of the presumption of innocence.

This is a difficult area; I do not know if we want to get into it now. It is a difficult problem in setting out the standards to be applied. It may be that you would wish to give the magistrate a discretion to deny bail outright if a person has previously been convicted of the offence of bail jumping. It might be that you would wish to give the magistrate the discretion to deny bail completely if the accused had been convicted of a serious offence while awaiting trial for a serious offence. It would be very difficult to set these out in legislation, yet it might increase the effectiveness of the legislation and ensure that it is properly administered.

I was commenting, Mr. Chairman, on some of the deficiencies in Bill C-4. A second-nature deficiency—the first was that it does not allow the magistrate any discretion to deny bail except in certain cases—is that it excludes from the operation of Bill C-4 those liable to life imprisonment. This includes a lot of offences which should come within the Bill.

Mr. Stafford: Robbery and rape, or things like that.

Professor Friedland: Well, are not robbery and rape...

Mr. Stafford: Well, actually, robbery, I should say.

Professor Friedland: Ordinary robbery, threatening a person with your fist and taking money from him would take the person outside in this case.

Mr. Stafford: I think Mr. Woolliams is getting at the point that this is much tougher than our Code is now.

Professor Friedland: Yes, it is, in that respect. I am not sure what you would do with the cases that are outside of this Bill. Does that mean you can deny bail in those cases in which event the law then would not be operating as effectively as it does at present?

Mr. Woolliams: Certainly I would rather operate under the Code as it is than under the Bill. On that you and I are in full accord.

Professor Friedland: But I do not wish to detract from...

The Chairman: Mr. Woolliams, the whole Committee would like your suggestion on how we can improve the administration by any report that we send back to the House, or recommendation to the House.

Mr. Mather: If Mr. Friedland has finished his statement, I have a question I would like to ask.

The Chairman: Do you want to ask your question now?

Mr. Mather: I am very pleased with the witness and the points that he has raised and the whole discussion. I point out, however, that the main purpose of the Bill as set out in the explanatory note is simply to assure that all persons, regardless of financial status, shall not needlessly be detained pending their appearance to answer charges, and so on.

It is argued by some that the present regulations provide for the release of people under very similar terms, but my original interest in this subject sprang from the fact that, as I understand it, a very large number of people to whom release is made available by bail are quite unable to raise the bail. This one law for the poor and another for the rich and is the principle I am trying to bring forward in what I propose. I think in your own study, Professor, you found that in Toronto something like a majority of people who had relief offered to them on a bail basis were unable to take advantage of it.

• (12:00 noon)

Professor Friedland: Yes, sir. The law we are discussing in this committee room was not being properly administered in Toronto as it is not properly administered in many areas in Canada. They were thinking of bail

in terms of money, so the magistrates would say, "You are charged as a common prostitute under section 164(c). Bail will be $500". They were not concerned how the person raised that money and, as a result of this, $500 would be put up. The result of requiring money rather than surety is that many people were unable to be released, and in our study about 60 per cent of those who had bail set were unable to raise it until the bail was lowered or until their trial or until they pleaded guilty. This is quite easy to understand. It is one thing to say to a person, "Find someone who will sign a document pledging that if you do not show up they will owe a debt to the government of $500, in which event they will have to sell their car and raise the money". It is another thing to say to a person, "Find someone who will right now sell his car before you will be released". It is very difficult to raise $500 in a short space of time. It is not that difficult to find someone who will pledge $500 if you do not show up. The Criminal Code envisages the latter system; that is, a system in which no one puts up anything. The surety just promises to be responsible for that amount if you do not show up. However the administration has been, and in many areas still is, that when bail is set at $500 what they want is money or real property and as a result of the way the law has been administered many people have not been released pending trial.

Mr. Mather: If I may ask one further question, Mr. Chairman. You say there have been a great many cases in the Toronto area where an accused although the release is available to him if bail, can be provided in monetary terms, would be held without bail, incarcerated, or they would borrow money to secure their bail and effect their release. In either event these circumstances might have an effect on the outcome of their trial or on their ability to present their case. Would that be true?

Professor Friedland: Yes, that is certainly true. It is something that I have not gone into here, which perhaps I should have. I assumed from the line of questioning that the Committee did not see any merit in a system of security in advance and wished to maintain the position envisaged by the Criminal Code which is that security in advance is not required. However, as you point out, the danger in security in advance is, firstly, that many people are not released because they are unable to raise the bail. Secondly, because money is required this brings into operation professional moneylenders and bondsmen who will put up money for a fee. The standard fee is usually 15 per cent, so in order to raise $500 until your trial three weeks later you have to pay $75.

Of course this whole routine is quite ridiculous because it does not achieve anything. All it means is that some moneylender obtains $75. It does not insure that you will show up for trial because, in fact, you do not get the money back. You have paid the $75 and you do not get that back. You do not lose anything if you do not show up. You show up in most cases but for other reasons, not because there is any financial advantage in your showing up. The professional moneylender does not take an interest in your particular case if you do not show up because he treats it as a business loss. In any event, I do not think we would want the moneylender to go after the people who abscond and haul them back into court, this is the job of the police.

The system of requiring security in advance, which brings in professional bondsmen and moneylenders tends to raise the level of the bail because the magistrates in some jurisdictions know that moneylenders operate and therefore the amount that is required tends to rise. It operates to the prejudice of the poor, the innocent and those who do not know the ropes, but it operates to the advantage of the professional criminal who knows who the professional moneylender is and can easily arrange to get out. Therefore the poor and the innocent may be the ones who suffer under this system.

As you point out, Mr. Mather, the effect of custody pending trial may be quite serious. It is very difficult to document this statistically. I attempted to do so in my book. It is for you to determine whether I did so, but on common sense grounds you can understand that custody pending trial can be very serious. It may incline people who perhaps are innocent to plead guilty to get it over with. It makes it difficult for an accused person to earn money to pay for a lawyer. It makes it difficult for a person in custody to track down witnesses. It makes it difficult for him to bring in character evidence because in some cases you have to persuade people to come and give evidence on your behalf. It prejudices an accused in custody if he does not have a job. There is nothing better for a defence lawyer who is arguing against sending a person to jail than to say that this person has had a job, he has been working for the last two months and it would be

tragic if he were returned to jail. It is much easier to send a person back to jail who already is in jail and who looks a little bit like a jailbird and does not have a job.

Mr. Stafford: They all look better when they have been there for a few days!

Professor Friedland: That is right. I think in the vast majority of cases that a defence lawyer who wishes to argue a sentence would feel that it is more of an advantage to have the accused not in custody than in custody at the time of sentence. There may be the odd case in which it is an advantage to say, "But he has already served three weeks in custody. Is that not punishment enough?" Certainly in the serious cases, where it is a question of a substantial jail term, most lawyers would rather not have the person in custody.

Mr. Woolliams: Mind you, those are very sad circumstances and I agree with you wholeheartedly, but if a magistrate or judge could let him out on his own recognizance either before or after he is committed for trial, he could do so. There may be room for some improvement in order to spell out a few things but does it not come back to the fact that they are not properly administering the law? It is a question which the attorneys general of the various provinces should take a look at—perhaps at the suggestion of the federal government—but basically the administration of justice falls under the provincial governments.

Mr. Stafford: Too many magistrates and judges depend solely on what the crown attorney has to say. Did you find that to be true in many cases? I know almost everywhere in south-western Ontario if the Crown objects violently to an accused getting out on bail he usually does not get out.

Mr. Gilbert: I think it is more important to get it codified and set out in the code than to depend on the administration.

Mr. Stafford: But every time you put an exception in there you are putting teeth into keeping him in jail. Another point I wanted to ask you about when you were going over this is whether the magistrate should hear this argument. Do you say the magistrate should hear that same case when he later finds out what the record of the accused is or should he wait until another magistrate in a busy world of magistrates is available to come from another city 50 miles away?

• (12.10 p.m.)

Mr. Friedland: That is a very important question. It is not that important in the large cities where magistrates will forget who the accused are, and it may come up before another magistrate. But in an area where there is only one magistrate, he has difficulty knowing what to do because in order to make an intelligent bail decision he should know about the background of the accused. Yet, if he knows about the background of the accused, he is prejudiced if he tries the case.

One technique that might be of assistance there—I have not mentioned this yet—is to have another body, apart from the police and the Crown attorney or the magistrate, doing a certain amount of preliminary fact finding in the case. This was the technique employed by the Vera Foundation in their Manhattan Bail Project in New York. It is presently the scheme that is being tried in Toronto by the Amicus Foundation.

An hon. Member: How do you spell that word?

Professor Friedland: Amicus; it is run by the Downsview Rotary Club. The scheme works in this way: some independent person—in Toronto it is law students but it could be probation officers, or it could be anyone—makes an assessment of the particular case looking into such things as whether the person has a job, his previous record, his roots in the community, and such factors as that, and then makes a recommendation to the magistrate as to whether this person should be released on his own recognizance or not.

This meets a number of objections. It meets your point, which is that otherwise the magistrate would know too much about the case, and it meets your point which is that magistrates are busy and do not have time to delve into the bail question, and it provides someone apart from the crown attorney and the magistrate to look into it. With a legal aid system such as we have in Ontario with the Duty Counsel, the Duty Counsel provide a useful service. They are somewhat independent even though they are on the defence side, but they are not identified with that particular accused, and they have been providing the magistrates throughout Ontario with a fair amount of help on the bail question.

I do not think that there is any other jurisdiction in Canada yet that has Duty Counsel, and so it is the magistrate himself

who has to hear these matters. So it might be quite useful for the court to have someone such as a probation officer doing a preliminary assessment on each case to make a recommendation to the magistrate on the bail question.

Mr. Chairman, I have been pointing out a certain number of deficiencies in the Bill. I am not doing this to attack the Bill, which I think is sound in principle, but rather to ensure that it is not in fact enacted in its present form. I doubt if Mr. Mather would wish it to be enacted in its present form. For one thing, I think it has to be—and I have mentioned a number of points—integrated into the Criminal Code. You cannot have, set off aside, another act which is so important to the Criminal Code when all lawyers and police officers operate with the Criminal Code. So that for ease of administration it should be in the Criminal Code.

Then as a matter of drafting, the language used in many cases is American language and American words not used in Canada such as "appearance bond" and "bail bond". Obviously these would have to be changed to make it consistent with the wording used in the Code.

It also adopts American techniques which can only be understood in the context of the American system of legalized professional bondsmen. For example, clause 3, subclause (1) (c) and (d) really envisage professional bondsmen; for example, (d) says:

> require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof...

This envisages insurance companies or bail bonding companies that would be considered solvent becoming the bondsmen. Since it is illegal in other sections of the Criminal Code to have professional bonding companies, we would have to exclude that from the operation of the Bill, clause 3(1)(d).

The Chairman: I think what the Committee are interested in, just as is Mr. Mather, the sponsor of the Bill, is the principle of people being kept in detention prior to trial. What we want to know is how we can improve the present sections of the Code and what amendments you might suggest that we could agree on and recommend to the House, with improvements. It would effect that purpose, because none of us wants to see people in jail who should not be in jail. We realize that the administration may be partly responsible for that. They have admitted that it can be that the law is all right, but the administration of it is far from perfect. Is that what you had in mind, Mr. Mather?

Mr. Mather: Very much so; I think I have indicated before that my whole purpose in bringing this forward was to get the subject matter discussed by your Committee with the hope that this Committee might see fit to make some recommendation to the House. I understand that the Department of Justice at this time is drafting an omnibus bill to reform or amend the Criminal Code. It seemed to me that the area of bail might be an area that they could well look at.

Mr. Gilbert: This is precisely what Professor Friedland has been doing, Mr. Chairman. He has been setting forth the more widespread use of the summons.

The Chairman: We are not here just to criticize the Bill; that is what I mean. We are to get to the principle of the subject matter.

Professor Friedland: I have saved the criticism of the Bill until the end, because I did not want to detract from the importance of the general area by minute criticism. But I think it would be useful, Mr. Chairman, if this Committee would recommend that a wide review of our pre-trial practices be undertaken with a view to legislation to meet some of the problems in the administration of the bail system: firstly, that the sections of the Criminal Code which now discourage the use of the summons be amended, and other sections be changed and amended to encourage a widespread use of the summons. On that, if you want, I could give you five specific amendments dealing with the summons.

The Chairman: The Committee would be very much interested in that. I think that is exactly along the lines we would like to proceed.

Mr. Aiken: Mr. Chairman, if Professor Friedland would mention briefly the sections that could effect this without going into them, I think it would be very helpful.

Professor Friedland: Well, my difficulty is whether I should deal specifically with sections...

Mr. Aiken: No.

Professor Friedland: ...which I did not want to do, or to deal generally. I have been sort of midway between a general discussion, and a strictly lawyer's discussion.

• (12.20 p.m.)

But I would mention section 435 of the Code, which I think would be a useful amendment: to amend section 435 to limit a peace officer's right to arrest without a warrant in respect of those cases where he reasonably believes that an arrest rather than a summons is necessary.

Secondly, I think section 438 should be amended in some way to provide that a policeman may release a person whom he has arrested in order to summon him.

Thirdly, I think the Criminal Code should be changed to allow a senior police officer or a police officer in charge of a station to set and accept bail prior to the first court appearance, certainly for summary conviction cases; and I can see no reason why this should not apply to all cases.

The Chairman: Would that be on his own recognizance?

Professor Friedland: In any way he wants. Presumably if the police wanted to release him it would be the type of case where they would feel that it would be proper to release him on his own recognizance.

In respect of section 438, let me give a little background on a particular problem that I have not mentioned. It is not one particular problem in this area; there are hundreds of small problems which contribute to a particular situation. Police officers throughout Canada tend to feel that the Criminal Code allows them to hold a person for up to 24 hours. The section says that you shall bring him before a Justice of the Peace within a period of 24 hours. Lawyers know that there is a House of Lords case on this, and the law appears to be reasonably clear that they should bring the person before a justice of the peace within a reasonable period of time, at the first reasonable opportunity, and that the 24-hour period is a maximum period. Yet the police tend to feel that it is a proper period for which they can hold people. Section 438 should be amended to provide that a person should be brought before a justice of the peace without unreasonable delay. I would include the words "without unreasonable delay" and in any event within 24 hours, and so on, to make it clear that this section is not intended as an authority to hold for 24 hours but is really designed as an outside limit to provide a safeguard for the accused persons.

I think it would be useful, Mr. Chairman, to provide that the Identification of Criminals Act be changed in some way to allow police officers to summon accused persons to obtain their fingerprints. At the present time the Identification of Criminals Act is limited to cases where the accused is in custody. I think it would be desirable to provide a penalty for an accused giving a false name to a police officer who summons him, and to provide a penalty for an accused who disobeys a summons.

The Chairman: Do you suggest any minimum or maximum amount?

Professor Friedland: For a summary conviction offence I believe the Code automatically provides up to six months and $500.00, and certainly that would be adequate. But at the present time the better opinion is that there is in fact no penalty at all if an accused disobeys a summons, and so the police with a certain amount of justification say, "well, if we summon him and he does not appear, he has not committed an offence", and yet that should be an offence.

Mr. Stafford: Do you mean a mailed summons or a served summons.

Professor Friedland: A served summons.

Mr. Stafford: Of course, in respect of a served summons there is always a bench warrant issued immediately for an arrest.

Professor Friedland: That is quite right, and that is the reason—

Mr. Stafford: Really that is the penalty that most lawyers indicate to an accused when he mentions not showing up. Is that usually not enough to make sure they appear? In respect of minor offences there might not be any possibility of jail, and in some of the smaller communities where they have a court sitting only once a week and sometimes only every two weeks, it is very difficult. I personally thought that the penalty there was almost sufficient.

Professor Friedland: The Criminal Code does not provide a penalty for that very reason: the possibility of issuing a warrant of arrest.

I am leaving aside Mr. Mather's bill for a moment. It is useful to clarify the law to ensure that security in advance is not part of our system. As I said earlier, it would also be useful to attempt to set out the conditions under which bail could be denied absolutely.

Another change would be to recommend to the provinces that they take steps to ensure that the Code is properly being administered. Perhaps through the Minister of Justice an official communication could be made that the Code is not being properly administered. Recommendations could be made that steps be taken by the provinces to provide some fact-finding apparatus such as the Amicus Foundation in Toronto or the Vera Foundation in New York. I realize that is somewhat outside the Committee's jurisdiction.

The Chairman: Is that functioning now?

Professor Friedland: Yes.

The Chairman: And how satisfactory is it proving to be?

Professor Friedland: At the present time they are studying their system and we will see what the results are. I do not know whether I would wish to comment on how satisfactory it is. The difficulty is that their operation does not include as many cases as perhaps they would want. Because they have limited the type of case on which they make a recommendation they exclude a fair number of cases. Therefore they do not operate in as many cases perhaps as they should. Nevertheless I am sure that in cases in which they do operate it is being a help to the magistrates. I think that the real deterrent against absconding is not the money that you may lose but the fact that someone will come after you, bring you back, and prosecute you not just for the offence of bail jumping but also the offence with which you were originally charged. To me the important point in the bail system is that financial security in advance should be eliminated from our release practices before trial and that the real deterrent against absconding should be vigilance of search, certainty of recapture and eventual prosecution for the principal offence as well as for the accused's failure to appear for his trial. To do that it may be necessary to take a national interest in the problem of accused persons skipping bail from one province to another. Part of the reason for its not working well in the past is that there have not been a great many prosecutions for bail-jumping, and some jurisdictions have been reluctant to go after accused persons. It is quite understandable that when a person skips from one province to another there is a reluctance to spend the time and the effort and to take a man off the force to go to that other province, to take him back and to prosecute him, because you then have him on your hands again. This works from city to city. Sudbury, or any northern city, would be reluctant to send someone to Toronto to take a person back to the northern community, and *vice versa*.

• (12:30 p.m.)

Therefore, one must take a broad view of it and understand that there might be such reluctance; and it is up to the provincial governments, through their attorney generals departments, to see this in the total context and realize that if forces do not go after these people to bring them back then the system will not work well, and that they must provide funds for this. I would also suggest that the federal government should provide funds if a person goes from one province to another. It then has national significance. It oversteps provincial bounds, and in much the same way that the federal government has got into the matter of, say, narcotics, which is of a national interest, they should be involved in this question of bringing back for trial people who have gone away from a particular jurisdiction.

Similarly, steps might be taken by the federal government to ensure that the offence of bail-jumping in an extraditable offence. It may be that the principal offence with which the person is charged is not serious enough to warrant extradition, yet bail-jumping strikes at the very foundation of justice. It is really a contempt of court; it is akin to perjury. It should be considered serious enough to warrant extraditing the person from one jurisdiction to another.

Bail-jumping was not included in the Canada-United States Treaty and that may be the reason for many of our recent bail problems. Until very recently there has not been a section in the American legislation providing that bail-jumping be a criminal offence, and since, for extradition to apply, it has to be an offence in both jurisdictions it was not included in the Treaty. I am not sure of the reason, but I think it would be a very useful recommendation for this...

The Chairman: It sounds like a very logical reason.

Professor Friedland: . . . Committee to make, that if an accused person shows disrespect to the judicial system by disobeying an order of the court to appear that is sufficiently serious to warrant extradition from another jurisdiction.

The Chairman: I was going to suggest, Professor Friedland, that perhaps some of the members might now like to ask you some questions. I see that Mr. Aiken would, and Mr. Gilbert.

Mr. Aiken: Mine is a very simple one, Mr. Chairman. On the whole question of summonses and custody before trial and bail, is it not really the burden of your presentation that the onus should be changed; in other words, that the Criminal Code should say that a person is entitled to a summons unless it is apparent to the magistrate that it is unlikely that he will appear for his trial; and that in the matter of bail, he should be released on his own recognizance unless it is shown that he may not appear for his trial. If a direction of this kind were put in the Criminal Code relative to these three matters you have mentioned it would really largely affect the general procedure without being specific.

Professor Friedland: Yes, I think that would be very useful as a minimum; and that it would be quite desirable to give a legislative direction that the philosophy behind the bail provision is that custody pending trial should not take place unless it is absolutely necessary, because it is inconsistent with the presumption of innocence and because of its harmful effects.

I think that would be quite useful, and in many respects that is exactly what this Bill does. It is a legislative statement that if you can avoid custody pending trial it should be avoided; but it goes a little further and says that if you cannot let a person out on his own recognizance, you should try something else, and if that does not work you should go to step number 2 and step number 3. I am not sure whether I would have chosen them in exactly that order.

An hon. Member: You mean the emphasis should be on release rather than...

Professor Friedland: Yes, that is right. I think that is the important point of this Bill. The reasons for its being such an important Bill and the philosophy behind it seem to be obvious to this Committee, and from your questioning it appears that everyone accepts the principle of this Bill. Some say it is desirable to have it because the law is being misinterpreted and others that the solution is to make sure that those interpreting the law do so properly. But is that not obvious to many people?

The Canadian Bar Association at their annual meeting in September 1965, did not see the problem as clearly as does this Committee. To the Canadian Bar Association the solution to the bail problem was to legalize professional bondsmen. This, of course, was completely the opposite of what was wanted. This is what they have been trying to avoid in the United States over the last couple of years by getting away from custody pending trial. The advantage of this Bill is that it counteracts this other move which had the effect of saying, "Things are bad. Let us legalize the professional bondsmen and make them better." This Bill really hits at the heart of it and says that if things are bad because there is security in advance then let us eliminate security in advance.

Mr. Aiken: May I ask just one supplementary question? Probably a good many police officers and magistrates fear that they may make a mistake and let out somebody whom they should not have. If the Bill gives them direction the onus is really not on the police officer or the magistrate, but on the Crown attorney or someone else to prove that this person is not likely to appear. It might result in better administration of the law as it now exists.

Professor Friedland: That is right; I think that is a very valid comment. It tells those administering the law that the legislature feels that it is an important policy to release those awaiting trial. It may be that they will commit another offence, or that they will not show up, but the legislature says that to some extent this is inevitable and a risk that must taken; and unless there is a clear danger that the person will abscond they should not be kept in custody. No guidance is given in the Criminal Code now on what steps should be taken, but this is true of most areas of the Criminal Code. We do not say as, for example, do the American Law Institute's Codes, the New York Penal Code or the Illinois State Code that in sentencing a person follow these principles. They have a whole section on principles of sentencing. Really all we say is: "You can do it up to life, gentlemen; do whatever you want." And that is about all we say.

• (12.40 p.m.)

But the Code should give greater guidance in all these areas. There should be a whole pre-trial section, such as in the American Law Institute, in the New York code, in the United States President's crime commission

dealing with police practices. We say nothing to the police about how they should obtain confessions, except that the courts say: "Make sure it is voluntary" and do not give very much guidance on that. It might be quite useful to set out in the Criminal Code a series of steps for the police officers to follow, such as: "You may have a short period of detention on the street for 20 minutes while you check the person's identification; in more serious cases and other cases you may take him to the police station for two hours." In other words, we give some guidance as to what may happen. It may be useful to say: "You cannot use a confession made without an independent person there." We give no guidance, for example, on the whole question of legal aid. We leave it up to the provincial governments to decide whether they have the funds to bring in a legal aid scheme and yet this is a matter which goes to the heart of the criminal trial whether a person has counsel.

It may be a very useful amendment—this is getting a little outside of bail—to say that a person cannot be tried for an offence without counsel in certain cases and therefore you set the standard just as the United States Supreme Court has done and you force the provinces to work out some scheme which ensures that a person will have a lawyer. What we are trying to do is to have, as much as possible, equal justice across Canada which no doubt the framers of the BNA Act intended because they gave the criminal law to the federal government in spite of the fact that in the United States criminal law was given to the states as well. We should attempt to ensure as much as possible that justice is even across Canada.

The Chairman: I have no argument with that principle, Mr. Gilbert.

Mr. Aiken: Thank you very much, Professor Friedland.

Mr. Gilbert: Mr. Chairman, I would like to ask Professor Friedland if what he is contemplating is but a four-tier system. First of all, the police officer that arrests would be given a certain discretion or jurisdiction over the issue of the summons. Then it gets to the police station and maybe the senior officer in the station would then exercise discretion; then there could be a justice of the peace as the third step, and the fourth step would be the magistrate. That is the four-step system that you are almost advocating there.

One of the dangers that has been impressed upon me is that—I am using figures here that the authorities tell me are correct—52 per cent of all indictable offences are committed by 25 per cent of criminal offenders, which include a group of no more than 10,000, and that group has three or more criminal convictions. Do you follow my point? In other words, more than 50 per cent of all indictable offences are committed by one-quarter of the persons who have three or more convictions.

As you pointed out in your book and your addresses, the real problem with regard to bail is assuring the attendance of the criminal in court, or the accused in court, and at the same time setting bail—an amount of bail which the accused can raise. In many cases you find men with serious criminal offences being able to raise the bail and in other cases people who have only been charged for the first time not being allowed to raise the bail. What I would like your comments on is: how do you handle these fellows with three or more convictions who are continuing to commit offences?

Professor Friedland: Your figures are interesting. I have no way of knowing to what extent they are accurate. One surprise that I got in my study was the number of people involved in the criminal process who were first offenders. I was very much surprised. It was quite a respectable portion. I cannot put my finger on the exact number but it was something like—well, I will not even estimate it—but approximately half or something like that of those involved in the criminal process did not have a previous conviction for an indictable offence which is the only thing I could find out. And it is true that there are unfortunately a great number of recidivists who keep coming through the system again and again. But there are also a great number who are not recidivists and who have never been in trouble before, and we have to gear our laws to both groups and the law must apply reasonably equally to both groups. I am not sure what comments I should make on your statement, because I am not sure...

Mr. Gilbert: The point is, I think, that as you pointed out, in the United States bail is mandatory. Here it is discretionary and it looks as though we would have to retain that discretionary aspect; otherwise we would run into real difficulties because the very fellows that you want kept in custody, even though

you are making the assumption, you know, of guilt, are the fellows that have had three or four previous convictions and you are not...

Professor Friedland: They may be the very ones that we should worry about because they were charged not because the evidence was strong but because they have had previous convictions and they look like likely candidates, and there would have been some other evidence. So we have to be careful not to take away rights from these people because they are the ones that may need the protection the greatest. The same argument was applied when legal aid was introduced in Ontario. Should we provide free legal aid for people with previous convictions? And some said: "No; they forfeited their right." But these people are the ones that in fact may need it to the greatest extent.

Mr. Gilbert: I do not know if that would apply to bail or not, though.

Professor Friedland: Well, no, except if you agree that those in custody pending their trial are at a disadvantage because they cannot work, because they cannot look for witnesses and find character evidence, then to some extent it does apply. But I agree with you that we would not want to eliminate the magistrate's discretion to deny bail. I do not think there is any serious body of opinion, on the other hand, that can easily be abused and it might be desirable to spell out in the legislation that if there is a serious risk of the person's absconding, then you can deny bail.

• (12.50 p.m.)

On this question of previous convictions, that is very difficult. My own personal feeling there is that you cannot justifiably deprive a person of his liberty pending trial when charged with a criminal offence unless in some way it is linked with an application for preventive detention. Let me elaborate on that. It just does not make sense to me to say: "Oh, we are very worried about this person committing other offences in that two-month period pending his trial and yet we are not particularly worried about him after he is released from the penitentiary. In fact he is going to be even more likely to commit offences when he is released from the penitentiary than during that two months period pending trial. So unless you are sufficiently worried about this person because of his character, his life of crime and his past record to justify bringing forward an application to hold him for an indeterminate period under our preventive detention legislation, then I do not think you are justified in holding him for the very crucial one or two-month period pending his trial.

Mr. Gilbert: That runs contrary to the English law which you have stated, that if the magistrate feels that the accused will commit another offence pending his trial then they have the right to refuse him bail. And as you have said, that particular principle has been unevenly applied across Canada.

Professor Friedland: That is the English law but there has recently been quite a reaction against that law on the basis that it can be very unfairly administered, even in England. So there is a reluctance to keep a person in custody, although they still do it in those circumstances, unless it is a very serious case.

Mr. Gilbert: I think I better finish off by telling Professor Friedland, Mr. Chairman, that I am in complete agreement with the principle involved and with your recommendation of the wide use of the summons, just so that you do not misinterpret what I have said.

The Chairman: Thank you, Mr. Gilbert.

Mr. MacEwan: All I want to say is that I agree with Mr. Gilbert. Professor Friedland has given us a lot of information today and I think we should now wait until we study the minutes because I am sure they will be of assistance to the Committee.

The Chairman: Gentlemen, next week we will be dealing with Bill C-96, an Act respecting observation and treatment of drug addicts. Our witness on Tuesday will be Dr. Gregory Fraser, Clinic Director, Alcohol and Drug Addiction Research Foundation in Toronto, and on Thursday Dr. J. Naiman, Psychiatrist of the Jewish General Hospital in Montreal.

If it meets with the wish of the Committee I would like to have a motion that reasonable living and travelling expenses be paid to Dr. Gregory Fraser, who has been called to appear before this Committee on November 21, 1967, and to Dr. J. Naiman, who has been called to appear before this Committee on November 23, 1967, on the matter of Bill C-96.

Mr. Stafford: I so move.

Mr. Gilbert: I second the motion.

Motion agreed to.

That, gentlemen, concludes this morning's session. Before adjourning the meeting I want to take the opportunity, Professor Friedland, on behalf of the Committee, of thanking you very sincerely for your appearance here today and for the information that you have given to us. As Mr. MacEwan has stated, when we read the minutes of the evidence and have an opportunity to study your recommendations I am sure they will be very beneficial. Your recommendations will undoubtedly be reflected in the report that we in due course will be making to the House on our observations of the subject matter of this Bill sponsored by Mr. Mather.

Thank you very much, Professor Friedland.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

TUESDAY, NOVEMBER 21, 1967

RESPECTING

The subject-matter of Bill C-96,

An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. J. Gregory Fraser, Director, Toronto Clinical Services and Director, Narcotic Addiction Unit, Alcoholism and Drug Addiction Research Foundation, Toronto, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27617—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 21, 1967.
(10)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Gilbert, Goyer, Guay, MacEwan, Pugh, Tolmie, Whelan and Mr. Woolliams (12).

Also present: Mr. Klein, M.P.

In attendance: Dr. J. Gregory Fraser, Director, Toronto Clinical Services and Director, Narcotic Addiction Unit, Alcoholism and Drug Addiction Research Foundation, Toronto, Ontario.

The Committee resumed its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*).

The Chairman announced that a meeting of the Subcommittee on Agenda and Procedure will be held soon, to consider what additional witnesses should be invited in connection with the subject-matter of Bill C-96.

The Chairman introduced the witness, Dr. J. Gregory Fraser, of the Alcoholism and Drug Addiction Research Foundation in Toronto.

Mr. Klein was invited to read a letter dated November 15, 1967, which he had received from Dr. Vincent P. Dole of The Rockefeller University. The letter contains Dr. Dole's views on the subject-matter of Bill C-96. Attached to the letter was a copy of an article by Dr. Dole and Dr. Marie Nyswander, entitled *Heroin Addiction—A Metabolic Disease,* which appeared in the Archives of Internal Medicine, July 1967, Volume 120. The Committee agreed that the letter and attachment should be filed as an Exhibit (*Exhibit C-96-3*).

Dr. Fraser made a few introductory comments on the subject-matter of Bill C-96 and read a prepared statement, entitled *Comments On Narcotic Addiction.* He also commented on the subject of methadone therapy, as requested by the Committee.

The Members questioned Dr. Fraser for the balance of the meeting. The Chairman then thanked the witness for the expert information which he had provided to the Committee.

At 1.05 p.m., the Committee adjourned until Thursday, November 23, 1967 at 11.00 a.m., when the witness will be Dr. James Naiman, Assistant Professor of Psychiatry at McGill University.

Hugh R. Stewart,
Clerk of the Committee.

27617—1½

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Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 21, 1967.

• (11:20 a.m.)

The Chairman: The meeting will come to order. We are resuming Committee consideration of the subject matter of Bill C-96, an Act respecting observation and treatment of drug addicts.

It is my pleasure and honour to introduce our witness of today, Dr. Gregory Fraser, Director of the Toronto Clinical Services of the Alcohol and Drug Addiction Research Foundation. He is also Director of the Narcotic Addiction Unit.

Dr. Fraser graduated in Medicine from the University of Manitoba in 1957. He did postgraduate work for five years in psychiatry and internal medicine at Vancouver, Montreal and Saskatoon. He is a specialist in internal medicine and a Fellow of the Royal College of Physicians.

Dr. Fraser has been with the Alcohol and Drug Addiction Research Foundation since 1962. I think you all have—if you have not, we have copies here—a memorandum that Dr. Fraser has prepared. Before calling on Dr. Fraser, Mr. Klein, the sponsor of the Bill, is here and he has a letter from Vincent P. Dole, M.D., of the Rockefeller University and I believe he would like the permission of the Committee to read it.

Is that agreed?

Some hon. Members: Agreed.

Mr. Milton Klein (Sponsor of the Bill): Thank you, Mr. Chairman. Dr. Vincent Dole, if you recall, is the doctor affiliated with the Rockefeller Institute who is referred to in the evidence given last time as experimenting with methadone the substitute drug for heroin and so forth. He says this in his letter of November 15, 1967:

> Thank you for letting me see the bill concerned with drug addiction. I am very pleased to support your position that drug addiction is a form of medical illness, and that the objective of society should be to provide treatment rather than punishment.
>
> The difficult problem in any such legislation is to define the rights of the addict to choose treatment or even to reject it. In practice the laws that have made treatment compulsory have become simply the instruments of putting addicts in jail without having committed a crime. I would urge, therefore, to recognize that the so-called treatment programs in which jails are called hospitals is not a bonafide treatment from a medical point of view.
>
> I believe that you might do well to describe drug addiction as a medical disease rather than identifying the bill with some particular theory of the condition, as you do in stating that it results from some type of mental illness. The enclosed reprint may help clarify the distinction between different theories of this condition.
>
> Let me emphasize that I support the intent of your bill and hope that you can formulate a process that will bring addicts to doctors rather than to jails.
>
> Sincerely yours,
> (sgd.)
> Vincent P. Dole, M.D.

With the permission of the Committee, I would ask that this letter be placed on the record.

The Chairman: The letter is on the record.

Mr. Klein: As an addendum?

The Chairman: As an exhibit. It is agreed?

Some hon. Members: Agreed.

The Chairman: Dr. Fraser, you may proceed. You know that after you have completed your statement the meeting is thrown open for questioning.

Dr. Gregory Fraser (Clinic Director, Alcohol and Drug Addiction Research Foundation, Toronto, Ontario): Certainly. Mr. Chair-

man and members of the Committee, I should like you to know that I consider it a privilege to appear before you in order to make a brief statement on Bill C-292 which was read in the House of Commons on April 21, 1967. Following this presentation, I shall be pleased to answer, if possible, any questions which you might have and to share with you my views on a public health problem which has been a very important part of my endeavours during the past three years.

My concern has not been exclusively related to narcotics; rather it has included primarily alcohol and other addicting or habituating drugs such as barbiturates, non-barbiturate sedatives and hypnotics, amphetamines and, more recently, the hallucinogens such as marijuana and LSD.

I should like to emphasize that I am appearing before you today as a senior member of the Toronto Clinical Services and that my views are based on my clinical experience in this field. My views must not be considered as the official views of the Addiction Research Foundation. Official views of the Foundation are formulated following deliberation, discussion and consultation with many persons both within and without the Foundation.

I think that you will be pleased to know that the Foundation is presently considering presenting a brief to this Committee. If this is done, such a brief will represent the views and thinking of a large variety of professionals who may view the problem with a very different emphasis. If you are interested in the official views of the Foundation, then I would urge you to approach the Executive Director for the submission of such a brief.

Mr. Chairman, before I read my comments on Bill C-96 or C-292, I note that this Bill states:

> This Act may be cited as the Drug Addicts Protection Act.

A problem immediately arises as to what we mean when we say "addict." For example, the most common addicting drug used in our society today is alcohol, and I think anyone who is addicted to alcohol is an addict and can be called an alcoholic. On the other hand, many people can be alcoholic without necessarily being addicted to the drug.

For example, some people with certain underlying personality disorders may, when drinking a certain amount of alcohol, become involved in behaviour where they suffer considerable economic loss and damage and insult to their families and friends. Certainly, such a person, by many definitions, would be considered an alcoholic although he need not necessarily be addicted to the drug.

In 1957 the World Health Organization defined drug addiction by naming four characteristics: the first is the desire to continue taking the drug; the second, a tendency to increase the dose; the third, a psychic and generally a physical dependence on the drug; and the fourth, an effect detrimental to the individual and society.

Because of the difficulties attending the definition of the word "addiction", in 1964 this Committee of the World Health Organization discarded the term "addiction" and substituted for it the term "dependence", specifying in each case the drug dependence of a certain type. And if I understand the intent of this Bill correctly, I think that we would be concerned this morning with drug addiction, or drug dependence of the morphine type, which has the four characteristics of addiction which I outlined to you.

The public health services hospitals in the United States at Lexington and Forth Worth maintain that evidence of physical dependence is necessary in order to define the pathognomonic feature for the diagnosis of addiction.

And now, turning to the comments which I have prepared, this is not as comprehensive a statement as I should like to have prepared for you at this time; however, with the limits of time at my disposal, it is the best that I could do.

Narcotic addiction is a public health problem. Classification of narcotic addicts is lacking in sophistication and includes professional addicts, medical addicts, and street or criminal addicts.

Professional addicts include doctors, dentists, nurses and pharmacists, and other professionals who have a certain accessibility to narcotic drugs. There are many different things which distinguish them from the other groups and it is generally recognized that the treatment of their addiction is more successful in terms of abstinence from drugs, and rehabilitation.

• (11:30 a.m.)

Medical addicts are persons who become addicted during the treatment of a disease, most often a chronic, painful, and incurable

disease where narcotic substances are administered to control pain. There is much agreement in the medical literature as to how these patients should be treated, although even here one is cautioned to use the smallest amount of the drug to afford sufficient relief of pain. Occasionally, however, a medical addict can pose a very different problem in therapy, especially when the disease for which the narcotic was originally prescribed is arrested or cured and yet the medical addict has an intense craving to continue taking the drug. Under these circumstances medical addicts may come into conflict with the law. For example, they may forge physicians' prescriptions and in this way be charged in court.

The vast majority of narcotic addicts are criminal or street addicts and it is probable that it is concern for this group which resulted in the formulation of the Bill C-292. One of the fallacies which has given rise to much misunderstanding is the belief that narcotic addicts are comprised of a homogeneous group of persons who can be rehabilitated if they are afforded a particular type of treatment. This, however, is not true. Rather, narcotic addicts are comprised of a heterogeneous group of persons with different personalities and problems, social, psychological, and economic. It has become clear that a wide variety of different approaches in treatment are required if a significant percentage of patients are to be rehabilitated. Narcotic addicts have done a good job in certain areas of creating the belief that all of their problems would be solved if they had their drug of choice made legally available to them. Again, this is not true. The problem is much more complex and the patient presents many problems in therapy.

Perhaps you will be interested in listening to some of the experience of the Narcotic Addiction Unit since its beginning several years ago. The basic principles by which the clinic works with narcotic addicts include the following:

Narcotic addiction is a public health problem.

It involves the patient's total person, including his physical, psychological, social and economic well-being.

Involvement with drugs is symptomatic.

A voluntary accepting approach with a graded program of expectations has the best chance of success—for some addicts.

From February 1, 1964, to June 30, 1967, 321 addicts were admitted to the program. On June 30, 57 of these were actively involved in the treatment program and the other 264 were not actively involved in the treatment program and they are referred to as inactive. During the past two years the number of active patients has remained relatively constant.

Of the active group of patients 39 were male and 18 were female; the mean ages of the male was 35 years and of the female 29 years. Both males and females had an average of 10 years of education. There were no significant differences in the ages and education of the active and inactive groups. Of the active patients 50 per cent were married and of the inactive patients 33 per cent were married.

There is a significant difference between the duration of treatment for the two groups. The mean duration of treatment for the active group is 8½ months and for the inactive group 2½ months. Many of the inactive group of patients visited the clinic on only a few occasions. They could not, in fact, be considered to have entered a therapeutic process. At the same time it must be concluded that the treatment program which we have offered over the past few years has not been accepted by the majority of addicts who apply for treatment. The drop-out rate for the total period of time is 85 per cent.

Patients are most commonly self-referred to the clinic although some patients are referred to us by social agencies, private physicians and penal or reform institutions. Most often the patient is admitted to the clinic within one to two weeks of his initial contact. The admission procedure involves an assessment of the addict's drug usage, his social and economic performance, his physical and emotional state and his motivation for treatment. This assessment involves the total staff; intake interview by the social workers, physical examination and history by the physician and nurse, personality assessment by the psychiatrist and social and economic performance by the social worker. Applicants are then conferenced by the total staff team including other program staff such as an occupational therapist. Program content includes chemotherapy, psychotherapy, occupational therapy, social, vocational, and personality counselling and social recreation.

The experience of the voluntary outpatient clinic of the Addiction Research Foundation

has been bery similar to other voluntary out-patient programs which employ similar techniques to our own. Recently the Addiction Research Foundation established a Narcotic Review Committee to evaluate the existing program, to survey the literature in regard to narcotic addiction treatment programs, elsewhere and to make recommendations to the Foundation as to what changes should be instituted so that we may more effectively serve this group of people who come to us. Although this report is not yet completed, it is already clear that a wide variety of approaches in treatment of narcotic addiction are necessary if more than a small percentage of patients are to be effectively rehabilitated.

There is a need for both voluntary and involuntary programs.

Mr. Chairman, you asked me if I would make a few comments on methadone. Maintenance methadone or methadone therapy is a most important component of chemotherapy and it is used for two purposes in the treatment of a narcotic addict. In one instance it may be used for withdrawal treatment and it is well recognized and agreed in the medical literature that this is the best treatment to afford a person who is addicted to heroin or morphine or other synthetic narcotic substances. It is long-acting in the body and it can be administered once daily, although characteristically, because of the patient's needs the medication is divided for withdrawal treatment into several doses a day. I do not think there is any disagreement about the place of withdrawal treatment, although there are those who would argue that withdrawal treatment should not be administered to patients who are voluntary out-patients. Some authorities advocate that persons undergoing withdrawal treatment for methadone should be in a closed hospital where the likelihood of obtaining illicit drugs is very much lessened and where there is perhaps some measure of involuntary control over the patient so that indeed you may be sure that you effect withdrawal.

• (11:40 a.m.)

I think that the views of these authorities may change as further experience in the treatment of the narcotic addict with withdrawal changes. In recent years laboratory techniques have emerged in particular thin layer chromatographic examination of the urine for not only narcotic substances but barbiturates and amphetamines. So that if a person were to come to the clinic for withdrawal treatment one might administer the drug to him on a daily basis, collect a sample of urine and examine it for the presence of other substances. If these substances are found with a certain frequency, which I will not attempt to define, in the urine of a patient undergoing withdrawal, one would possible discontinue the withdrawal treatment.

Of much greater controversy within the medical literature and among the medical authorities is the place of maintenance methadone therapy. We have employed this particular treatment in our clinic on the following basis. It was instituted on the hypotheses that it lessens the craving for the illicit use of drugs; that it decreases preoccupation with drugs and related activities and that it increases emotional stability as reflected, for example, in employment status, family relationships and the addicts' subculture. Patients are selected for this treatment on the basis on the following expectations: the clinic would be the only source of narcotic drugs; the patient would avoid the addicts' subculture area; the patient was employed, seeking employment or engaged in a retraining program; the patient's residence was relatively stable and that the patient seemed to be positively motivated toward the goals of our treatment program.

Methadone is presently administered only in liquid form. Initially it is dispensed on a daily basis but as the patient demonstrates his reliability, it may be dispensed twice weekly or even once a week. Patients do not—

Mr. Klein: May I ask you one question, doctor, on that point. What is the cost of a dose of methadone?

Dr. Fraser: Oh, it is very small; I do not know.

Mr. Klein: I am told it is less than 10 cents.

Dr. Fraser: It is very small; I know that, sir. Patients do not know the dose of methadone which they receive. The maximum daily dose of methadone administered is 40 mgs. with a mean of less than 30 mgs. Of the active group of patients, 42 were on maintenance methadone therapy for a mean duration of 8½ months. Of the inactive group, 39 patients had been on methadone for a mean duration of less than four months.

During the summer of 1966 an independent research study was carried out on the active patient population by a sociologist who is the senior member of the research division. Of the 57 patients who were active in treatment at that time, 63 per cent had more or much more contact with square friends; 88 per cent had less or much less involvement with the addicts of culture; 33 per cent had more or much more contact with family members; 88 per cent reported a marked improvement regarding illicit use of drugs and 73 per cent had less or much less preoccupation with drugs.

Now Dole and Nyswander in New York City have more experience with the use of methadone for maintenance treatment in the treatment of narcotic addiction than any other authorities in America and I think at the present time they have close to 600 narcotic addicts who are on this particular therapy. They use a much higher dose of methadone than we employ in the clinic. They go as high as 180 mgs. with a mean of 100 mgs.

The patient is admitted to hospital for up to six weeks while he is stabilized on this particular medication and it is my understanding that controlled studies have been carried out on patients in hospital so that if they are administered narcotic substances they do not get the euphoriant effect. Dole and Nyswander also claim that doses of methadone at this level completely relieve the craving for narcotic drugs and within their program their drop-out rate is very small.

I do not know the criteria of accepting patients into their program. It is quite clear that not all narcotic addicts are going to apply for treatment in a voluntary kind of program. It seems that many of them have to be compelled to take treatment, but I think that all medical authorities feel that most studies in the treatment of narcotic addiction lack controls and careful evaluation. The emphasis which is being placed by medical authorities at the present time is on the need to more carefully evaluate the treatment programs which are presently employed in various parts of the world.

I would like to comment for just a moment on Synanon and Daytop Lodge. As you know, ex-addicts are very important in these institutions and there is a complete authoritarian structure throughout them. I had the opportunity of visiting Daytop Village on Staten Island in New York about a year and a half ago and one could not help but be very impressed by seeing several hundred narcotic addicts who were obviously living in a drug-free environment and obviously were much more content with their lives. Certainly they may have developed a dependency on the institution and there are many who criticize these organizations, stating that the narcotic addict becomes dependent on this particular sub-culture and that his eventual rehabilitation into the community will not be achieved. I do not share this criticism; I think it is much more constructive to have a narcotic addict dependent on a sub-culture which is drug free, who is not engaged in illicit or criminal activities such as most street addicts are, and who is self-supporting and may be making a worthy contribution, for example, even to knowledge about narcotic drugs and the dangers which they hold for the user.

I think there is a need to explore a wide variety of approaches. In New York City, if patients who may have a term of imprisonment but then are released on parole are carefully followed on parole by their probation officer the chances of remaining abstinent for a relatively long period of time are much greater than if the person is released under no supervision whatsoever.

In concluding my formal remarks, Mr. Chairman, I must say that we have to note and take cognizance of the fact that in our experience there has been a drop-out rate of 85 per cent. We do know that a small number of those who have dropped out are now drug-free and are working and contributing as members of the society in which they live. However this number is very small and despite the fact that there is this high drop-out rate I think it is important to recognize that at least a percentage of narcotic addicts have responded to the type of treatment program we have offered. Our experience is somewhat better than with the public health hospitals in the United States that I mentioned, and we look now to the future to developing a much greater diversification in the approaches of treatment which we use and thereby think that we will be able to help a larger number of patients who come to us for treatment. Thank you.

• (11:50 a.m.)

The Chairman: Thank you very much, Dr. Fraser.

Are there any questions?

Mr. Tolmie: Mr. Chairman, I think all of us realize that a great deal of crime and violence results from the efforts of addicts to obtain their drugs, as they do of course, illegally. Also, these cravings make it possible for the creation of syndicated crime rings to provide the drugs necessary. In effect, you stated in your presentation that the results, as far as cures are concerned, are very dismal indeed, as 85 per cent drop out. My question is this: It has been suggested that a program could be developed whereby drugs would legally be supplied free or at a nominal cost to drug addicts. Now if 85 per cent of drug addicts drop out of these voluntary clinics it means they go back to the streets. Would it be possible to initiate a type of facility where drugs could be supplied legally and free and at the same time continue with your type of narcotic addiction unit, the purpose being to make certain that these so-called hopeless cases at least would not have to resort to crime or violence to obtain what they need? This may be a feeling of desperation but it appears to me from what you have said here that you are making very desperate efforts to no avail and that the real problem is the crime induced by people who have no control over their desires. I would like your comments on that.

Dr. Fraser: First, in regard to crimes of violence, Mr. Chairman, I think surveys and studies have quite clearly indicated that narcotic addicts very uncommonly become involved in crimes of violence. They become involved more in crimes against property because they support their habit mainly by theft, at a considerable cost to the community, and there is no doubt about that. Female addicts resort quite often to theft or prostitution in order to gain sufficient money to support their habit.

I should emphasize that we have not offered maintenance methadone therapy to all narcotic addicts who have come to us for treatment. I outlined the expectations that were placed on the narcotic addict if we were going to supply him with drugs, perhaps the most important one being that he was employed, seeking employment or engaged in a retraining program.

Mr. Tolmie: You do supply certain people with drugs though?

Dr. Fraser: Yes.

Mr. Klein: Not methadone though?

Dr. Fraser: Yes.

Mr. Klein: Are you speaking of methadone or are you speaking of opium?

Mr. Tolmie: I am talking about the drugs they crave and have to resort to violence to obtain.

Dr. Fraser: They do not resort to violence.

Mr. Tolmie: Or resort to theft or whatever it might be. Does your particular unit provide these drugs that they find so necessary?

Dr. Fraser: We provide drugs in those cases to a patient whom we feel is somewhat motivated for treatment, is involved productively as I mentioned, is seeking employment or engaged in a retraining program, or is employed.

Mr. Klein: What kind of drug do you supply?

Dr. Fraser: These were the expectations I outlined for placing a person on methadone.

Mr. Tolmie: Do you supply heroin?

Mr. Klein: Do you supply heroin and opium?

Dr. Fraser: Oh, no.

Mr. Tolmie: Will you continue please.

Dr. Fraser: What was the other part of your question?

Mr. Tolmie: Although you have made valiant efforts, according to your presentation, is it correct that the results are negligible?

Dr. Fraser: No, I do not say that. I say that we have demonstrated that a voluntary outpatient approach that uses all the types of treatment I have indicated will help about 10 to 15 per cent of narcotic addicts who come to us on an out-patient basis. Now this certainly is better than the follow-up studies which have been done for example in the public health hospitals which I referred to in the United States. This is somewhat of an improvement. Although this approach offers some benefit to a small percentage of patients, most of the patients come and need treatment almost immediately; they may come two or three times to the clinic and that is all.

Mr. Tolmie: I will try to put my question very succinctly. Regardless of your efforts—and I certainly appreciate what you are trying to do: in many cases it is hopeless—the

drug addict goes back to the streets and as you say, resorts to theft to obtain what he has to obtain. Do you feel a social service for the protection of society would be rendered if centres were developed whereby drugs which they crave could be supplied legally to them and at a nominal cost?

Dr. Fraser: Not without all of the other services which I have outlined to you. Although the people in the narcotic control division say that the statistics of the clinics that were established in the 1920's in the United States for this purpose were incomplete for careful evaluation they felt that this greatly increased the incidence of narcotic addiction at that particular time, and this is why these particular authorities oppose so greatly and are so fearful of what are very important experimental studies and new studies in the treatment of narcotic addiction. But supplying the drug alone to the person will not solve all of the problems. He has become habituated to a certain way of life over a long period of time and just giving him the drug will not solve all these problems.

I mentioned that the average education of the patients coming to us was 10 years. Although I have not the details of their occupational histories with me some of them had never worked for more than a few weeks to a few months at a particular time. So a person needs much encouragement in getting ready for employment and he needs much encouragement and support to seek and obtain employment. Then, how many people are willing to employ narcotic addicts if they know that they are narcotic addicts and have been involved in criminal activities?

Supplying the drug alone free will not solve the problem; it is much more complex.

Mr. Tolmie: Yes, I quite realize that. I do not want to pursue my line of questioning too long. I am not thinking so much in this particular case of the drug addict himself; I am thinking of society. If, as I say, these drugs were made available in this manner would it not have a beneficial effect in view of the fact that the rate of theft, crime and prostitution would be decreased?

Dr. Fraser: This has been argued and postulated. There are no studies which are going to indicate that this is so. One can develop a hypothesis to this extent but whether or not this would actually occur I cannot tell you. I can tell you that on the doses of methadone which we have employed in our clinic, and we wonder whether we should not have employed higher doses of methadone in our clinic, we know that even though they do get this drug at the level, many of the narcotic addicts who have been placed on maintenance methadone continue to use other illicit drugs, as determined by our thin layer chromatographic analysis of the urine and by physical examination. So we may have been merely adding a drug or decreasing their habit on the streets, but not necessarily ending it. I think that we need more time and further study to see if by increasing the dose we could completely remove their craving for illicit drugs. As I mentioned in my statement to you earlier, the most promising work in this regard is the work of Dole and Nyswander in New York City, where their drop-out rate is very small. However, they do deal, according to people to whom I have talked, with a selected group of addicts, and not all addicts are going to come to them for treatment.

• (12 noon)

Mr. Tolmie: Do you know of any other countries that have tried this system of legal drug dispersal?

Dr. Fraser: Other than the United States?

Mr. Tolmie: Or Canada. Has it ever been tried or practised in any other country?

Dr. Fraser: In Britain, certainly, where they administered both heroin and cocaine to patients.

Mr. Tolmie: How did it work?

Dr. Fraser: During the initial follow-ups which were reported in the literature there were very promising results, but as one went farther on in the studies, they seemed less promising in their approach. I have never had the opportunity personally to look at these programs, but I have heard a wide variety of different reports about exactly what was being accomplished. Some claim that absolutely nothing is being accomplished, except having drug addicts who were high on heroin and cocaine, to others who claim that many of the addicts were rehabilitated, working, and supporting their families.

Mr. Woolliams: I have a related question. I have never felt that one can ever legislate morality. I suppose the most important thing to do is to try to enact laws which help the

addicted individual and thereby help society. My first question which is leading up to something, is this: Do you agree that the law as it is now, the Narcotics Act, has pretty well demonstrated that it has failed?

Dr. Fraser: Yes.

Mr. Woolliams: Our Canadian Act was based on the one in the United States, just as we followed prohibition. When the United States had prohibition we tried to legislate morality. You agree that the law as it is today has failed. In what way do you say it has failed?

Dr. Fraser: I think it has certainly been well demonstrated that if you incarcerate an addict for a number of years, almost before he is out of jail he is back on drugs again and once more involved in the criminal activities with which he had been associated in obtaining these drugs. Many patients—or, in this case, many prisoners released from jail, are re-arrested within a day or two of their release from prison. Therefore, incarceration alone certainly has done nothing to solve the drug-addiction problem.

Mr. Woolliams: That brings me to my second point. It is not the drug itself; it is the desire and craving that have created these people who follow a criminal course. You have already said that.

Dr. Fraser: Yes; to support their habit.

Mr. Woolliams: That is right. Is that not what the British have tried to cure? Is not the problem that these people go out, and, having become addicts of a certain drug such as heroin, may have to pay such large sums of money for it that the consequence is that they commit theft, burglary, prostitution and all those kinds of crimes in order to get the drug? That is the whole problem, is it not?

Dr. Fraser: No, not the whole problem.

Mr. Woolliams: It is very largely the main problem.

Dr. Fraser: It is certainly one of the problems.

Mr. Woolliams: Yes. Now, I would just like to point out something to you. From some of the material that I have read I gather that in England they have increased the dosages and that where it has been free, or comparatively free—the addict has become even more immersed in his addiction because he can readily get it. He takes bigger dosages as time goes on. Therefore, what is happening is that he becomes a greater addict. This has been one of the arguments.

To your knowledge, what is the percentage in Canada, under the present law and the present circumstances, who have been cured after having become addicted to heroin or any other such drug?

Dr. Fraser: Very small. I could not give you a percentage, because when you say "cure", what do you mean by "cure".

Mr. Woolliams: So that they do not get the habit again—are completely cured of the habit?

Dr. Fraser: Very small.

Mr. Woolliams: Very small. Then that is somewhat of an answer to my good friend. Once the particular individual is addicted he will probably commit all these crimes under the Code and that is why he gets into jail. It is because he must get the drug. Would it not be better if he went to a health centre? You cannot cure him. You have already admitted that the percentage of cures is small. Even if he took more of the drug he would not be committing these crimes on society and demoralizing those with whom he came in contact. He could go to one of these centres and be able to get the drug. That individual may be somewhat isolated from society, but at least he or she is out of the way and not demoralizing the rest of society.

Dr. Fraser: Let me say that I would not be involved in the work that I am doing if I did not believe that methadone, or perhaps other narcotic substitutes, might not aid in the rehabilitation or improvement in well-being of these particular people.

People like to believe though, that all problems related to narcotics, and the narcotic addict will immediately be solved once you give the person a sufficient amount of drug. This has not yet been proven. It would be dangerous and wrong to say that you are going to remove all the problems associated with narcotic-addiction just by supplying the drug. It has been demonstrated that some narcotic addicts merely take the drug which they are getting and also take other illicit drugs which they continue to obtain on the street, and continue to engage in the activity in which they have been involved all along.

Mr. Woolliams: There is some suggestion that when methadone is used as a cure the patient becomes really "hooked" on methadone for life in order to stave off the addiction to the other drug. Is that correct?

Dr. Fraser: Yes; the patient becomes addicted to methadone.

Mr. Pugh: Would this be a parallel to a diabetes cure?

Dr. Fraser: I could not really equate it with diabetes, which we know is perhaps a variety of different disorders and where there is a relative or absolute deficiency of insulin in the body. Metabolic changes occur, of course, in the addict who has been on heroin for a long period of time, but whether or not that creates irreversible changes which necessitate his having the drug from that time forward, cannot really be stated with certainty. Certainly patients who have been incarcerated, or involuntarily or voluntarily committed to a hospital such as the one at Lexington, who have been off these drugs for a long period of time, when released become involved in the society from which they came. They certainly do not at this time have a physical dependence on the drug, although they may have a psychological dependence.

There are also authorities who claim that it is necessary to keep a person in such a hospital for as long as six months if one hopes to remove the physical and psychological dependence entirely.

Mr. Woolliams: I have just a few more questions. Under the British system the addict can get a certain quantity of the drug. You have said in your own brief that there are professional addicts now who will probably take drugs all their lives and who, because they are in the professional class, may never find themselves in the position where they have to commit any crime. From your experience, does heroin really impair health? Is there any evidence of that? Are there any statistics indicating that it has an effect on the longevity of the individual?

• (12:10 p.m.)

Dr. Fraser: Certainly heroin impairs people. For example, it markedly decreases appetite. People on heroin often eat very little and lose weight; they become malnourished. Its most common side-effect is that it gives rise to constipation. The great danger in the use of heroin, as it is obtained on the street anyway, is that a person who has had a high addiction to heroin and then has had it withdrawn, either in jail, or in hospital, or elsewhere, may take some heroin and kill himself in the process. That is probably the most common way of meeting death from heroin.

I do not believe, however, that it has been demonstrated that there are long-term, organic disorders arising from heroin.

Mr. Woolliams: It may be also that the malnutrition, outside of the effect of the drug itself, may be due to the fact that a person who has to choose between getting the drug or getting a room and meal, will choose the drug. I think we now come to the thing that we are all concerned about at the present time, the use of marijuana by university and college students in Canada and the United States. The suggestion has also been made by medical people and experts like yourself that this is merely the beginning and then they go on to other drugs. Because of the extensive use of drugs by certain college students in the United States and Canada, what would you suggest as the solution to this problem at the present moment?

Dr. Fraser: The longer I am here the less I feel like an expert. I certainly do not know what the problem is. I do not think this is really a question for a medical authority. I think it is a question for the community and society at large to decide what to do about the problem of marijuana. As you know, there are committees that now want to legalize marijuana and I suppose the position that a medical person should take is that if such a substance does no harm then one should support such legalization.

Mr. Woolliams: On that point, if I may interrupt you, I was talking to one of the top medical men from Toronto recently—I do not want to use his name—and I would like to get your idea on this because other medical people and experts in the field have made other statements on the effect of marijuana, but he voiced the strong opinion that marijuana is the type of thing that has serious and permanent effect on the cells of the brain. In other words, if an intelligent person with an I.Q. of 130 or 135 continues to use marijuana it will have the harmful effect of reducing that person's I.Q. It destroys certain cells of the brain. It is not like being an alcoholic. You may be an alcoholic but if you get away from the alcohol habit you can return to being a normal individual with all

the physical and mental capacities you had before you become an ordinary alcoholic. What is your opinion in this regard? There are a lot of professors in universities and medical people who keep coming out with the statement that there are no harmful effects from the use of marijuana. University and college students have said to me, "There is no harm in it. It is no worse than alcohol or tobacco. I am going to use it." Can you give us an unequivocal answer with reference to whether, in your opinion and from your experience, marijuana is harmful and has permanent effects, or are some of these other experts trying to leave the impression that there are no harmful effects?

Dr. Fraser: As you know, there are many types of marijuana and they go under a great variety of names. Marijuana obtained from the eastern countries might contain more or even different active ingredients of marijuana. It is claimed from studies which have been done that in some of these countries it does give rise to permanent organic deterioration of the central nervous system. However, whether the marijuana they are using is the same as the marijuana we are using in this country, which I think is mainly imported from Mexico, I do not know. I certainly do not think there is any conclusive evidence today on which I can state that marijuana gives rise to organic brain damage.

Mr. Woolliams: Is there any conclusive evidence that it does not?

Dr. Fraser: No, because the studies which have been done in countries where marijuana is used to a large extent have not been controlled studies. The greatest criticism of these clinical studies in regard to the addiction field is that so many of them have not been controlled.

Mr. Woolliams: Is it not a fact that when these medical people and professors, who have some knowledge of the subject of drugs, make these statements they do irreparable social damage because they leave the impression with the youth that irrespective of the type of marijuana it is, whether it is grown in China or in any part of Asia, Europe, Canada or the United States, that it is all the same package. They really believe there is no harmful effect from it and as a result they use it and say, "Look, I am going to get a kick out of marijuana instead of going out on my weekend drunk". Is that not right?

Dr. Fraser: Are you asking me if marijuana and alcohol are similar?

Mr. Woolliams: No, I am not asking that. Does it not have a psychological effect on a student if he believes it when he hears people that hold certain positions in the scientific and medical field say that it has no harmful effects and that he may continue to use it?

Dr. Fraser: As I say, we just do not have the necessary information to make unequivocal statements as to the long-term effects of the marijuana that we use in this country.

Mr. Woolliams: Perhaps I will put it a little more mildly. Would you agree, then, that it would be better, until we have that kind of evidence, if those people did not make any... evidence make any...

Dr. Fraser: I think many people make irresponsible statements about drugs, not just professors.

Mr. Pugh: May I ask a supplementary on that one matter. These irresponsible statements—or responsible, whichever way you want to put it—to your knowledge are definitely not based on actual research?

Dr. Fraser: No.

Mr. Pugh: There is no research going on that has reached the stage where they can say whether it is harmful or non-harmful?

Dr. Fraser: No. It is illegal to use marijuana, therefore one does not administer marijuana to people to find out what effect it has. As I said, the only studies that are available concerning the long-term damaging effects of marijuana are from countries where marijuana is extensively used and that may not be the same kind of marijuana that we use in this country.

Mr. Pugh: Is there any research being done there which would give an indication one way or the other?

Dr. Fraser: Alcohol...

Mr. Pugh: No, I am talking about marijuana.

Dr. Fraser: But we want to know how such marijuana is used, over what period of time it is used and how habit-forming—and I mean psychologically habit-forming—it is. Does a person develop an habituation to marijuana to the extent that they become

interested in marijuana smoking and nothing else and what are the contents of the active ingredients of marijuana. Although it is known that there are hospitals which contain many organically deteriorated patients who have been using some kind of marijuana, these studies have been uncontrolled.

Mr. Pugh: But in the countries you mentioned where the use of marijuana is legal, there is as yet no known research on the subject?

Dr. Fraser: That question cannot be answered unequivocally.

Mr. Woolliams: May I just ask a supplementary on that line of questioning. You mentioned there was evidence of organic deterioration in certain cases where people had been using some kind of marijuana. Is that in itself not sufficient evidence to condemn the use of marijuana as a drug by individuals? No one has done any research on whether it is harmful or not and yet it is known to have harmful effects organically so far as individuals are concerned. Is that not sufficient evidence to condemn it and place it in the category of a dangerous drug?

• (12:20 p.m.)

Dr. Fraser: I said we did not know how dangerous is the long-term use of marijuana.

Mr. Klein: In other words, a filtered marijuana. It is silly, is it not?

If I may ask a supplementary, in speaking of addiction you used a word which I think is very pertinent to this particular discussion, that is, "dependency" on marijuana. If there were a debate on whether marijuana is addictive or not, would you say that with the person that smokes marijuana it could become a matter of dependency?

Dr. Fraser: Yes, it certainly could.

Mr. Klein: Although he might not be addicted in the narcotic sense, he becomes so dependent upon it that it almost becomes an addiction. Is that not correct? A person can become very dependent upon cigarettes and I would say that a person who cannot give up cigarettes—and I am not making any reference to our friend over here—becomes very dependent on them.

Dr. Fraser: Yes.

Mr. Klein: Where does dependency stop and addiction begin?

Dr. Fraser: As I say, the World Health Organization, because of all the difficulties in arriving at what constitutes "addiction", have now dropped the term and use the word "dependency".

Mr. Klein: Exactly. Therefore if we use the term that persons can become "dependent" upon marijuana, then would you not say it becomes a danger?

Dr. Fraser: Dependency is not, of itself, necessarily harmful. All of us, or many of us, are dependent on our morning coffee containing caffeine which is a stimulant, and we become, through habitual use of this, dependent on it. But I do not think anyone is advocating that we outlaw the use of coffee just because we happen to be dependent on it in our everyday lives. We know far more about the very damaging effects of cigarette smoking, but I do not see anyone advocating that we outlaw cigarettes.

Mr. Klein: We may get to that.

Dr. Fraser: Why, I certainly hope that they do not advocate that we lock everyone up for...

Mr. Klein: No, no, I am not thinking about locking them up; we are very much opposed to that. But would you say, if I may continue on that subject, that marijuana, glue sniffing, and all these other innovations could contribute to the decadence of our society?

Dr. Fraser: Well, let me answer about glue sniffing. It is known that there is a very damaging substance in glue sniffing. I think we have had damage reported in Toronto from glue sniffing. We have witnessed disordered behaviour as the consequence of glue sniffing, and perhaps more important is the brain damage, the kidney damage, the damage to the blood-forming tissues of the body which we know arise as the result of glue sniffing. So certainly if everyone adopted glue sniffing as a habit, this certainly would result in considerable deterioration of the people using it, and therefore, I guess, to the decadence of society.

The Chairman: Mr. Pugh?

Mr. Pugh: Before I start asking my questions, and there are not very many, I would like to go on on one thing. We have established that there is no known research—certainly not in Canada and probably not in the United States and elsewhere where marijuana is illegal—into either the harmful effects or the

non-harmful effects. Would you say offhand then that any statement by a medical man on the subject of whether it is harmful or non-harmful is an irresponsible statement? There is no known research...

Dr. Fraser: I think there are statements which do not present the facts as we know them that tend to be irresponsible.

Mr. Pugh: You made the statement that you have men in prison for two or three years who are addicts when they go in, and that when they get out almost immediately they are looking around for the drug again.

Dr. Fraser: Yes.

Mr. Pugh: Are they involuntary patients while they are in jail or in penitentiary?

Dr. Fraser: They are prisoners in jail.

Mr. Pugh: Is there a course of treatment in prison—voluntary or involuntary?

Dr. Fraser: I guess there is at the institution at Matsqui, which perhaps bears certain similarities to programs that have evolved in the United States in Lexington and Fort Worth. I know that they are attempting to institute a treatment program while a person is there and yet, as I mentioned, the relapse rate of people being released from Lexington and Fort Worth hospitals is very great.

Mr. Pugh: There is none in Canada?

Dr. Fraser: Well, in Matsqui, there is...

Mr. Pugh: Matsqui, in B. C.?

Dr. Fraser: Yes. Their experience has not been extensive enough to determine exactly what effects the treatment will have.

Mr. Pugh: In the last statement that you made—I do not have my brief in front of me at the present time—you said that there is a great need to carry out voluntary and involuntary cures...

Dr. Fraser: Yes.

Mr. Pugh: ...at the present time, and I am trying to tie this in with the questions that Mr. Woolliams asked in regard to going to a centre and having the drug available. Would this not be a better thing, as against what you have answered on that in regard to centres where people could go and get these drugs? Do you feel that medical research has not gone far enough and that it is worth going on at all speed with medical research and trying to get a better rate of rehabilitation, that you probably are putting this line with a medical sickness, and that you feel that, just like in many other things, eventually you will find a cure?

Dr. Fraser: I think that eventually we will be able to significantly improve most of the people that come to us. But as I said, if this involved placing them on such a drug as methadone, then certainly you have not cured them of their addiction, but you may have cured an awful lot of other ills in their lives.

Mr. Pugh: Yes. That is like diabetes and insulin; it is a medical cure, not an addiction to insulin, although the patient cannot get along without it. Similarly, as someone mentioned in regard to methadone, there might be harmful after effects, but you feel that it is worth a trial and that we should keep trying.

Dr. Fraser: Yes, I certainly believe very much that all of the approaches which I mentioned have to be tried with narcotic addicts who come to us.

Mr. Pugh: I gathered from your remarks that the cure without relapse to date has had a very, very small percentage. Is there anything in line with Alcoholics Anonymous in regard to drug addiction?

Dr. Fraser: Yes, there is an association called Addicts Anonymous.

Mr. Pugh: Is there any reported success?

• (12:30 p.m.)

Dr. Fraser: Yes, there is reported success in certain centres where this has developed; and, might I say here that you are illustrating the point which I am trying to make: that the addicts are not a homogeneous group of people but a heterogeneous group of people. Some are going to respond to Addicts Anonymous; some are going to respond to voluntary out-patient treatment programs such as we have; some are going to respond to the treatment program such as Dole and Nyswander have; some are going to respond when they are put on parole and followed carefully by probation officers; some are going to respond when they are put on probation and put on a drug such as methadone and followed daily with urine testing for total drug usage; some are going to respond by certain inspirational approaches which have been developed at

certain centres; some are going to respond to Synanon and Daytop Village. All of these programs offer promise of a significant improvement in the life of the narcotic addict. Some of them involve abstinence from drugs such as Addicts Anonymous and Synanon and Daytop Village; other programs do not involve abstinence from a drug. Some are probably going to have to be permanently institutionalized in some kind of treatment centre.

Mr. Pugh: I am in agreement completely with what you said, that you must keep on trying; the only thing that I want to do is tie in the research with the trying.

Dr. Fraser: Yes.

Mr. Pugh: And going along on this business of feeding drugs over a period of time to find out about such things as tolerance and the possibility of cure, have you the figures for instance, on the British experience? Is it working out at all reasonably, either from the point of view of cure or of stopping crime, stopping the drug racket?

Dr. Fraser: I have had different reports; the last reports I have read were those of Lady Frankau, who was reporting considerable success with her treatment program. She aims, of course, to eventually get the person off the drug altogether; but I have heard conflicting reports and have no direct evidence as to the success of the British system.

Mr. Pugh: Thank you, Mr. Chairman.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Dr. Fraser, I notice that in one of the four basic principles on page 2 of the Foundation, it is the voluntary acceptance approach which has had the highest success. If you relate that to Mr. Klein's Bill, Mr. Klein is really taking the involuntary approach; he is having the magistrate determine whether the accused should take clinical treatment before, and then determine whether he should proceed with the offence as charged. So you get the voluntary and the involuntary approach. With the voluntary approach you have not had a very successful record with regard to cure. Do you think it would be worse if you had the involuntary approach?

Dr. Fraser: No, there is evidence and there are studies to show that some involuntary approaches seem to work much better than voluntary. A number of cases who have come to us either on probation or during the period of their parole have made very good progress in treatment up until the time their probation ends and then they have relapsed, so that putting some external force on a person who lacks internal controls often is essential. There are studies in the United States that indicate perhaps in some patients this is more effective than a voluntary outpatient approach.

Mr. Gilbert: You have said, "heterogeneous group" with regard to the drug problem and I think studies indicate that. If I understand correctly the problem with most people charged with criminal offences—and you are quite right that the type of criminal offence is the non-violent theft, prostitution, pick-pocketing and so forth—is that they are attempting to obtain money to buy the drug.

This is where the narcotic clinics come into effect because if you do that then you are taking away the profit motive from the pusher of the drug. This is why I am rather inclined to approve of narcotic clinics because they take away that profit motive and it thereby may take away the necessity to commmit these crimes.

I agree with you that not only are the narcotic clinics necessary, there are other treatments that must go with them. What do you think of the approach of the narcotic clinic to take away the profit motive of the pusher?

Dr. Fraser: Well, of course, people become narcotic addicts from their association with other addicts. Perhaps by accident they happen to be born in a certain area of a city where there is poverty, slum, lack of education and lack of opportunity for employment. Many factors are involved in what makes the narcotic addict. If you are saying that if we just give legally unlimited supplies of narcotic drugs to the narcotic addicts we are going to have no more problems, nothing could be further from the truth.

Mr. Gilbert: You can get what is known as the "get tough" policy approach, you know. You can impose terms of imprisonment on the pushers. Someone said that the analogy with regard to prohibition is that you develop men like Capone and Luciano. I think probably we are developing the same type with regard to drug pushing and to me this brings up the necessity for these clinics, that

control the amount of the drug given to the person. In other words, it seems to me that you have to get the pusher out of the market.

Dr. Fraser: And do not forget that many addicts themselves are pushers who are pushing the drug to support their own habit.

Mr. Gilbert: That is right. I wonder if I could just ask one final question, Mr. Chairman? We have been talking about a cure. Should we not really start talking about prevention? Is this not the whole basis of it? I do not know what educational films or material we have that might be shown to high school students and college students which would do away with the necessity of the so-called "kick" they are looking for. What would you suggest along those lines?

Dr. Fraser: I think the problem in education is to develop programs which result in effective education. I think in Britain with regard to tobacco there is no question that many educational and national programs were established to educate people about the dangers of cigarette smoking, and yet the consumption of tobacco has continued to rise in the United Kingdom as you know.

I suppose one bases these programs on the belief that all people are sensible and logical, and if you tell them if they do this it is going to be harmful to them, then they are not going to do it. But people are not necessarily always sensible and logical and perhaps very few people are. So there are many factors involved in prevention. Certainly, I agree with you that prevention is one of the most important, if not the most important, aspect of this entire problem and therefore it becomes a problem for the entire community at large to do something about the areas where narcotic addiction is generated.

Mr. Gilbert: It is really not a question of legislating the morals in this province. Here you have a drug that really affects the physical and the mental health of a person. It is really not morals that we are legislating for. Mr. Woolliams was trying to indicate it concerns morals. Do you think it is morals? Surely it goes beyond that.

An hon. Member: You could not legislate morals.

Mr. Gilbert: You could not legislate on it; that is right. It seems to me that...

Dr. Fraser: Are you asking me whether I think drug use is a moral problem?

Mr. Gilbert: No; all I am saying is that Mr. Woolliams said you could not legislate on morals, you see. I am saying that we can legislate on something that really goes beyond morals because drug addiction affects the physical or mental well-being of a person.

Mr. Klein: And his family and society.

The Chairman: I think Mr. Woolliams did take that additional step.

Mr. Gilbert: Did he?

The Chairman: That is what I understood in his questions at any rate.

Dr. Fraser: Certainly your opinion would not be shared by Dole and Nyswander who are administering high doses of a synthetic long acting narcotic substance to people. They are not administering this to people with a view to giving rise to physical and mental damage to them and, if we can have any confidence in their preliminary reports, no organic or mental damage has been shown to result in people taking this drug on a long term basis and the effects seem to have much benefitted society.

• (12:40 p.m.)

Mr. Gilbert: Thank you Mr. Chairman.

The Chairman: Mr. MacEwan and then Mr. Klein.

Mr. MacEwan: Doctor, who supports this research foundation with which you work?

Dr. Fraser: The provincial government supports the foundation.

Mr. MacEwan: The provincial government of Ontario.

Dr. Fraser: The narcotic addiction unit of the Alcohol and Drug Addiction Research Foundation received some federal support for a certain length of time but I believe it is entirely provincially supported at the present.

Mr. MacEwan: I see. And are there any similar foundations throughout Canada that you know of?

Dr. Fraser: There is only one other narcotic addiction unit in Canada and that is located in Vancouver.

Mr. MacEwan: I see. You mentioned that you visited Staten Island?

Dr. Fraser: Daytop Village.

Mr. MacEwan: And who supports the activities there?

Dr. Fraser: It was initially supported by the National Institute of Mental Health but whether they continue to support it or whether it gets finances elsewhere I do not know.

Mr. MacEwan: I see. Do you think this is such a serious problem that the foundation research that they are doing should have national support in Canada?

Dr. Fraser: Yes, I certainly do believe that.

Mr. Klein: Dr. Fraser, I think you have established that a drug addict is a sick person.

Dr. Fraser: Yes, I very much believe that a drug addict is a very sick person.

Mr. Klein: And not a criminal.

Dr. Fraser: He may be both.

Mr. Klein: But you would call a person who is addicted to drugs *per se* to the point where it is so compulsive that he must have it, a sick person and not a criminal.

Dr. Fraser: Yes, I would call him a sick person.

Mr. Klein: As opposed to a criminal.

Dr. Fraser: As opposed to a criminal.

Mr. Klein: Personally, I think you have been very modest in the matter of the institution you come from. Would you say that if your institution were given larger sums and your facilities for confinement were increased your record might be a lot better than indicated today?

Dr. Fraser: There is no question in my mind that if we could develop the type of comprehensive program that I outlined to you, which would necessitate an increase in facilities and staff—it is not easy to get very competent staff to work with the narcotic addict—we could do a much more effective job than we are doing now.

Mr. Klein: Would you say that this is the road to the future rather than incarceration?

Dr. Fraser: Absolutely.

Mr. Klein: You are convinced of that?

Dr. Fraser: Yes.

Mr. Klein: Would you not say that if we can supply jails in our society we can supply clinics?

Dr. Fraser: I suppose so.

Mr. Klein: It is appalling to hear that there are only two clinics in Canada. Is it not correct that if these clinics were established a lot of the unanswered questions could be answered because of the work that would be done by these clinics...

Dr. Fraser: Yes.

Mr. Klein: ... which are now not available. Would you say, Dr. Fraser, that incarceration would be the last resort or no resort at all?

Dr. Fraser: I personally do not believe that sick people should be incarcerated.

Mr. Klein: I just have a few more questions. You spoke of an educational program in respect of cigarette smoking in the United Kingdom. I am not making a crusade against tobacco but just giving you an illustration. You seemed to indicate that the educational program failed in England. Might it not have failed as a result of the fact that cigarettes are commercially advertised on radio, television, in the newspapers and so on? You might say, there is a sort of counter-educational fight going on.

Dr. Fraser: I certainly do believe that advertising tobacco and other things which we know to be harmful, when associated with the popular imagination that they do associate cigarette with smoking, does something to encourage people to smoke.

Mr. Klein: But does not the fact that the government, on the one hand says, "do not smoke because it is harmful to you" and on the other hand, receives great returns in the form of taxation from the sale of cigarettes, indicate an imbalance somewhere?

Dr. Fraser: I think so.

Mr. Klein: Let us go to another area of prevention. Someone asked how we prevent this, which was a very good question. Perhaps if I had presented this Bill now I might have presented it very differently from the manner in which I did. At the time I felt

that we ought to deal with the sick people. On the question of avoiding a situation, what do you do to stop people from becoming addicts or participating in drugs or marijuana? I think marijuana encourages people. Even if it is eventually proven to be non-addictive it certainly encourages adventure on the part of the person that uses it; they might want to have a higher feeling from a higher drug.

As a preventative measure would you not think that it might be an idea, even though it might be a traumatic experience to some youngsters, to take the teen-agers, the 14-year-olds and the 13-year-olds—because that is the age bracket in which I understand education has to begin—to clinics like yours and show them the depths to which addiction leads people; and do you not think that that might have a more educative effect on them than any film or literary tract?

Dr. Fraser: Yes, I certainly think with regard to narcotic addiction that if one knew the kind of life the narcotic addict leads when he is heavily or moderately addicted to heroin it would tend to discourage his use of it.

Mr. Klein: You would not be opposed to having youngsters visit clinics to see what happens to people when they become addicted?

Dr. Fraser: This would depend upon the patients, whether they wanted to...

Mr. Klein: To be exposed.

Dr. Fraser: ...to be exposed to spectators. May I be permitted to elaborate for a moment? In this regard, we know that in the United States narcotic addiction arises in the most underprivileged areas where there is lack of housing accommodation, the slum areas, where there is overcrowding, a lack of education, a lack of opportunity, family disruption, where you have minority groups of people and where you have a supply of addicting drugs which are pushed.

Mr. Klein: Yes, but that is falling by the wayside now because the campus is being attacked. These drugs are now being filtered into the campus and that is where I say the danger of the decadent society begins. It has been said, for example, that juvenile delinquency usually occurs in areas such as you spoke of, the slum areas. However, statistics indicate that it is not confined any longer to the slum areas but has spread into the middle and upper class areas of society because of marijuana and because of drug addiction.

Dr. Fraser: You are not suggesting, however, that narcotic addiction is common on the campus, are you?

• (12:50 p.m.)

Mr. Klein: No, I am not saying that narcotic addiction is common on the campus but I am saying that marijuana on the campus makes people adventurous to the extent of trying LSD and other forms, to use the vernacular, "of taking a trip". Youth is asking for the truth about marijuana but I do not think there is anybody that can give them the truth at this time because I think it is too early to make such an assessment. Do you agree? The parents of this country are very concerned about the fact that their children may be participating in the use of marijuana. It is in the area of the campus and the high school that the great problem exists, I think, in the future control, or prevention, that has been spoken of previously in this Committee. This is the area that must be attacked. We have to get to the 13-year-olds and the 14-year-olds. We should not allow them to sniff glue, for example, without explaining to them what you have just explained to us. Why should not teams go to the high schools now and tell the children what you have told us? Children are not going to get copies of the minutes of these proceedings, but perhaps field teams could go and tell children what glue-sniffing can do.

An hon. Member: That might teach them how to do it.

Mr. Klein: But if they were told by responsible people the effects of glue-sniffing on their bodies, and the fact that they could die from it, it might have an effect. What we are doing is just simply sitting back and letting this thing happen; and we are not doing a thing about it.

Do you favour visiting the universities and high schools and explaining these programs to them and inviting them to come to your clinic?

Dr. Fraser: I do not favour inviting everyone to our clinic, no. I do favour education which is designed to prevent. However, we must remember that many people who use drugs do so because they have certain psychological disorders. Education on a drug is not going to cure the psychological disorders.

Perhaps there is a need to detect the person who may be vulnerable to development of an addiction in the later years of his life.

Mr. Klein: I want to ask you one last question, doctor, on the distinction between the drug addict and the criminal, if there is one. Let us suppose that there is, and that a judge, or a magistrate could, in his own mind, make the distinction, in the person appearing before him, that he is a pure addict and not a criminal; in other words, a sick person rather than a criminal...

Dr. Fraser: I really do not understand what you mean, because surely I could be an alcoholic and also be a criminal.

Mr. Klein: Yes.

Dr. Fraser: If I am an alcoholic and I go and rob somebody's store I am also a criminal.

Mr. Klein: That is correct; you are right. That is why I am trying to make a distinction. Suppose a man is arrested because a syringe is found on him.

Dr. Fraser: Yes?

Mr. Klein: He is arrested without having committed any crime, and he is brought before the magistrate. If it is proven that he used that syringe do you think the solution is to throw that man into jail?

Dr. Fraser: I have said repeatedly this morning that I do not think the answer is to throw him into jail.

Mr. Klein: You would be opposed to it?

Dr. Fraser: Yes, I would be opposed to it.

Mr. Klein: That is all.

Mr. Aiken: My question may have been asked in another way, but I would like to ask it. Are there addicts who cannot be helped medically or therapeutically.

Dr. Fraser: Certainly with known and presently existing treatment methods there are some addicts whom we are not going to be able to help. This is true of most diseases which we have known throughout medical history.

Mr. Aiken: In such a case is there any real alternative? If they are pushers, or are influencing others, is there any alternative to confining them?

Dr. Fraser: For some addicts there is, at the present time no alternative to some form of confinement. However, I personally believe that where a person is confined they should have available to them at least the best possible known treatment. A person confined must be afforded the opportunity to get well.

Mr. Aiken: Is an effort being made now to distinguish these two groups of people—those who can be helped and those who really cannot be because of their continual return after their release from confinement?

Dr. Fraser: I do not believe that we can predict, in the case of persons coming to us, whether one is going to respond to treatment and another is not. I think we do sometimes know that certain individuals will not respond to, say, our type of treatment, but this does not mean he is not going to respond to another type of treatment such as I outlined earlier. Therefore, a wide variety of treatments is what is needed to meet a significant percentage.

However, I would agree with you that even then there are going to be some addicts whom, with our existing treatment methods, we are not going to be able to help.

Mr. Aiken: Is there any rule-of-thumb indication of who these people would be?

Dr. Fraser: No.

Mr. Aiken: I am referring to a person who perhaps has taken the cure two or more times and returned to addiction. There is no rule-of-thumb way in which you can judge this?

Dr. Fraser: No, there is no rule of thumb by which we can judge this. We have been, I think personally, of greater benefit to, and have had greater success with, patients falling into the older rather than the younger age group. But when I was at Daytop Village, for example, most of those who were in that kind of a treatment-setting—they do not apply the word "treatment", but it is treatment—were a much younger group of people.

Mr. Klein: May I ask one last question? If an addict is brought before a judge, as in the example I gave you, with, say, a syringe in his possession, would you think it a good idea for the judge, in determining that case, to consult with an institute such as yours about what might be done with this chap before he throws him into jail?

Dr. Fraser: Provided the community is prepared to provide sufficient facilities and staff to enable them to give advice to the court.

Mr. Klein: If the man is regularly and faithfully taking treatment at your institution and then is brought before a judge do you think that it would be harmful to incarcerate that man and deprive him of the treatment? Would it be better that he continue?

Dr. Fraser: If it has been demonstrated that he is making good improvement...

Mr. Klein: ... he should not be incarcerated?

Dr. Fraser: ... he should not be incarcerated.

Mr. Pugh: Doctor, apart from those whom you have classified as incurable I rather gathered that, although drug addiction is a medical thing to start with, there are other things behind it—medical as well—which would make them incurables. Reverting to this idea of centres, if you had a method of control would that not, in the end result, give you the basis for fairly thorough research? In other words, what we are seeking is some form of cure, or the possibility of one. You cannot do it without research. Do you not think that a centre of some sort is possibly the best way to get research with control? I do not mean just handing it out, but with control. Everybody who comes before you has a case history, and unless you have these case histories you are certainly not going to benefit from any sort of casual research?

Dr. Fraser: No.

Mr. Pugh: Well, in that light do you not think that possibly centres could be established, not to provide drugs but, in the end result, to provide a cure. If you find a cure you can eventually do without your centres.

Dr. Fraser: I think we are going to have to work a very long time at this. When you use the word "cure" I have difficulty in knowing exactly what you mean. I will illustrate that difficulty this way. For example, a person may even be cured through narcotic control methods which have been implemented. It may be, because of action by the police, that very little heroin in available in a city for a heroin addict. What does he do when this is not available? He turns for help to other drugs such as barbiturates, amphetamines and alcohol. You may have cured him of his heroin addiction but if afterwards he is left an alcoholic living on skid row, you certainly have not accomplished anything.

Mr. Pugh: This all leads me to believe that you feel all we want to do is control this thing. No cure is available now nor will a cure be available. I rather feel the othe way around. I believe that if this can be called a medical matter that in the end we will somehow or other find a cure for it although, like thousands of things that have gone on in the medical history of this world it may take years.

Dr. Fraser: Idealistically I think we must look toward a cure, yes, but I think it is a long way off. Man has been treating chronic bronchitis for many, many years but we certainly do not have a cure for it yet. Narcotic addiction has only been treated on this continent for a few years. I agree with you in principle, sir.

Mr. Gilbert: Mr. Chairman, I have one short question. Is there a simple test to determine if the person is a drug addict?

Dr. Fraser: You usually determine whether a person is a drug addict or not by taking a history and carrying out a physical examination. Although a person may be a drug addict he may not have been using drugs for possibly a week and you might bring this person into a clinic and examine his urine for the prevalence of narcotic substances or give him what is called a nalline test, which has a certain effect on the diameter of the pupil of a person who has used narcotic substances recently, but just because you find the presence of heroin or another substance it does not mean that person is an addict. There is no simple test. You have to combine these methods with what is still the best method, the physical examination and history.

Mr. Gilbert: Thank you very much, doctor.

The Chairman: Dr. Fraser, I would like to thank you on behalf of the Committee for the masterly way in which I thought you handled the somewhat extended questioning. I think we have quite throughly explored a lot of the problems of the narcotic addict and I for one feel that I have learned a lot and I believe the members of the Committee feel the same way. On their behalf I wish to thank you most sincerely.

At our meeting on Thursday at 11 o'clock we will have as our witness Dr. James Naiman, a psychiatrist from the Jewish General Hospital in Montreal. This meeting is now adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

THURSDAY, NOVEMBER 23, 1967

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. James Naiman, Assistant Professor of Psychiatry,
McGill University.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27619—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Otto,
Mr. Brown,	Mr. Howe (*Hamilton South*),	Mr. Pugh
Mr. Cantin,		Mr. Stafford,
Mr. Choquette,	Mr. Latulippe,	Mr. Tolmie,
Mr. Gilbert,	Mr. MacEwan,	Mr. Wahn,
Mr. Goyer,	Mr. Mandziuk,	Mr. Whelan,
Mr. Grafftey,	Mr. McQuaid,	Mr. Woolliams—24.
Mr. Guay,	Mr. Nielsen,	

(Quorum 8)

Hugh R. Stewart,

Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 22, 1967.

Ordered,—That the name of Mr. Howe (*Hamilton South*), be substituted for that of Mr. Scott (*Danforth*), on the Standing Committee on Justice and Legal Affairs.

WEDNESDAY, November 22, 1967.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion: That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.—(Notice of Motion No. 20).

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

27619—1½

MINUTES OF PROCEEDINGS

THURSDAY, November 23, 1967.
(11)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day. The Vice-Chairman, Mr. Forest, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Guay, Howe (*Hamilton South*), MacEwan, McQuaid, Pugh, Tolmie and Mr. Wahn (12).

In attendance: Dr. James Naiman, Assistant Professor of Psychiatry, McGill University and Psychiatrist at the Jewish General Hospital in Montreal.

The Committee continued its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*).

The Vice-Chairman introduced the witness, Dr. James Naiman, Assistant Professor of Psychiatry at McGill University. Dr. Naiman delivered a prepared statement entitled *The Problem of Addiction.*

The Vice-Chairman announced the names of two additional witnesses who have been invited to appear before the Committee in connection with the subject-matter of Bill C-96.

On a motion by Mr. Aiken, seconded by Mr. Tolmie,

Resolved,—That reasonable living and travelling expenses be paid to Miss Isobel McNeill and Dr. B. Cormier who have been called to appear before this Committee in the matter of Bill C-96, on November 28, 1967, and November 30, 1967, respectively.

Concerning the subject-matter of Bill C-4, (*An Act concerning reform of the bail system*), the Vice-Chairman referred to a communication dated November 21, 1967 from Mr. Mather, M.P. Mr. Mather enclosed a copy of a report entitled *Pre-Trial Release Practices In Sweden, Denmark, England And Italy To the National Conference On Bail And Criminal Justice.* The report appears in the Journal of the International Commission of Jurists, Winter 1964. The Vice-Chairman also referred to articles by Peter K. McWilliams, Q.C., Crown Attorney, County of Halton, Ontario. The articles appear in Volumes 8 and 9 of the Criminal Law Quarterly, and are entitled *The Law of Bail.*

On a motion by Mr. Cameron (*High Park*), seconded by Mr. Howe (*Hamilton South*),

Resolved,—That the copy of the report submitted by Mr. Mather on the subject of Pre-Trial Release Practices, and copies of the articles by Mr. McWilliams on the subject of bail, be filed as Exhibits (*Exhibits C-4-2, and C-4-3 respectively*).

Returning to the subject-matter of Bill C-96, the members questioned Dr. Naiman on the problem of addiction, for the remainder of the meeting. The

Vice-Chairman thanked the witness for his competent and informative testimony.

The Committee adjourned at 1.00 p.m., until Tuesday, November 28, 1967 at 11.00 a.m. The next witness will be Miss Isobel McNeill of Toronto.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 23, 1967.

The Vice-Chairman: Order, please. This Committee is considering again this morning Bill C-96 sponsored by Mr. Milton Klein. The subject matter is the observation and treatment of drug addicts.

We have with us this morning as our witness Dr. James Naiman, who is Assistant Professor of Psychiatry at McGill University. Dr. Naiman graduated in arts in 1945 and in medicine in 1949 from McGill University. He interned at Bellevue Hospital in New York and the Queen Mary Veterans Hospital in Monteal.

From 1952 to 1954 he was the Assistant Resident at the Montreal Neurological Institue, the Allan Memorial Institute and the Montreal General Hospital. He holds certificates and a diploma in psychiatry and has received training in psychoanalysis. He is a member of several psychiatric associations and has published several scientific papers on subjects relating to his specialized field of medicine. Dr. Naiman is an Associate Psychiatrist at the Jewish General Hospital and an Assistant Professor of Psychiatry at McGill University. Dr. Naiman, we are very glad to have you with us. As usual I suppose you have a statement and then you will be available to answer questions by members of the Committee.

Dr. James Naiman (Assistant Professor of Psychiatry, McGill University): Mr. Chairman and gentlemen, I should like first of all to state how deeply honoured I feel to have been asked to appear before your Committee. I consider it a grave responsibility with which I have been entrusted and hope to be able to live up to it.

• (11:20 a.m.)

The difficulty of my task is well stated in an article which appeared in July, 1967 in a journal published by the World Health Organization (1). This article quotes the title of another article which appeared in the Journal of the American Medical Association, the title being "Drug Addiction: Crime or Sickness", as illustrating the problem of reconciling the attitude of the medical profession and that of society in its entirety towards the victim of drugs. The WHO article goes on to say that to the WHO and to the greater part of that portion of the medical profession which is specialized in this area the user of drugs is a sick person who must be treated like any other sick person. However, even when governmental authorities agree with this point of view, their acts are not in conformity with it. A drug addict may be considered, on paper, as a sick person but, and this is true in many countries, when he is found in possession of drugs or of a syringe, it is to the penitentiary that he is sent for a period of several years. But how would it be possible to be a drug addict without being in possession of drugs or of equipment connected with it? Never has the breach between the medical profession and the organized powers of society been greater or more evident.

Before proceeding any further I should like to state that I have personally received the greatest possible cooperation from legal authorities in individual cases. In the past year, we have embarked on a pilot project of treating a small number of drug addicts at the Jewish General Hospital in Montreal. It has been our experience that, in every instance where a criminal charge has been pending against an individual under our care, the legal authorities when informed that an individual was under our care have decided not to proceed with the charge, even though we have scrupulously refrained from requesting this, my position being that if one disagrees with a law, one should endeavour to have it changed rather than ask a court of law to make an exception in a particular case.

I should like to consider the problem before us under three headings:

1. Is narcotic addiction an illness?

2. If so, and I do believe it to be so, what kind of an illness is it?

3. What kind of legislation would be most appropriate in dealing with this particular illness?

Let me add immediately that I do not consider legislation to be the only important aspect of the problem. No change in legislation is likely to be useful if it is not accompanied by provision for adequate medical facilities for the treatment of addicts. It makes very little sense to state that the proper place for an addict is a hospital or a clinic rather than a penal institution unless there are suitable—that is, staffed with competent personnel—hospitals and clinics ready, willing and able to accept the addict who is referred to them for treatment.

At the risk of being accused of maligning the much abused general practitioner, I should like to state my position that the treatment of drug addicts is an exceedingly difficult matter, probably best carried out in specialized facilities, preferably affiliated with university teaching hospitals.

The statement that addiction to narcotics is an illness is hardly, to a medical man, a revolutionary novelty. For the next while, I shall quote liberally from a book on drug addiction written in 1962 by Dr. Lawrence Kolb (2).

Dr. Kolb's qualifications for expressing views on this subject are the following: He spent 36 years in the United States Public Health Service, his tours of duty including an assignment to the Hospital for Narcotic Drug Addicts at Lexington, Kentucky. He was assigned to study all phases of drug addiction from 1923 to 1928. From 1951 to 1962 he devoted himself to further study in this area. At the present time, he is Professor and Chairman, Department of Psychiatry at the College of Physicians and Surgeons, Columbia University, Director, New York State Psychiatric Institute and Psychiatric Service, Presbyterian Hospital of New York. This year, Dr. Kolb is the President of the American Psychiatric Association.

Among the statements Dr. Kolb makes in his book are the following:

1. Drug addiction is a symptom of a mental disease, it is not the perversity of an evil character, and its treatment does not yield simply to moral persuasion.

2. One should:

(a) continue to apply legal restrictions on the purchase and distribution of narcotics.

(b) Provide addicts with treatment for withdrawals from drug use and assistance in dealing with the social and emotional factors that contribute to it.

3. There is nothing about the nature of drug addicts to justify their treatment as criminals.

4. We are in urgent need of laws that place the treatment of patients with narcotics unequivocally in the hands of physicians. We must have laws that permit physicians to administer opiates or likeacting synthetics regularly to patients.

The desirability of a change in attitude towards the addict was also stated recently by a leading Canadian psychiatrist, Dr. Travis Dancey (3), Chief of the Psychiatric Service at the Queen Mary Veterans Hospital in Montreal. Commenting on some recent work by Drs. Dole and Nyswander of Rockefeller University in New York, Dr. Dancey stated "they have contributed remarkably to a gradual change in attitude towards the addict himself to the end that he will eventually be looked upon as a human being with troubles rather than a sort of leprous parasite as is almost universally true at present. This change in attitude may permit efficient treatment of the narcotic addict to be carried out in settings of more human type than heretofore considered possible."

The undesirable effects of a correctional setting in dealing with narcotic addicts was recently stated by Dr. D. Craigen (4) at the annual meeting of the Canadian Psychiatric Association in 1966. Dr. Craigen, who is on the staff of the Matsqui Institution, a correctional facility for narcotic addicts in British Columbia, stated in part: "Placing an individual in a correctional setting can be, and often is, antitherapeutic. Too often, pathological behaviour occurring within an institution is the result of institutional experiences, rather than a manifestation of the problem areas which predisposed and precipitated the inmate's commitment."

Careful studies in recent years have added to the amount of factual information we have about addicts.

A study by Vaillant (5) in 1966 of patients formerly hospitalized in Lexington, Kentucky, indicated the following:

1. the average addict remains addicted for a decade or more.

2. By age 42, only one quarter of those initially addicted were still using narcotics.

3. The suicide rate was two to five times the expected one for a population of that age.

4. The addicts remained physically healthy.

These observations seem to warrant the following conclusions:

1. there is a tendency towards spontaneous recovery in addicts as they get older. This is in contrast to alcoholism which, as far as I know, tends to get worse.

2. The high suicide rate would appear to constitute factual support for the view that these people are psychiatrically ill.

Richman (6), in Canada, in a study published in 1966, arrived at the conclusion that 20 per cent of so-called "criminal addicts" —those are people who have received convictions for offences relating to narcotics —will give up their addiction over a five-year period, and that the prospect for abstention increases with age of the addict.

A number of current investigations have direct relevance to the issue of treatment.

1. Vaillant (7) found that 96 per cent of all addicts who sought voluntary hospitalization for addiction at Lexington, and the majority of whom remained in hospital for relatively short periods (less than three months), relapsed. On the other hand 67 per cent, of those who received at least nine months of compulsory hospitalization and a year of compulsory supervision were abstinent from drugs for a year or more.

This finding would support the view that compulsory hospitalization in a suitably staffed institution plus compulsory supervision is one effective approach to the problem of addiction.

2. The outpatient treatment of addicts.

The treatment of addicts on an outpatient basis has been considered an exercise in futility until recently.

These are, however, indications that this pessimism may be unjustified, although it is too early to make any final decision in this regard.

Dole and Nyswander (8) have reported encouraging results with methadone. Methadone is a drug which is classified as a narcotic in both the United States and Canada. It differs from heroin in that it does not produce euphoria. Dole and Nyswander have been able to restore to useful, productive lives a very high proportion of previously unemployed and more or less derelict addicts by maintaining them on a regulated amount of methadone. This cannot be considered a cure of addiction in the sense that methadone is itself a narcotic. It is, however, a social cure in that these individuals lead useful, productive lives.

Another drug which has shown promise is cyclazocine. This drug is considered a narcotic in Canada but not in the United States. It has been successfully used in the treatment of addicts by Jaffe (9) and others.

The effect of this substance is to block the effect of heroin, so that even if the patient takes it, he experiences no effect. In time, he stops taking it. According to the law, possession of alcohol is permitted, possession of a narcotic is a crime. A lengthy discourse on the dangers of alcohol would be out of place here, but I should like to quote a few statistics: Hayrer and Albers (10) examined the bodies of pilots in 158 fatal general aviation accidents which occurred during 1963 and found an excessive amount of alcohol, over 15 mgm per 100 ml of blood—the maximum permissible is about 80; anybody over 80 is, in effect drunk—in the bodies of 35.4 per cent. Recently, Selzor and Weiss (11) found that of 72 drivers responsible for fatal traffic accidents in a Michigan county, 40 per cent were alcoholic. They were chronic alcoholics. There are other figures which tend to run around 30 per cent.

• (11:30 a.m.)

It seems to me that the drastic difference between the attitude towards alcohol and that towards narcotics is not supported by such facts as are at our disposal.

I should like to suggest that the real distinction to be made is not between one drug affecting the central nervous system and another—alcohol is, of course, a drug which affects the central nervous system—but rather between the use of a drug and its abuse, or excessive use.

I would suggest that the law should recognize that any person who used to excess any drug which affects the central nervous system is a psychiatrically sick person, and that such a person should receive treatment, voluntarily if possible, involuntarily if necessary. The principle of involuntary commitment of certain mentally ill persons has been recognized for a long time.

The crime of "possession" of a drug, which really means its use, should be eliminated from the criminal code.

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The Vice-Chairman: Thank you, Doctor. Before we proceed to question our distinguished witness, I think we should deal with a few matters in case we lack a quorum later on. I wish to report that there was a meeting of the Steering Committee last November 21. Next week's witnesses on this Bill will include Miss Isabelle McNeil, who will appear here on Tuesday, November 28. Miss McNeil is a Special Research Project Officer, Alcohol and Drug Addiction Research Foundation, Toronto. Next Thursday we will have Dr. B. Cormier, Associate Professor, McGill University Clinic, Forensic Psychiatry Section.

Could I have a motion that reasonable living and travelling expenses be paid to the witnesses for next week?

Mr. Aiken: I so move.

Mr. Tolmie: I second the motion.

Motion agreed to.

The Vice-Chairman: On the matter of Bill C-4, presented by Mr. Mather concerning the bail system, Mr. Mather has sent us a report on pre-trial practices in several European countries. This report appeared in the Journal of International Commission of Jurists in the winter of 1964 and it contains material that he wishes the Committee to look at.

We also have an article here by Mr. P. K. McWilliams, Crown Attorney, County of Halton, Ontario who published an article on *The Law of Bail* which could be useful to the study of this matter. Are there two different articles?

The Clerk of the Committee: Yes.

The Vice-Chairman: Could we have a motion that these papers be made part of the file of exhibits concerning Bill C-4?

Mr. Cameron (High Park): I so move.

Mr. Howe (Hamilton South): I second the motion.

Motion agreed to.

The Vice-Chairman: First on my list for questioning...

Mr. Aiken: There is one other matter, Mr. Chairman.

The Vice-Chairman: Yes, Mr. Aiken?

Mr. Aiken: I think most of the members are aware that we also had another Reference referred to us last night by the House. I suppose the Steering Committee will take up this particular problem. It is the question of compensation for the innocent victims of crime brought on by Mr. Cowan and the House referred it to our Committee. I am afraid I made the suggestion myself. It is going to overload this Committee and I think we will have to consider just where it is going to be fitted in.

The Vice-Chairman: Yes, it is a very interesting bill. I think we should take it up at the next meeting of the Steering Committee. First on my list is Mr. Tolmie.

Mr. Tolmie: Mr. Chairman, I just have two questions. One pertains to the possibility of starting clinics sponsored by the government. I think the evidence so far has been to the effect that although great efforts have been made to cure addicts, a large percentage is incurable, and after treatment they go back to a life of crime in order to obtain drugs.

The suggestion has been made that the Government perhaps should consider setting up a type of clinic where drug addicts could go and obtain drugs under supervision legally, free or at a minimum cost. I would like to get your idea on this subject.

Dr. Naiman: This is really very similar to what Dole and Nyswander are doing rather successfully. My view would be that probably methadone would be the drug employed. I think it should be given under direct supervision in the sense that the addict should not be given any kind of supply of the drug. He should come to the clinic daily and it should be given in liquid form, because these people can put the thing under their tongue and spit it out so that all kinds of things may happen. It should be swallowed under the direct observation of a person—it does not have to be a doctor; it can be an attendant or anybody that one feels one can trust.

I think on that basis it makes sense. I think this is what Dole and Nyswander are doing and doing very well. I think the dose has to be definitely set by the doctor and one should not be influenced by the addict's claim that he wants more and so on, and it should be given in this way. I think if that is done it would be a helpful contribution to the problem.

Mr. Tolmie: You would not go along with the proposition that if these people refused that type of care—in a sense that was going to help them—they should be entitled to the actual drug itself, heroin or whatever it might be?

Mr. Naiman: Well...

Mr. Tolmie: Excuse me—just to preface—with the purpose in mind that they are going to resort to crimes in order to get this type of drug anyway, so for the safety of society it would be wiser to provide it for them.

Dr. Naiman: The rate of failure of Dole and Nyswander is extremely low. In the cases they have picked—and they have picked some pretty bad cases—I think the number of people who refused the methadone and went back to heroin according to the last rate was something like 15 per cent, and some of these people have come back to them later on and asked for the methadone. Let me put it to you this way: I do not think it is really necessary to do this. I think if one were to provide methadone in the way in which I have suggested, probably it would not be necessary to supply them with heroin. Perhaps this is a bit of undue conservatism on my part, but I think I would be happier supplying them with methadone than with heroin.

Mr. Tolmie: Just one more question. You mentioned in your presentation that the Canadian government has established an institution for drug addicts at Masqui, in British Columbia and the attitude seems to be that it has a correctional atmosphere and hence it is not as helpful as it might be. Now, have you any personal knowledge of this institution and if so do you have any personal recommendations which would, perhaps, improve its value?

Dr. Naiman: No, I do not. I have never been there. The only information I have about it is Dr. Craigen's rather extensive article. I think the staff is doing the best it can. I think the real issue there is not so much the question of the way the place is run but, shall we say, the unnecessary labelling of the individual as a criminal. I think the moment you label somebody a criminal you set in motion a series of events which are undesirable in a variety of ways. I am not suggesting that the atmosphere of mental hospitals is always ideal. I think some of us saw the movie *The Snake Pit* which appeared a number of years ago. Based on what I have read, I think this institution could probably be, let us say, changed into a psychiatric hospital and, with relatively little modification, used for the treatment of addicts. I think it is a question of labelling and some other changes; let us say the kind of changes which in time are being introduced in mental hospitals throughout North America.

• (11:40 a.m.)

Mr. Tolmie: Just one related question to this and that is all. If this is a pioneer attempt to treat addicts in a humane manner, as I assume it is, would you not think that some responsible body should be examining more closely the actual results attained at this institution?

Dr. Naiman: This, of course, would be for the purpose of assessing its values and this would perhaps determine this type of institution we would develop in the future. In other words, we should not build more of them if

we do not know how this one is actually accomplishing its purpose.

Dr. Naiman: You see, we have information on how Lexington is performing. I gave you some figures on what happens to people who have been in Lexington. I think that one can use that, shall we say, as a kind of yardstick. Obviously you see these follows-ups for a number of years and I would feel reasonably certain that the people in charge of this institution will in time be concerned with the kind of results they are obtaining and try to follow up their former—whatever you want to call them—inmates or patients in order to determine what happens to them.

You see, there are really two issues. It is very easy to take somebody off drugs in a closed setting. The medical procedure for taking a drug addict, somebody who is on heroin, and getting him from the medical standpoint to the point where his body no longer needs the drug and he can function without it takes about twelve days. When Dr. Kolb, whom I have quoted, was at Lexington be developed a fairly standardized glutenize technique. You just follow what Dr. Kolb says and in twelve days, without undue suffering, the addict is off. The question is what do you do with him afterwards? How long do you keep him in a hospital setting? How long do you keep him in a supervised out-patient setting? Once you get him out there is then, of course, the possibility of a relapse, and then the question arises what are you going to do if he relapses once? Some failure rates have been calculated on the basis of a person who has relapsed and took the drug once. I think this is ridiculous. If they are going to talk about relapse rates it should be what percentage of these people will be taking drugs let us say, five years later and how much of the time are they going to be taking them?

If one thinks in those terms one can actually get to recovery rates, let us say, with the existing facilities of Lexington, which is the prime one in the United States, and looked at from that standpoint the figures are not that bad. I have some actual figures from a paper by O'Donnell which I chose when I was reviewing the literature on the subject and when one considers this from the standpoint of periods of time that people are away from drugs one can get up to percentages as high as 76 per cent that these people have drug-free periods. As I said before, it seems to get less with age anyway, so that one can help them for certain periods by perhaps re-hospitalizing them at certain points. One of the points which I made, and on which the evidence is fairly conclusive, is that time works in one's favour anyway. This is where I think the concept of recidivism in the criminal law goes very much against the medical facts, in the sense that by the time someone has committed his fourth offence it is probably the last time he will do it anyway.

Mr. Tolmie: I do not want to belabour the point but this is my question. We have in Canada at the present time an institution designed to assist narcotic addicts. Has the government or interested organizations such as the one you represent made any studies to see whether it is effective or not? In other words, is it just going on—

Dr. Naiman: I am sorry, I cannot answer that question.

Mr. Tolmie Would it not perhaps be sensible if you or your organization projected itself into this particular sphere and analysed it? It seems to me rather strange that we should continue to construct institutions similar to this one without knowing their purpose and effect. I was wondering if perhaps your group or yourself would not be more interested in the practical aspect of the actual conditions and results of this institution?

Dr. Naiman: I must confess ignorance as to how long this institution has been in existence but I think that any study of its results would only be meaningful, let us say, at the five-year point. In other words, what happens to the people who have been in that institution five years after they have left it. I am merely confessing ignorance, I do not know if there are enough people available at this time to permit such a study.

Mr. Tolmie: That is what bothers me, Dr. Naiman. You do not know and I do not know who does know. I am just wondering if something should not be started immediately. This type of survey might be in process now, I do not know, I am just throwing that out as a suggestion.

Dr. Naiman: My guess would be that anybody who is in charge of an institution of this kind is concerned about relapse rates, re-admission rates, and so on. My guess would also be—and I can only guess—that

the people involved in this institution are probably doing what you are suggesting should be done.

Mr. Tolmie: Thank you.

The Acting Chairman: Mr. Aiken?

Mr. Aiken: I also have two questions. When I heard your paper read, my first conclusion was that you felt that alcoholics and drug addicts were poles apart both in their rate of recovery and their symptoms while they were using the drug or alcohol, but on page 8 of your brief you state:

> It seems to me that the drastic difference between the attitude towards alcohol and that towards narcotics is not supported by such facts as are at our disposal.

I want to ask you about your use of the word "attitude". Do you refer to the difference between the public attitude and the medical attitude?

Dr. Naiman: I am referring here, I think, to the public attitude and also to the legal attitude. You see, the figures I have quoted suggest that in some respects alcohol is more dangerous than heroin. I wish to be very careful about the choice of words "in some respects". I do not want to be quoted as saying that alcohol is more dangerous than heroin, period, but in some respects I think it is and yet the Criminal Code is the other way around. This is the point. I have already given you statistics about airplane and traffic accidents. I could also give you statistics with respect to violent crimes. You mentioned something about the crimes committed by addicts. Generally speaking, crimes committed by addicts are very minor. Heroin does not make people into criminals per se. The crimes of addicts are usually petty, such as shoplifting and prostitution and they are trying to get the money with which to pay for the drug. The drug itself does not make them commit crimes. On the other hand, I saw a recent paper which was written about people convicted of felonies in the state of California and 40 per cent of them were using alcohol excessively and I think that a fair percentage of them—I do not know whether the percentage was as high as 40 or not—were in fact intoxicated at the time the crime was committed. So in terms of the danger to society which, as I understand it, is what the law is primarily supposed to be concerned with and not the danger to the individual alone, in many respects alcohol is worse and yet our Criminal Code is directed the other way.

• (11:50 a.m.)

Mr. Aiken: That leads to my second question. I note from your brief that in general the addict remains physically healthy whereas the alcoholic does not. That and various other statements that you made make me wonder whether in those minor cases where addicts are not causing any danger to anyone except themselves it would not be better to leave them alone—especially when we are not yet properly set up to treat a great many of them and some get into the wrong type of institution.

Dr. Naiman: I think this is a reasonable statement to make.

Mr. Aiken: In other words, addiction in itself or the possession of drugs should not be considered a crime unless it can be shown that the public interest is being harmed by their interference with other persons. Would you go that far?

Dr. Naiman: This bulletin showing a fellow smoking opium, going back to 1845, was published by an organism of the Quebec Government which deals with alcoholism and drug addiction. You see there a fellow, lying flat on his back, smoking the stuff. This is really the most likely result of somebody taking heroin in excessive doses. He is not a useful member of society because he is not going to be working. He is not going to commit any crimes, sexual or otherwise. He cannot hold up a bank because he is much too knocked out by the drug to do this sort of thing. So the question of doing something about him I suppose is for his own welfare; he would be better off if he was a more productive individual. However, from the standpoint of society such a person lying flat on his back and ingesting the stuff really is not all that much of a threat.

Mr. Aiken: In respect of any changes in the legislation you are saying that we should be more specific or perhaps more sophisticated in our attitude toward which drug users are actually committing offences against the public—that is, in criminal law, which is what we are considering here.

Dr. Naiman: Yes, I would agree with that.

Mr. Aiken: Thank you.

Mr. Howe (Hamilton South): Mr. Chairman, at the risk of being repetitive, not having been at the previous meeting, I would like to ask some questions. Dr. Naiman, do you feel that this is strictly an illness with no criminal connotations as far as the addiction itself is concerned?

Dr. Naiman: Quite.

Mr. Howe (Hamilton South): Not necessarily the method of acquisition of the drug.

Dr. Naiman: Quite.

Mr. Howe (Hamilton South): And with this method you say that you are not protecting society from him but that you are protecting this individual from himself. Of course there are many other conditions in society that do not have the criminal connotations that this particular disease has, and I am thinking of mental illness and many other things. Your brief is entitled The Problem of Addiction. For the record and for my own interest, could you give me in general terms the classes of drugs that relate to addiction?

Dr. Naiman: Do you want the general definition of an addict?

Mr. Howe (Hamilton South): I mean in what class, for example, would you put barbiturates?

Dr. Naiman: May I answer your question in a circumstantial way because I am afraid that is the only way in which I can answer it.

Mr. Howe (Hamilton South): Yes.

Dr. Naiman: You see, the concept of addiction was originally used in relation to narcotic drugs, to the opium and its derivatives. It involved the idea of a craving, it involved the idea of increasing doses of tolerance—the need to use an increasing dose to produce the same effect—and it also involved the idea of physiological dependence. If a person has been taking opium or one of its derivatives for a while and stops taking it abruptly they get such physical symptoms as vomiting, diarrhea, high fever, and they may even die if the drug is removed abruptly. This is the reason for this 12-day regimen that I have mentioned. Now, historically, this is what addiction related to. I think people also spoke of addiction to cocaine, which is not an opium derivative but has somewhat similar properties except that it does not produce this physiological dependence; you can take somebody off cocaine and nothing dire happens to them. I use the term "addiction" in my paper because this is the word the law uses and this is the word the Bill uses. I think at the moment the view that I am expressing is probably shared by most people in the field, that really we should talk not so much of addiction, which has this fairly precise meaning that I have defined, but of drug abuse. If we speak of drug abuse then of course benzedrine and its derivatives, amphetamines, LSD and marijuana can all be abused, but alcohol is the prime offender. Those are the principal ones. I suppose you have heard of glue sniffing and so on. There is a variety of toxic substances which can be used or abused. If we broaden it in this way and call all this addiction then I think we get so far away from the term's original meaning that probably the substitution of "drug abuse" as more accurately describing what we as doctors are concerned with and perhaps what you people should be concerned with in terms of law, is a more apt term to use.

Barbiturates are a good example. People can use barbiturates in such a way that there is no abuse at all. They may just take a sleeping pill at night, and if they keep to one such pill a night for the next 40 years nothing will happen to them. However, if they take in excess of 400 or 500 milligrams a day the brain begins to deteriorate, the intellect goes down, and their habits deteriorate. There are of course differences between all these drugs but I think the crucial difference is really between use and abuse rather than between opium derivatives and non-opium derivatives which is what the law emphasizes at the moment. Have I answered your question?

Mr. Howe (Hamilton South): Yes, you have in a sense, Dr. Naiman. You and I are both in the same profession so our interest is medical. Nevertheless, you gave me a nebulous type of medical definition which you and I can accept but which in law is rather difficult to accept because you have to have what is termed a legal definition for addiction before applying whatever treatment or punishment you are going to apply by law. Then again, not being a lawyer I do not know what the legal definition of the word "addiction" is now. I understand that they use simply the word "possession". If so, we as doctors must come up with more of a legal

definition as to when a person is an addict and is going to need this type of treatment. Then the next question that logically follows is how are we going to enforce it. If we are not going to enforce it by legal means what means are we going to use to apprehend this person so that he can be forced to have treatment?

Dr. Naiman: We do not really have a precise or legal definition of mental illness either and yet we do place mentally ill people in psychiatric institutions against their will. We have managed to do this without really a precise legal definition and, on the whole, I think there has been relatively little abuse of this. I am sure there has been some abuse in individual cases, human nature being what it is.

Mr. Howe (Hamilton South): I think even lawyers make mistakes. The question is how are we going to enforce it? Are we going to enforce it through the medical profession like we do mental illness now, where two doctors for example certify a person as mentally ill?

Dr. Naiman: This would be my suggestion, yes.

Mr. Howe (Hamilton South): I am sorry, Mr. Chairman, if my questions were rather disorganized. Those are all I have for now.

Mr. Pugh: Although most of my questions have been asked I am very interested in one particular line of questioning. Is there a reasonable estimate of how many drug addicts there are in Canada? Is the incidence of drug addiction and the use of drugs increasing? Are there more people using drugs today than previously?

Dr. Naiman: Dr. Craigen gives the actual number in this paper. I am not too far off when I say that around 1964-65 the figure was 3,400.

Mr. Pugh: These are known addicts?

Dr. Naiman: Yes.

Mr. Pugh: Do you think that there are many unknown addicts? To put it another way, do you think many people are using these drugs now on the quiet?

Dr. Naiman: This is of course an exceedingly difficult question to answer. If they are using it on the quiet then of course I do not known about it. I think there are a certain number who do because one sort of hears by the grapevine. A patient of mine told me that he knows of a very successful business executive who has been on heroin for God knows how many years. This person apparently never got himself into trouble with the law for any reason, and because nobody knows about him he is not included in any of the statistics.

Mr. Pugh: In respect of those voluntary types who come for medical help, is there some bureau to which a doctor must report that a man is taking drugs and has come to him for treatment.

Dr. Naiman: You see, the crime as defined by the Criminal Code is possession rather than use. If a patient comes and says that he is using the stuff this is not, in law, a crime and therefore this is not a reportable condition.

Mr. Pugh: Doctors say that in their experience there seems to be an increase in the number of people using drugs. Is there any general knowledge available?

Dr. Naiman: As far as morphine and its derivatives are concerned, I would say no. I think there is a feeling that the use of LSD and marijuana is becoming more prevalent. I do not think that anybody has really counted heads. One gets a case here and a case there and someone thinks that perhaps there is more of the stuff being used. As far as opium and its derivatives are concerned, to the best of my knowledge there is no evidence of an increase in use at the present time.

Mr. Pugh: What do they do now with criminals who are known drug addicts? When a drug addict is convicted of a crime and goes to prison, is he given any special care?

Dr. Naiman: The Matsqui Institution, in British Columbia, as far as I know, is very interested in this problem. If a drug addict is arrested in Montreal all that happens is that he is sent to jail or the penitentiary for the duration of his sentence, and that is all.

Mr. Pugh: Does he have any special medical help?

Dr. Naiman: No.

Mr. Pugh: In other words, whether he is on opium, cocaine or whatever it might happen to be, he has to live with his own

problem, and if he is really suffering I suppose he goes on the sick list line-up and that is all that is done.

Dr. Naiman: I suppose the doctor in the penitentiary might give him a few doses to help him out, but I really do not know whether or not this is done. I am sure that my successor as a witness, Dr. Cormier, who works at St. Vincent de Paul and has done a good deal of work in penitentiaries, can give you far more reliable information on what happens.

Mr. Pugh: When did the medical profession accept the fact that this is a sickness.

Dr. Naiman: I am trying to think of the date. There have been official statements to that effect from the American Medical, the American Psychiatric and practically every organized medical body that I can think of. I would say that about 20 years would be a reasonable estimate.

Mr. Pugh: Is it not rather an extraordinary thing, Doctor, that when the medical profession has had its mind made up for so long that addiction is a sickness, this thinking has not come down to the penal institutions? If this is so, something should have been done about it long ago. If a man goes to prison and has say, a venereal disease, both the doctors and the prison authorities do something about it. If addiction has been considered a sickness for all this time surely steps should have been taken to provide adequate facilities to care for it. You mentioned certain facilities in British Columbia. I come from British Columbia myself and I know it is a very forward-looking province. But surely to goodness this problem should have been given some attention throughout the rest of Canada.

Dr. Naiman: I fully agree that it should have been done. As I say, I would prefer to defer this question to Dr. Cormier who would be better informed since he works in penal institutions. As far as I am aware, nothing has been done. Those addicts that we have seen and who have spent time in the past in penal institutions do not report. That is really the only information I have because I have never in any capacity set foot in a penal institution.

Mr. Pugh: We have had one or two witnesses say that methadone is harmful because the side-effects and so on are not fully known.

Dr. Naiman: I think the side-effects are very minimal. Before we set up our program at the Jewish General we inquired around a little and were told that people could not function under the Dole and Nyswander program of giving 100 milligrams of methadone a day. I went to New York and spoke to Dr. Jaffe who was using it at the Albert Einstein Medical Centre. He started using it when he was at Lexington and then he used it there. He took me to his lab and showed me four technicians who were doing fairly detailed technical work for him, and he said, "One of these girls is on 100 milligrams of methadone; now take a good look and tell me which one of them it is." I am a reasonably competent physician and I think I can tell when somebody is in any way intoxicated, but that person, from all external manifestations, was functioning perfectly well. I could not tell which one it was and I still do not know.

Mr. Pugh: Is treatment of out-patients and the like effective or should the person be institutionalized?

● (12:10 a.m.)

Dr. Naiman: I am sorry that I again have to hedge. I think, Dole and Nyswander have been conducting their work for the last three years. I have a paper here from a man in Texas who reports a 50 per cent cure rate with selected private patients in his office practice, and this has been going on for the last year or two. As far as assessing the long-term results of out-patient clinic treatment is concerned, I think we will have to wait until the long term has elapsed. At the moment we just do not know. The preliminary results are extremely encouraging and, in my opinion, warrant a continuation of this approach. It will take perhaps 10 years—five years anyway, but probably 10 years —before anybody can really make an authorative statement.

For instance, the follow-up of Lexington.... Vaillant made the study on people who had been in Lexington 12 years before. At that point I think you can obtain reasonably meaningful statistics. When you do something for a year in this kind of chronic condition, all you can report on is whether or not your immediate results are encouraging enough to warrant continuation of what you are doing. To find a cure for appendicitis is relatively easy because something either works or it does not work and you know very rapidly; you know within a few days.

But, if you are dealing with a condition like this, it is perhaps like tuberculosis or diabetes; that is, a very long-term thing, and I think you need a pretty long period before anybody can really categorically state what works and what does not work and in what percentage.

Mr. Pugh: Mr. Chairman, I will pass now.

Mr. MacEwan: Doctor, this is in line with the last question Mr. Pugh asked. On page 3 of your submission you state the following:

> ... that the treatment of drug addicts is an exceedingly difficult matter, probably best carried out in specialized facilities, preferably affiliated with university teaching hospitals.

I can see this being carried out in larger areas—provincial capitals and so on—where there are universities located. In areas where you do not have these university teaching hospitals, just what could be done there to provide facilities to treat drug addicts?

Dr. Naiman: Fortunately for the situation, the overwhelming majority of drug addicts reside, in fact, in large metropolitan centres so that the catchment area of major hospital facilities really would encompass—I am giving the figure off the top of my head but I do not think I am too far wrong—probably close to 85 or 90 per cent of the total addict population of the country taking, let us say, a 50-mile radius of Vancouver, Toronto, Montreal and so on.

The reason I am mentioning the universities is that I am thinking particularly outpatient clinics as I feel that in the present state of our knowledge it is desirable to keep careful records and to have well controlled supervision, so that one knows what one is doing. It could happen that some general practitioner way out in the sticks may very well see a patient he knows and give him his methadone liquid everyday. A man might come in the morning before the doctor starts his general round of patients, be given his methadone, be sent home and everything may be fine. But I am talking about the probability that the doctor is more likely to say that he will see him next week, next month, or take the attitude that he is a fine fellow and will not abuse the stuff and so let him have it.

I am just really thinking in terms of the control under which things, in my opinion, preferably should be conducted. It is not an absolute. I am really making a relative rather than absolute comment.

Mr. MacEwan: In regard to these facilities, for instance in the Montreal area, is it the provincial government that pays towards these facilities?

Dr. Naiman: At the moment in Montreal there are no facilities. The provincial government has set up this office to deal with alcoholism and drug addiction. They have obviously given first priority to alcohol and they have set up a number of centres specializing in the treatment of alcoholics. We have asked for some time to set up a centre for addicts and we have received the reply that there are no funds; this is for slightly over a year. I am not critical of the government. I think that alcoholism is undoubtedly a much more major problem in the Montreal area in Quebec than drug addiction and they are going to direct their funds first towards trying to do something about alcoholism. I think this can be a reasonable administrative decision from their standpoint in terms of the establishment of priorities.

Mr. McEwan: Do you consider drug addiction a national problem? I take it, not to the same extent as alcoholism, from what you have said?

Dr. Naiman: I an not altogether clear on what you mean by a national problem.

Mr. MacEwan: Is it of sufficient importance that not only provincial governments but the federal government should contribute towards facilities for the treatment of drug addiction?

Dr. Naiman: I think you are asking me to express something which is outside my competence. The Criminal Code, of course, is federal, which is why I am talking to you about it this morning. As far as the question of the relative roles of provincial and federal authorities in health matters is concerned, I think this is a thorny political matter which I would prefer to avoid.

Mr. MacEwan: I did not mean to get you involved in that. Thank you, Doctor.

Mr. Gilbert: Mr. Chairman, I would like to ask Dr. Naiman a few questions about marijuana. You said in your statement on page 5 that a study by Vaillant indicates that addicts remain physically healthy. One of the scares that many people, or more especially parents have today is the use of marijuana

by university students and so forth. From your studies, have you observed any physical effects in persons using marijuana?

Dr. Naiman: Personally I have not seen anybody using marijuana. In our experience at the hospital or in my private practice I just have not come across it so I am talking from what is in the literature rather than from experience. What is in the literature is the following: that as far as adverse effects on physical health are concerned, if there are any, I am not aware of them. There is the occasional acute psychotic episode. In non-medical terms the person temporarily goes crazy. He develops hallucinations, delusions and so on. Now, again to come back to the comparison, or what I use as a yardstick—alcohol—this happens with alcohol as well and has been known for a very long time—delirium tremens or alcoholic hallucinosis.

These reactions do occur with marijuana. People have reported for treatment and have been hospitalized in various centres because of the occurrence of this episode. As far as I know there is absolutely no information whatsoever as to the proportion of marijuana users who will develop these reactions, if, indeed, the use of marijuana is as widespread as we are led to believe it is. I am talking about what I read in the popular press and about the government's having arrested about 300 people across Canada last year for marijuana. If the use is really that widespread then the incidence of toxic reactions must be awfully low because there have been few reported. The significance of this depends on the total number who are using the stuff.

I have a paper here by Dr. Keeler. I think he studied 16 students in North Carolina. His estimate is that a considerable proportion of the student body is using it. But if they have a few thousand students and let us say half of them are using it, there would be about 1,000, conservatively. Now, if you have a rate of 15 per 1,000, this is not high. But it may be higher because some of these reactions. I think the only honest answer to this is that we really do not know.

Mr. Gilbert: Have you any suggestions with regard to preventive cure, or the education of young people not to use these drugs?

Dr. Naiman: I will answer that question, with your permission, in the negative way, by saying what it should not be, and perhaps then it will become clear what I think it should be.

• (12:20 p.m.)

It should not be an excessively scary type of propaganda. In other words, people will say, "This is terrible. If you do this then all kinds of dreadful things are sure to happen to you". If the individual sees that his friends are using the stuff and nothing really all that drastic happens to them then the statement is obviously a lie and I think it defeats itself. Public education in the matter should really be as factual as possible. In my opinion, there should be statistics, such as the number of pilots killing themselves and other people after having taken drugs—the sort of cold hard facts. We should collect the cold hard facts about marijuana or barbiturates, or, any drug. We live in a reasonably sophisticated age and students are intelligent people. If we give facts I think we are likely to influence them. If we indulge in scare propaganda I think it will backfire on us.

Mr. Gilbert: I have one further question, Mr. Chairman, if you do not mind. I note in your paper you say that if people are charged with criminal offences and they are referred to your hospital for treatment if the treatment continues then probably the charge is not proceeded with. Now, would that be a charge of possession of narcotics?

Dr. Naiman: Yes; they are faced with the charge of possession.

Mr. Gilbert: It should not be a charge, say, of theft, or prostitution?

Dr. Naiman: No, no. We have not had experience of this, but there have been a few instances of charges of possession. You see, when we take somebody for treatment what we do is give them a letter stating that Mr. so-and-so is under the care of the Jewish General Hospital for the treatment of drug addiction. The patient then waves this, you see, like a flag, and we have not interfered at all. I have never had any direct contact with the RCMP or the Crown Prosecutor, or anybody. The feedback that we get is that the patients have found it a very helpful thing.

Mr. Aiken: This proves that the police authorities generally are really more interested in seeing people take treatment than in putting them in prison?

Dr. Naiman: Yes. I have absolutely no quarrel with the police authorities. As matter of fact, there have even been instances where people under our care, let us say, have been

involved in a traffic accident and they have brought the person, who is on methadone to the hospital so that he could get his methadone. They have been extremely helpful. There has been no friction at all with any kind of legal authority.

Mr. Gilbert: This brings me to my next question, on the availability of the drug. Many of the addicts commit offences for the purpose of getting money to buy the drug.

Dr. Naiman: That is right.

Mr. Gilbert: There has been a recommendation that narcotic clinics be set up so that they could be given the drug. One of our previous witnesses said that the mere setting up of a clinic is not sufficient because, as you say, drug-addiction is a symptom of some other mental disease, so that you have to take it a stage further than just giving the person the drug; that you must give him other treatment.

I will just finish by saying that it seems to me that you have really to strike at the availability of this drug. At the moment we permit pushers to sell the drug, and they are doing it for the purpose of making money. It is a question of taking this profit motive out of drugs. Then you will have, to me, a reduction in the criminal activities of these addicts.

Dr. Naiman: Yes. The statistics on the criminal activities of addicts are very impractical, if you have studied the question. The criminal activities of the addict are, to all intents and purposes, really related to their need to procure money. I would imagine that if the price of whisky went up to $100 a bottle there would be a great deal of crime committed for the purpose of getting the $100 necessary to buy a bottle of whisky. That is really a link between crime and narcotic addiction.

Mr. Gilbert: Thank you very much.

Mr. Wahn: Mr. Chairman, I came in a little late. If my questions duplicate those already asked, please stop me.

In the brief prepared by Dr. Naiman there is a statement that drug addiction is a symptom of psychiatric illness, and also that it very often disappears spontaneously after a period of a decade or so. Is there, or is there not, any inconsistency in those two statements?

Mr. Naiman: They are quite consistent, because there are illnesses which we know tend to run a natural course and to get better with advancing age. Even an illness such as schizophrenia will often tend to get better with advancing age. I do not think there is any inconsistency there.

Mr. Wahn: And many of the mental illnesses which cause the drug-addiction, or bring on the drug-addiction, themselves disappear spontaneously after age 42 in a large number of cases.

Mr. Naiman: One of the problems—and my medical colleague here can perhaps support me in this—in trying to put the point across is that in psychiatric illness we are not dealing with a situation in which a person is either sick or well. You know, you either have measles or you have not, and there is nothing in between. Here there is really a spectrum. If one takes a sample of the population at large and rates them according to the degree of mental disorder, there will be very few who will have none. It is like a continuous line. It is almost like the intelligence curve. Consequently, the person after age 42 is, let us say, on an all-or-none basis, different from what he was before, in that he does not use the drug any more. In order to maintain this—this is an observation, anyway—the theory does not have to be that he has become a radically different person. He needs only to have changed a little bit—just enough—so that he can manage without the drug.

Let us take, as an objective thing, the psychological test called the MMPI. They have been giving it at the Mayo Clinic to all patients whatever they come in for—gallbladder and everything. Therefore they have an enormous mass of data. As I said before, you have a continuum. If the patient moves a bit along that continuum, that may be good enough for him to stop taking the drug. So it does not imply that there is a specific illness and then at age 42 for some miraculous reason the specific illness disappears. He just became a somewhat different person after age 42, but the somewhat becomes a matter of degree, or a matter of kind, when it is a question of, say, consuming the drug.

Mr. Wahn: Thank you, doctor. My second point is that the brief seems to suggest that the medical effects of addiction may be no worse than, or, may not be as serious as, taking alcohol. Does this depend upon the type of drug? For example, a newspaper

report recently indicated that a drug such as LSD or twoline, which is in a glue sometimes used, do have very serious medical effects upon the individual.

Dr. Naiman: Yes. That statement is based on a study which was a follow-up of people who were in Lexington 12 years ago. The study was published a year ago. This refers only to morphine and its derivatives. In those days, the number of people using LSD was negligible. LSD was only discovered, I think, in the late 1940's and at that time it was a psychiatric curiosity. It was used at first in the treatment of certain illnesses. When I was an intern in The Allan, Dr. Cameron, who was then the professor of psychiatry, thought it had some promise. It did not, so to speak, begin to run wild until very recently. LSD causes all kinds of damage to the individual. There is damage to the reproductive system, and to the chromosomes. This is so. The information here with respect to the addict remaining physically healthy in spite of many years of addiction essentially refers to the heroin user.

Mr. Wahn: This represents the traditional drugs and with the development of new drugs by synthesis that statement, then, would require a great deal of careful consideration.

● (12:30 p.m.)

Dr. Naiman: Oh, yes.

Mr. Wahn: The effect might be very much more serious than the effect of alcohol.

Dr. Naiman: LSD might very well, although we know, of course, that the effects of alcohol on both the liver and the brain can be quite serious. Actually, the standard method for calculating the number of alcoholics in a community is to take the number of people who die of cirrhosis of the liver per year from the statistics of the vital bureau statistics, or whatever body publishes that information, and then multiply by a certain factor and that tells you how many alcoholics there are.

Mr. Wahn: The consumption of alcholic beverages might decline greatly if this particular hearing is well publicized. I think the brief also indicates that perhaps it would be desirable to delete the provision of the Criminal Code which makes it a crime to possess narcotics. It is no longer a crime to possess alcohol so long as the bottle is sealed properly in transportation. Is it possible if the stigma of crime were removed from the possession and, therefore, the use of narcotics that their use might become almost as widespread as the use of alcohol now that its use has been legalized?

Dr. Naiman: Yes. This is a question I expected and I searched for the answer. Dr. Kolb in his book gives the figure of the greatest number of narcotic addicts that ever existed in the United States prior to the introduction of any kind of legislation regulating narcotics which was the Harrison Narcotic Act, I think, around 1915 or something like that. He went back to the time when there was no legislation at all—I am sorry; I do not recall what the total population of the United States was at that time—and the estimated total number of addicts at that time was about 250,000.

In the early 1960's it was down to 60,000 so when it was completely unregulated in any way, shape or form—which, incidentally, is not what I am suggesting—the number would be four times as great as it is now if one assumed the population to have been the same. Perhaps one of you gentlemen knows what the population of the United States was in 1900. Let us assume it was 100 million; one would have to add another factor of two so that would increase the number eight fold.

By fairly strict criteria, using this business of people who die of cirrhosis of the liver, the number of alcoholics in the United States in the year which Dr. Kolb took for his figures was about five million at a time when there were 60,000 narcotic addicts, so the ratio in terms of the far more prevalent use of alcohol is overwhelming. As I said before, I am not advocating selling heroin in bars, but even if it were done the likelihood is that the ratio would still be similar.

I do not know how many of you have ever had morphine. I had it when I had my appendix taken out. I had an injection and they kept it up for a day or two and really, for any half-way normal person, it is awfully ghastly stuff. It keeps your mind in a kind of haze and blur and just on a purely subjective basis I think you have to be awfully disturbed to want to be in that state. I did not have the slightest desire to stay on the stuff.

Mr. Wahn: Then you do not think there would be any social danger in removing the criminal stigma from the possession of narcotics?

Dr. Naiman: No, I do not think so.

Mr. Howe: Unless possibly it is for sale. Any person possessing it for sale alone—surely we cannot agree with that.

Dr. Naiman: No; that is trafficking. I go back to what I quoted previously. I certainly think trafficking should be prohibited. As a matter of fact if in terms of legal procedure it is easier to obtain a conviction for possession than to prove that the possession was for the intent of selling, I suppose it is up to the legal people to figure out a way of wording it in such a way.

My point is that the addict who has a certain amount of drug in his possession for his own personal use should not be considered for that reason a criminal. The person who makes a business of trafficking in drugs and maintains warehouses for that purpose and so on, definitely should be considered a criminal and I am in no way suggesting legalized distribution of heroin.

Mr. Pugh: Would your recommendation be changed as a result of the fact that now we are developing new types of drugs, and more dangerous drugs medically, such as LSD?

Dr. Naiman: Even with the use of a dangerous drug—and I come back, really, to the procedure, let us say, of civil commitment—it seems to me more appropriate than your branding somebody as a criminal if he uses a drug which is going to be dangerous to himself primarily. I think there has been one murder reported with the use of LSD. Well, you know, this is very questionable because so many people are using LSD. Even if LSD was implicated in one murder, this is neither here nor there, I think.

Really these people primarily are harming themselves. This is why the figure that I gave for alcohol was really in terms of injury to others. It seems to me that the role of the law primarily is to protect us against what others are going to do to us. If an individual wants to use a substance which is harmful to himself, well perhaps forcible treatment has a place but I do not think the place is the Criminal Code.

Mr. Cameron (High Park): Dr. Naiman, I just wanted to ask one or two questions following along what Mr. Gilbert said and your remarks about warning young people particularly about the use of marijuana, not using a scare approach to the problem. Is not the other side of the coin their moral health, not their physical health? Apparently it does not harm their physical health too much, but their moral health is involved. They are apt to do things because they take a particular drug, heroin in particular. They do things that otherwise they would not even think of doing.

Dr. Naiman: Which kind did you mention, sir?

Mr. Cameron (High Park): Well, I mentioned marijuana. I do not know what influence it might have on their moral character but, for example, it produces a tendency to do things which normally they would not do. But with heroin it is perfectly clear that the craving for the drug leads a person to do things which normally he would not do in the field of minor crimes, and so on.

Is not another approach to the problem to try to educate people, particularly young people nowadays, to the harmful effects that this may have on them?

Dr. Naiman: You have mentioned two issues which I think are very different. Marijuana does have a certain disinhibiting effect in the sense that if somebody takes marijuana, he is more likely to make a pass at the girl next door than he otherwise would. It has a certain releasing effect. Heroin is the opposite. Heroin addicts, if you think of sex as an example, are much less interested in sex. And those crimes that they commit—I just want to reiterate this again because I think this is one of the great misconceptions about the narcotics user—are not committed by the narcotics user while he is under the influence of the drug. When he is under the influence of the drug he is more likely to be as in a picture; he is lying flat on his back; he cannot commit a crime. The crime is committed—and usually it is a very minor crime as opposed to a major crime—for the purpose of obtaining the money that they need to obtain the drug. The morphine or the heroin-addict is not really disinhibited. It does not relax his moral standards. It may be that in one or two cases it does, to a certain extent; I think this is correct.

Now, in terms of obtaining factual evidence about the comparison between the relaxation of moral standards, which is the result of the use of marijuana, and that which is the result of alcohol, I think one would have a pretty difficult time. Certainly at the moment there are no comparative figures to indicate how many girls have succumbed while under the influence of alcohol as compared to under the influence of

marijuana. In the case of other crimes committed under the influence of marijuana, I do not think there is any particular evidence of a high co-relation.

Mr. Cameron (High Park): Let us assume that we establish one of these clinics that you are advocating and people are coming to it voluntarily or are referred to it by the police courts who say that if they go to this particular clinic and take the treatment they will do something about their case. Using only methadone which is the one treatment which has been specifically mentioned, what proportion of cures do you feel would follow? If this is something that you could hold out to the public as a new hope for an addict, and if he will take this particular type of treatment on a voluntary basis—I am not talking about the involuntary—what are the prospects that he will be able to overcome the habit?

Dr. Naiman: The preliminary percentage of Dole and Nyswander, in terms of not going back to heroin, is 85 per cent.

As I said in answer to a previous question, I think we will have to wait 5 to 10 years to see how this holds up in time. Dole and Nyswander, in addition to giving methadone, are very enthusiastic. This, I think, always helps when you start with a new treatment. They are social workers and they have a very large staff; they have the resources of the Rockefeller Institute, which is now called the Rockefeller University, behind them; and they do a great deal more for these people than just dishing out the methadone. They have an integrated and really quite sophisticated program. They report 85 per cent cure, in the sense that the person does not go back to heroin. One will just have to wait to know how successful this is going to be in the long run. When one is dealing with something that is as recent as that there is no substitute for time.

Mr. Cameron (High Park): Dr. Fraser, who was before us on Tuesday, did not seem to think that the percentage was nearly as high as that.

Dr. Naiman: I think this is part of the issue. The results may be different in Toronto. It may be that 5 or 10 years from now this particular approach will be discarded. All one can say from these early experiments is that it holds promise. In medicine there have been many forms of treatment in the past which have held out great promise and which in time have been discarded. I am not trying to sell this as the answer to the problem, or that the problem has been solved by any means.

Mr. Cameron (High Park): It is still under study.

Dr. Naiman: It is under study. That is all one can say at the moment. If the study in Toronto contradicts them and if a few other studies in other centres contradict them, then the treatment will have to be discarded.

There is a man in Baylor University, which is in Texas, who gets up to 45 per cent cure without methadone, just by seeing these people in the office.

Mr. Cameron (High Park): I have one last question. In your practice, have you had any experience of treating people with methadone?

Dr. Naiman: Not in my private practice. I have not wanted to become involved in this. However, in the hospital we have treated a few people with methadone. I think the number that we have treated is about 5 or 6, which is really too small a number to warrant making any statement. We also did not have, for lack of funds, the kind of laboratory facilities which would have enabled us to check on whether or not these people might also be taking heroin.

What we have observed—and I think perhaps in itself it is a remarkable feat, considering what has been said about addicts in general—is that they will come to the hospital every day; so that in terms of being assured that you have the body there and that therefore at least a doctor or a nurse is going to see them, I think I can support what Dole and Nyswander said. They will come. They are not going to disappear.

Mr. Cameron (High Park): There is probably a natural reluctance.

Dr. Naiman: Beyond that I do not think that we have had enough experience to make really any comment one way or the other.

Mr. Cameron (High Park): Thank you very much.

Mr. Pugh: Does a person taking methadone experience the same feeling and have the same effects as he would if he were taking drugs? You say they voluntarily come back to the hospital for this treatment. Does methadone induce anything into their minds?

Dr. Naiman: Well it is difficult to know exactly what it induces because drug addicts are a very sophisticated group of patients. They know that methadone is a narcotic and they know that they are getting it. Now it does not give them the kind of lift that heroin gives—this is the major difference between the two drugs—but they seem to be quite contented to take it, and they do in fact take it. Exactly why they should take a drug beyond what is to them the satisfaction of knowing that they are taking a narcotic which really produces, as far as one is able to tell, no visible attack, is somewhat unclear, I do not know.

Mr. Pugh: Could it be the money factor?

Dr. Naiman: That is perfectly true but, on the other hand, they do not get the "lift" from it that they used to get from heroin.

Mr. Pugh: I would imagine that it is very well known among addicts...

Dr. Naiman: Oh yes, they know about it.

Mr. Pugh: ... that if you go on treatment it is not going to cost you anything.

Dr. Naiman: Oh, yes, certainly.

Mr. Pugh: There is a hope of a cure but this also gives you the same effect, and this is what I am getting at.

Dr. Naiman: It does not give you quite the effect because it does not produce that elevation of mood, but presumably it must do something because, taking Dole and Nyswander's figures, they get 85 per cent of people coming back. The man in Texas tries to do it without the drug and he is down to 45 per cent. Therefore the drug must do something but exactly what it does I cannot say.

Mr. Pugh: It must reduce the craving.

Dr. Naiman: Oh, yes, in some way, of course it does and although it does not give them the satisfaction that the drug did in some ways it seems to reduce the craving.

Mr. Pugh: Maybe it could be used as a substitute for alcohol.

The Vice-Chairman: I believe Dr. Howe has a further question.

Mr. Howe (Hamilton South): In general terms would you say that society originally condemned people who were addicts because they considered them as having shall we say a self-inflicted condition which was punishable instead of treatable and consequently our so-called penal institutes did not provide any treatment? In other words, the institutes did not provide psychiatrists, psychologists and so on to treat these individuals and this is why it took on the present connotation.

Dr. Naiman: You are asking me really an historical question and I am afraid I have to just plead ignorance. I really do not know why society considers this to be a crime. The obvious reason for making this drastic distinction between alcohol and narcotics is of course a question of prevalence of use because the overwhelming majority of the population does use alcohol. When they tried prohibition in the States of course it did not work very well, but I think it has been accepted notwithstanding the disadvantages that it has.

Mr. Howe (Hamilton South): In other words, these people were actually being punished because they inflicted this condition on themselves?

Dr. Naiman: Yes.

Mr. Howe (Hamilton South): Such as venereal disease and so on. They all have this connotation.

What would be the criterion for cure through this new type of institute that you suggest before you can return these people to society again, if you are going to institutionalize them?

(12:50 a.m.)

Dr. Naiman: This is a very difficult question to answer. I really think it is going to have to be a question of trial and error. The evidence seems to be—and I am going back to Vaillant's figures on Lexington—a bit of hard data. This is 12 years later. This is not, "I have found something wonderful", the way Dole and Nyswander did with lots of press coverage, and so on, and advertise it all over the place. This was carefully done and thought out. If you keep people in the length of time that Vaillant has mentioned, which is, let us say, 9 or 10 months, and then give them a year of supervision outside, you get a very high percentage of recovery. I think one could use this as a kind of yardstick on which to fall back. My own inclination would be to try to see, with the development of these new outpatient facilities, what happens if you release people who go to clinics sooner

and really use rehospitalization. I know that some of my psychiatric colleagues will disagree with me on that because the worst thing a mental hospital psychiatrist likes to think of is that a mental hospital is a threat. However, I have used it as a threat with outpatients and it works. I am not talking about drug addicts, I am talking about any kind of psychiatric patient. If a man is very sick and he does not come back for treatment and he does not take his medication, I will take the position, "Considering how sick you are, if you do not continue with treatment you will end up in a mental hospital". As I say, I will be jumped on for this as soon as I return to Montreal.

Mr. Aiken: I do not agree with threatening a person with any illness that he has to go to a hospital.

Dr. Naiman: I really think it works. I think if we can keep the hospital, the closed institution, in the background we may in fact be able to have not too many people in the institution. There will be some, yes, but probably one can at least try outpatient treatment and see what happens. If it fails, then one hospitalizes.

Mr. Howe (Hamilton South): You do not actually come up with a true criterion because you have no way, except by trial and error, of determining the percentage. This is making the natural assumption that everybody is different and therefore someone is going to perhaps be cured in three months and someone else may not be cured in five years. You have no way of predetermining this before you release them except by the time factor that you have suggested.

Dr. Naiman: It is a bit more tricky than that because with schizophrenia, let us say, one can tell that at a certain point the patient no longer has delusions, hallucinations, and so on, and therefore, he is ready for discharge from the mental hospital.

Of course, a drug addict is not taking heroin while he is in the hospital. One hopes the mental hospital is run sufficiently well that heroin does not come in by some other means.

Mr. Howe (Hamilton South): Like alcohol does in some of the other hospitals.

Dr. Naiman: That might also happen but let us assume it does not. Of course, while you have them in hospital you have a 100 per cent cure because they cannot get heroin in a mental hospital.

The question as to when he is well enough that if you discharge him he is not going to relapse and go back to the drug I think of necessity is going to be done by guess and by God. I am sure that of necessity there will be a great many errors made because there are no reliable criteria.

Mr. Howe (Hamilton South): You do not have a 100 per cent cure in hospital. You have a 100 per cent abstinence.

Dr. Naiman: That is right. If one follows these people up in clinics, those who relapse can be rehospitalized. My inclination would certainly be that one relapse—let us say he takes heroin once or even twice—does not mean that we immediately rush him back into the hospital. I think this would be a very unrealistic approach. Incidentally, there are laboratory methods now which are very reliable. You can obtain a sample of urine from an individual and you will know exactly whether he has been taking heroin, barbiturates dexedrine, and so on, and one does not have to rely—this is perhaps a point worth making for the record—on the individual's word. We had to do this with our pilot project because we did not have the money for the lab facilities, although these lab facilities are not all that expensive. It is now possible by simply asking the addict to produce a sample of urine, usually in the presence of an attendant because otherwise he could bring the urine of somebody from across the street, to tell whether or not he has been taking drugs. They do that.

Mr. Howe (Hamilton South): This is true even in the first examination.

Dr. Naiman: That is right. One would know exactly and you do not have to take the addict's word for anything in this area.

Mr. Howe (Hamilton South): Anyone who has a recurrence of this addiction is usually a liar along with it, is he not?

Dr. Naiman: Yes. If he knows he is going to go back into the hospital, or there is a threat of this, he is likely to lie. But at the same time, you see, this again can work in a preventive way. If an individual knows that his urine is going to be checked and if he takes the stuff he is going to be detected, that will act as a deterrent. He realizes his doctor is going to know that this has happened.

The Vice-Chairman: If there are no further questions, in the name of all the members of the Committee I wish to thank our distinguished guest for appearing before this Justice Committee this morning. You have been a most competent and informative witness, doctor. Your presentation and the pertinent and detailed answers you gave I believe will be very useful to this Committee in its study of this important Bill which is before us. We are very grateful to you, doctor.

This Committee stands adjourned until November 28, when we will hear Miss McNeill.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

—OF—

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, NOVEMBER 28, 1967

THURSDAY, NOVEMBER 30, 1967

RESPECTING

The subject-matter of Bill C-95,

An Act respecting observation and treatment of drug addicts.

WITNESSES:

Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto; and Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Montreal.

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OF

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

TUESDAY, NOVEMBER 28, 1967
THURSDAY, NOVEMBER 30, 1967

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESSES:

Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto; and Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Montreal.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27621—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (*Hamilton South*),	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
Mr. Guay,	Mr. Otto,	Mr. Woolliams—(24).
Mr. Honey,		

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

CORRIGENDUM

Issue No. 11—THURSDAY, November 23, 1967

The name of the witness appearing before the Committee on Tuesday, November 28, 1967 is Isabel Macneill, rather than the way it appears in Issue No. 11 of the Minutes of Proceedings and Evidence.

ORDER OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 29, 1967.

Ordered,—That the name of Mr. Ryan be substituted for that of Mr. Brown on the Standing Committee on Justice and Legal Affairs.

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

27621—1½

MINUTES OF PROCEEDINGS

TUESDAY, November 28, 1967.
(12)

The Standing Committee on Justice and Legal Affairs, having been duly called to meet at 11.00 a.m. this day, the following members were present: Messrs. Cameron (*High Park*), Forest, Honey, Howe (*Hamilton South*), Stafford and Whelan—(6).

In attendance: Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto, Ontario.

There being no quorum, the members present agreed to hear the witness and to ask for a motion at the next meeting to have today's proceedings incorporated as part of that meeting.

The Chairman introduced the witness, Miss Isabel Macneill, of the Alcoholism and Drug Addiction Research Foundation in Toronto. Miss Macneill read a prepared statement concerning the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*). Following this, the witness was questioned by the members present.

At the completion of the questioning, the Chairman thanked Miss Macneill for her appearance before the Committee.

At 12.20 p.m., the proceedings adjourned, until Thursday, November 30, 1967 at 11.00 a.m., when the witness will be Dr. B. Cormier of McGill University in Montreal.

THURSDAY, November 30, 1967.
(13)

The Standing Committee on Justice and Legal Affairs met at 11:10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Forest, Gilbert, Guay, MacEwan, Otto, Ryan, Stafford, Whelan and Woolliams—(11).

In attendance: Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Director of Forensic Psychiatry, McGill University and Psychiatrist-in-Charge, St. Vincent de Paul Penitentiary, Cité de Laval, Quebec.

The Chairman introduced the witness, Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University. Dr. Cormier addressed the Committee, stating his views as a clinician and teacher, in relation to the subject-matter of Bill C-96, (*An Act respecting observation and treatment of drug addicts*).

On a motion by Mr. Otto, seconded by Mr. Gilbert,

Resolved,—That the proceedings of Tuesday, November 28, 1967, be incorporated into today's Minutes of Proceedings and Evidence.

For the balance of the meeting, members of the Committee questioned Dr. Cormier on the problem of addiction and its relationship to the subject-matter of Bill C-96.

Mr. Stafford moved, seconded by Mr. Whelan,

That proceedings against any person charged under the Narcotics Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

It was agreed to refer Mr. Stafford's proposal to the Subcommittee on Agenda and Procedure for consideration, and its recommendation back to the main Committee.

Mr. Stafford suggested that Mr. D. Craigen of the Matsqui Institution in British Columbia, be invited to appear as a witness in connection with the subject-matter of Bill C-96. The Clerk was instructed to get in touch with Mr. Craigen and report to the Subcommittee.

The Committee adjourned at 1:10 p.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 28, 1967.

• (11:20 a.m.)

The Chairman: I am going to call the meeting to order. We are considering the subject matter of Bill C-96, an Act respecting observation and treatment of drug addicts, and at this stage I would like to introduce Miss Isabel Macneill, who is a clinical research associate with the Alcoholism and Drug Addiction Research Foundation in Toronto. I understand that Miss Macneill will give some of her background for the information of the Committee. Therefore, Miss Macneill, I will call upon you. We do not ask our witnesses to stand; you may remain seated; just make yourself comfortable and proceed.

Mr. Howe (Hamilton South): Mr. Chairman, is there no brief or submission for us?

The Chairman: Yes, there is a brief that Miss Macneill mailed to the secretary. Unfortunately, I presume due to the heavy Christmas mail, it has not been received yet. Miss Macneill has a brief and in due course it will be photostated and copies given to all the members of the Committee for study.

Mr. Howe (Hamilton South): Well, it is hardly fair to try to question today.

The Chairman: I realize that, Dr. Howe, but that is the situation we are in, and at this moment I certainly cannot do anything about it.

Mr. Howe (Hamilton South): No, that is fine. I am sorry.

The Chairman: Miss Macneill.

Miss Isabel Macneill (Clinical Research Associate, Alcoholism & Drug Addiction Research Foundation): Thank you, Mr. Chairman. In 1948, I was appointed Superintendent of the Ontario Training School for Girls at Galt. The purpose of this school was the re-education of juvenile delinquent girls, and this was my first contact with people in conflict with the law. Now, subsequently, in 1959 I went to England. In England, I became very much interested in the so-called British system of treatment of the narcotic addict.

I then returned to Canada and became Superintendent of the Prison for Women in Kingston from December 1960 until March 1966. During this period 70 per cent to 45 per cent of the inmates were convicted for possession of narcotics.

At present I am employed by the Addiction Research Foundation in Ontario to undertake a study of narcotics abuse in Metropolitan Toronto. This study involves the relationship between narcotics, the abuser and the environment.

Illegal possession of narcotics is a criminal offence. Most government money and effort are directed toward the apprehension and conviction of narcotic traffickers and abusers.

Narcotics-abuse as a medical-social phenomenon has never been scientifically explored and until it is no conclusions about treatment are possible. It is difficult for me to accept that imprisonment is a rational solution. Imprisonment removes some abusers who engage in criminal acts to acquire drugs for some periods of their lives. A study of the convictions of narcotics abusers will reveal that very few are cured by imprisonment. The narcotics abusers I know do not appear to be restricted to any social class, or type of personality. They have learned by contact with narcotics that the drug makes them more comfortable in their particular milieu. If they become involved in the street society, it, as well as the drug, supports their feelings of inadequacy.

In prison the abuser has no feelings of inadequacy. He has no responsibility for making important decisions. Work, food, clothing and recreation are provided for him. Prison insulates him from the stresses which make life outside difficult. Society is perplexed because so many narcotic abusers revert after months or years in prison, even prisons such as Lexington and Corona where treatment is stressed.

My impression of narcotic drug abuse is that it is uncontrolled and undesirable self-therapy. Narcotics seem to enable the individual to live comfortably as long as he can have drugs, or be the private responsibility, as in imprisonment. Our problem is to enable him to live comfortably in society, earning his living, participating in normal activities and feeling adequate.

Controlled medication may be the answer for some. Methadone maintenance experiments in the U.S.A., and to a lesser degree in Canada, have enabled some abusers to work, or at least to refrain from criminal activity. In-patient hospital treatment for withdrawal, followed by individual and group therapy and social and vocational rehabilitation, might ultimately bring other abusers to abstinence.

Ex-addict-directed programs, such as Synanon, have received great publicity as an almost instant cure for those who remain in the program. This program has been criticized because very few return to society. However, a drug-free community is obviously more desirable than a drug-abusing community.

All treatment programs for narcotics-abusers in Canada operate under disadvantageous conditions. By seeking help the individual admits he is a law-breaker, subject to imprisonment. Most abusers trust few people. Many believe that there is a link between clinics, social agencies and the law. Sometimes patients are progressing slowly towards cure. They have moved from the corner society, have enrolled in courses, or secured employment. As with alcoholics, the occasional reversion to abuse is probable. However, with the narcotic-abuser, possession means arrest and usually imprisonment. Therefore, the progress made towards re-establishment is lost.

The ultimate answer to drug-abuse probably rests in social attitudes. If society agrees that drug-abuse is a medical-social problem, with medical-social solutions, legal consequences for abuse will have to be rejected. Any alternative to legal sanctions will be expensive initially. Many approaches must be tried with clinical research to determine which approach is effective for whom. Where treatment facilities exist, and could be expanded, a more generous use of probation for narcotics-abusers might be a first step towards a more rational approach. Co-operation between the police, probation officers and clinical staff would be essential.

The Chairman: Dr. Howe, followed by Mr. Honey.

Mr. Howe (Hamilton South): Mr. Chairman, I have just a few questions for our witness.

You have said—and this is to repeat what last week's witness said, and to emphasize—that addiction in itself is not a crime; that it should not be treated as a criminal offence, with consequent incarceration in jail, but rather should be treated in a medical way. Is this how you feel about it?

Miss Macneill: That is how I feel about it.

Mr. Howe (Hamilton South): You say that one of the essential criteria for addiction is the sense of inadequacy, or the lack of a sense of responsibility. Do you conceive of any social way of preventing this, since the cause is usually a single thing? Is there any way of preventing addiction?

Miss Macneill: First of all, I wish to re-emphasize that I know probably 400 drug-abusers, and they are different in as many ways as any 400 people that you would meet walking down a city block.

Mr. Howe (Hamilton South): But they do have this common bond?

Miss Macneill: However, there is, in my experience, some problem in growing up. I have never met a drug-abuser whom I felt had a happy, emotionally-secure childhood. The life histories of most drug abusers whom I know show that they are from broken homes. Therefore, to answer to your question, I think it is obvious that we will be able to prevent the abuse of drugs by more concern about the child during the school years—about the child's developmental pattern.

• (11:30 a.m.)

Mr. Howe (Hamilton South): Do you think hospitals in Ontario such as Thistletown Hospital for the emotionally disturbed children are now possibly playing a role in preventing some of this...

Miss Macneill: I think so.

Mr. Howe (Hamilton South): And could be used on a wider scale?

Miss Macneill: A much wider scale.

Mr. Honey: Mr. Chairman, I wonder if I could ask Miss Macneill to take a minute or

two and tell me—and I hope I could be helpful to the committee—the extent and the objectives of her research project; if she could just go into that a little.

Miss Macneill: The objective is to obtain an accurate picture of narcotic drug abuse in Metropolitan Toronto. I am trying to make contact with as many hard drug abusers as possible, to talk to them, to find out their ideas about the drug abuse situation, and out of this I will write a report to the Foundation. What they will do with it, of course, is their concern.

Mr. Honey: As you have indicated to Dr. Howe, you are concerning yourself with the background and the environmental conditions . . .

Miss Macneill: Yes, the present life style.

Mr. Honey: . . . of the drug addict. As a next step, are you going into the area of cure and rehabilitation?

Miss Macneill: I am not a trained person in the medical field. I think my observations will be of interest to the staff of the Foundation for planning the treatment program.

Mr. Honey: Have you spent time in the Yorkville area of Toronto?

Miss Macneill: Not so much in the Yorkville area; I concentrate on the downtown area. The heroin abusers tend to stay around the Dundas and Jarvis parts of town, but there has been a great change in Toronto. In 1965 when I spent some time on the corners, there was a very large congregation of narcotic addicts in various restaurants. Now this is changing. There is very little heroin in Toronto at this point, and what I am seeing is substitute drugs—the barbiturates. Heroin addicts who cannot afford the price and reject the quality are turning to barbiturates, to a drug called alvodine, and there is some slight evidence of experimentation with LSD.

Mr. Howe (Hamilton South): These, then, are not narcotics, if you will excuse me.

Miss Macneill: Alvodine is a narcotic.

Mr. Howe (Hamilton South): Alvodine, but not the others. They are barbiturates.

Miss Macneill: Barbiturates. The effect of barbiturates abuse by these heroin users is very upsetting, because they take so much for granted; they become quite incompetent, and usually are admitted to hospital on an emergency basis, or to jail overnight.

Mr. Honey: These are hard to appraise. Would it be fair to describe them as hard-core addicts, who have been addicted over a number of years?

Miss Macneill: They are young addicts.

Mr. Honey: They are young addicts. These are the people in the Dundas-Jarvis area. How do you describe a young addict?

Miss Macneill: Under thirty. I am meeting very few people in Toronto under the age of twenty-one who are using narcotics. Of course I am not finding everybody; I just started this project and may run into more. But this is one of the encouraging things; that there are very few young people becoming involved.

Mr. Honey: In your present study or your studies in the past, have you had an opportunity to observe the arraignment of these people in court on offences of theft, or shoplifting, or something where it is probably apparent that the person is a drug addict? Have you had a chance to observe the handling of these people in the magistrates' courts in Toronto?

Miss Macneill: Yes, in most of the cases I see in court, the women are charged with vagrancy(c), soliciting, the men with theft-under.

Mr. Honey: And is there any differentiation in the treatment, or in the processing of these people through the magistrate or courts as opposed to a woman charged under the section you mentioned who is not a drug addict?

Miss Macneill: No, I do not think the drug abuse really is involved very often in a vag. (c) charge. When a person is charged with vag. (c) there is no reference to her state as a drug addict.

Mr. Honey: Would it be apparent to an observer that that woman is a drug addict?

Miss Macneill: No, not unless she was sick.

Mr. Honey: I see.

Mr. Howe (Hamilton South): Could I interrupt and ask a question for explanation. What is vag.(c)?

Miss Macneill: Soliciting. Wandering. . .

Mr. Howe (Hamilton South): I understand. And you used another one—"theft-under".

Miss Macneill: Under fifty dollars.

Mr. Honey: Then, Miss Macneill, I just want to come a little closer to the Bill we have under study and, if you would like to comment, ask you two questions: first, whether, as a result of your observations and studies over the years, you think that legislation along the lines of Bill C-96 would be helpful to the drug addict and to society generally; and secondly, whether you feel that there is at present a need for this sort of legislation in the courts as you have observed them?

Miss Macneill: Ultimately, I would hope that all legal sanctions could be removed from the drug abuse problem. We must recognize that, because of the legislation over the past 30 or 40 years, we have a very large number of people who, although possibly delinquent initially as juveniles, because of the necessity to acquire money, became quite involved in criminal activities.

Now, at the present time, in looking at this Bill, there are one or two points that concern me, and the first is that in clause 2 (c), I am concerned that a judge or magistrate looking at the record of a drug abuser and seeing four or five convictions would quite naturally be tempted to say: "This man is not suitable for treatment." And yet in my experience—and I believe Dr. Fraser made this point—some of the older addicts are more amenable to treatment. In fact, there appears to be some reason to believe that after 15 to 17 years' drug abuse, a person drops out of the drug abusers' society, so that that point rather concerns me—this idea that it shall be "within the discretion".

• (11:40 a.m.)

Mr. Honey: Is it a discernible trend? Have you been able to establish by research that after 15 or 17 years there is a significant number who drop out?

Miss Macneill: I have not been able to establish it by research but there has been research done.

Mr. Honey: There has. Well then, referring to subclause (c) of clause 2 which you mentioned, Miss Macneill, I gather—and probably it is inherent in this clause—that you would like the magistrate or judge to have available medical or a social worker's evidence before he exercises discretion as to the possibility of recommending rehabilitation rather than look at the cold facts of the man's record and then make a decision. Is that what you are saying?

Miss Macneill: It would be very difficult, for presumably you would get drug abusers before the magistrate who had never had any contact with a clinic. After all, there are very few clinics in Canada. Vancouver and Toronto are the big ones.

All right, you could have a predetermination report. I would not call it presentence because we are eliminating the idea of sentences. What would a social worker or a doctor be able to say about the possibility of one man being curable and another one not? I think there is this dichotomy here between law and punishment and it is very difficult to resolve. We are saying on one side that this drug addict is a sick person and yet we are going to prescribe legal sanction for sickness.

Mr. Honey: Would you not agree that the intervention and the assistance of medical and social evidence would be helpful in these circumstances?

Miss Macneill: It would be helpful, of course.

Mr. Honey: It probably would be something that we would feel—or would you agree should be available to the magistrate or judge in these drug addiction cases?

Miss Macneill: Yes, definitely.

Mr. Honey: There is only one other question, Mr. Chairman. In your opening statement, Miss Macneill, I detected, and may be I was wrong, that you were perhaps a bit pessimistic, from your research and observations to date, about the over-all picture of the cure and rehabilitation of drug addicts. Is that a fair assumption?

Miss Macneill: I do not think anyone to date has any reason to be optimistic. I know 100 cured narcotic addicts and in most cases they have been cured by a very good relationship with one person—marriage, a child, a job, some comfort greater than addiction. I think my concern is that if we are going to say cure is total abstinence, then there is reason to be pessimistic. But if we are going to accept that there are some people who have used drugs for so long that total abstinence is an unrealistic goal, and maintain them on methadone or any drug that might be discovered in the future, I would be quite optimistic about the picture. I believe total

abstinence is desirable but realistically it is not easy to attain.

Mr. Howe (Hamilton South): How then would you define a cure for the sake of the record as far as cure is concerned?

Miss Macneill: As far as I am concerned, the chronic drug abuser who is living in society working and refraining from committing offences is a cure.

Mr. Stafford: Miss Macneill, I had to go out and use the telephone for a minute and I missed the first part of your report but when I arrived you were saying that possession means arrest and sometimes imprisonment. You do agree, do you not, that the Crown first of all must prove a case beyond any reasonable doubt and that arrest is almost always a necessity?

Miss Macneill: Yes. I was suggesting, Mr. Stafford, at that time, that the process of treatment was rather difficult for an agency like the Addiction Research Foundation because narcotic drug abusers tend to slip and when they do, if they are suspected of possession of heroin and arrested, very often they are returned to prison, which means that the progress that they have made toward cure is lost. I think that we could use a parallel if we had the same attitude toward alcoholics.

Mr. Stafford: Are you quite right, though, when you "if they are suspected"? The Crown must always prove its case beyond any reasonable doubt.

Miss Macneill: Oh yes, but I am not suggesting that they do not have heroin. This is what I mean by the slip; that they have possibly acquired a position, they have moved away from the corner, but they will revert. They will, under stress, perhaps on a week end, go down, meet an old friend, and they will secure heroin. If they are arrested by the police, they will be returned to prison.

Mr. Stafford: Are you talking more of a breach of probation or a new offence?

Miss Macneill: Both.

Mr. Stafford: But in a new offence, though, the Crown must more than suspect; it must prove beyond any reasonable doubt.

Miss Macneill: Oh, it does prove. I am not suggesting the Crown does not prove it. They have heroin in their possession. My point is that the process of curing a narcotic abuser is a very long one.

Mr. Stafford: But the theory and practical problems on the street are two different things, are they not? The police, for example, cannot stand by and watch an addict dispose of his narcotic. Sometimes, it is a very difficult police job.

Miss Macneill: I am not talking about trafficking. You use the word "dispose". I am not talking about trafficking; I feel every trafficker should be arrested and incarcerated.

Mr. Stafford: Even an ordinary addict sometimes tends to dispose of what he has at the time, does he not? Certain action must be taken by the police. I could not quite get your emphasis on arrest, as if it were something that was wrong.

Miss Macneill: I can give you an example, a hypothetical example, of a man who got out of prison, came to Toronto and got himself a job. He did very well for three months. He went to work every day. Then he has an upset and meets some former associates. He goes to his boarding-house room and the police, with good reason no doubt, follow him there and find that he is in possession of heroin. The chances are that he will be arrested for possession, and in due course will be tried and returned to prison. Yet, in making an effort to work for three months for the first time in his life he has really made some progress.

• (11:50 a.m.)

Mr. Stafford: That is quite true, but sentences are usually left up to the judges or magistrates anyway; and how would you distinguish between taking certain cases away from the magistrate and not letting him do the job as he feels best and dealing with the even more criminal offender? Sometimes the dividing line between the two of them is very difficult to find. The only thing I was getting at is that by your evidence you tend to give one the impression that these people should be let out, to keep giving them more and more chances. Yet the Crown, in order to do anything with these people, has to prove its case beyond any reasonable doubt. Do you not feel that an institution like Matsqui on the West Coast is probably as good a place as any to treat many of these offenders?

Miss Macneill: Well, Mr. Stafford you missed the beginning of my statement.

Mr. Stafford: That is what I said.

Miss Macneill: My attitude to prison for addicts is that they are deprived of responsibility whilst in prison. They must be. The drug abuser does not have to take responsibility for any important decisions; work, food, clothing, everything is provided for him. Yet in my experience the drug abuser is a person who needs to develop responsibility. This is why a prison has never worked for him.

Lexington has not worked and the Lexington authorities are very frank in admitting this. The California experiment is not too successful. Matsqui has not been is operation long enough to assess. But there is a difference; I feel that the addict should be charged for the crimes he commits. If he steals, he should be charged for theft. He should be charged with any illegal activity. And if we made sufficient treatment facilities available, I believe that a large number of the criminal acts of addicts would be eliminated. The majority that I know steal for one reason, and that is to get money for drugs; or they steal drugs.

Mr. Stafford: Then the responsibilities that they had in society up till the time of their first conviction certainly did not work, or they would not be in trouble.

Miss Macneill: Very few of them had many responsibilities in society. Most of the people I know drifted—and I am talking about the street addict; they are a totally different type of person who uses drugs. They are people who abuse narcotics who appear to function quite well. I think we ought to look at other countries. There are many countries where the possession of a drug is not a criminal offence and where for many, many years the problem has been a medical-social problem. North America is really one part of the world that is very punitive in this regard.

Mr. Stafford: Do you have any idea how many persons could be convicted of offences such as you are considering now, and the number that are actually in jail?

Miss Macneill: I would not be prepared to give an estimate, but I know that there are a fair number of people who are using drugs, and particularly marijuana, which of course is in the same category as the hard drugs, according to the law. There would be a very, very great number of people in jail.

Mr. Stafford: And a very small number of the total is in jail.

Miss Macneill: Yes.

Mr. Stafford: Do you not think that our judges and magistrates today use the same discretion in these cases as they do in many others? This is the point I am trying to get at, but we keep running around in circles. Is there any other way of doing it? In Matsqui, for example, do you happen to know how many are there? That is one institution in Canada, except that certain people are at the women's institution in Kingston.

Miss Macneill: I have not really any idea. I think there are 300 men and 35 women; something like that. But, you see, the point is that they may be in Matsqui now, but in 18, 16 months they will be out. Then they will continue, in most cases, to use drugs, to steal to support their habit; and then they will go back again. So that our answer really is not cure, because it does not stop people from using drugs. It is in prevention. Obviously if prison was a deterrent there would be much less marijuana smoking in some places.

Mr. Stafford: Still, I do not see what you are getting at. I will try again. How are you going to control the ones that the judge feels should be in prison any better if they are walking around outside?

Miss Macneill: I do not follow you, Mr. Stafford, but what I am suggesting is that the treatment of a narcotic abuser is probably more effective in the community. I am not suggesting that there are not some people who abuse drugs who should be in jail. But I think you determine "what sort of man is this?" And if he is a thief, if he is committing serious crimes, he should be charged and convicted just like any other person.

Mr. Stafford: I was always under the impression that the magistrate already did more or less use his discretion along the lines that you wish he would. I put it to you that they already do this, more or less.

Miss Macneill: When I look at women of a certain age who have been in institutions almost continuously since they were 16, first of all in training school, then in a reformatory, then in a prison for women, for the offence of possession of narcotics, I must question the effectiveness of our system. I feel that if at some point in time these

women had been given probation, with treatment as part of probation, we might have cured them.

Mr. Stafford: I will be very brief about this, but that can apply to all kinds of people who have been continuously in jail for theft.

Miss Macneill: I think there is a little difference. I think that there are certain physiological and psychological factors about narcotics abuse that make it different.

The Chairman: I think, as I understood from your evidence, Miss Macneill, that your statement was that imprisonment was not a rational remedy for a drug addict; not a cure. I do not think you went so far as to say that a person who was in possession should not be apprehended and incarcerated for his own good. The progress that has been made in treating drug addicts is such that if a person appearing before a magistrate could, on a voluntary basis, be referred to a clinic for treatment, that might be an improvement; at any rate so far as that particular individual is concerned.

Miss Macneill: I would agree with this. I think that the person who voluntarily seeks treatment is much more apt to be cured than the person who has treatment imposed upon him.

The Chairman: The magistrates, in exercising this discretion—and most of them do exercise very honest and bona fide discretion—are dealing with the problem in the best way they can.

Miss Macneill: Under the existing legislation.

The Chairman: Temporarily at least it has some benefit on the drug addict because during the term of imprisonment he is off the drug. Is that right?

Miss Macneill: It has some benefit for society in that they are not out stealing to maintain their habit.

The Chairman: Yes, but what is the benefit to the addict?

Miss Macneill: I do not think there is much benefit to the addict in the majority of cases. I think there are few addicts who go to prison who have made up their minds.

The Chairman: Mr. Whelan, before you go, do you have any questions? Mr. Forest.

Mr. Forest: Is this research you are engaged in now financed by the provincial government?

Miss Macneill: Yes. I am an employee of the Addiction Research Foundation.

Mr. Forest: While you were at Kingston you probably met quite a few female addicts.

Miss Macneill: Yes.

Mr. Forest: They were all female addicts?

Miss Macneill: No, I am working with males, too.

Mr. Forest: While you were head of...

Miss Macneill: Yes, I met a great many; I think perhaps there would have been 200.

• (12 noon)

Mr. Forest: Would they come from a lower class?

Miss Macneill: Not necessarily.

Mr. Forest: No?

Miss Macneill: No; they come from all classes.

Mr. Forest: What was their general motivation? Was it because they felt insecure? Was that the general motivation for those people to take drugs?

Miss Macneill: They are people who moved into the abusing society of Vancouver or Toronto; and very often they have told me it was curiosity in the beginning; they were associating with these people and they were curious. Once they had used drugs they liked the effects. It made them feel better. I use the word "comfortable". I am not suggesting "comfort" in the sense of physical comfort, but they felt more able to meet people. Then, of course, becoming dependent on the drugs, they had to raise the money to finance this habit, and they became involved in prostitution and petty theft.

Mr. Forest: Was treatment available at this hospital for them at the time?

Miss Macneill: Not the people that I know. The Foundation in Toronto has been treating narcotics-addicts for only three or four years; and the Vancouver Foundation was established, I think, about ten years ago; but for the people I know, the majority of whom are now in their late twenties, there was nothing in the way of treatment available.

Mr. Forest: Is there now any alternative, other than prison, for those people who are found in possession of drugs?

Miss Macneill: There is no alternative should the magistrate decide they go to prison. If he decides that treatment might benefit them he may put them on probation; but in the Toronto area I do not know of many cases where narcotics-addicts have received probation. Some are paroled from institutions, but the usual procedure, when a person is convicted of the possession of narcotics, is to put him in prison.

Mr. Forest: Do you consider this a mental illness?

Miss Macneill: No, I would not accept it as a mental illness. It is a social illness which, I think, requires both a medical and a social approach. It requires withdrawal treatment, to start with. Any person who has been on heroin for some time is very sick when they stop using it; they must be hospitalized. But that is only part of the problem. This is why I am a little concerned with the wording in the Bill:

> ...the said clinic or medical practitioner...

A medical practitioner could deal very well with the professional addict, the person who has a job, has a secure position in society and happens to have become addicted to drugs, but those on the streets have so many problems. They have problems of employment; they have never worked; they have the problem of developing a responsibility for budgeting. They need a social and vocational rehabilitation program as well as a medical one.

Mr. Forest: Is there a class of addicts who cannot be helped and have to be confined?

Miss Macneill: I could not answer that question because I do not think there has ever been sufficient help available. I do not think we have even tested the possibility. There are, at the moment, some programs in the United States that are tending toward this total approach—a community-based program—for their rehabilitation. These programs have not been evaluated as yet. Daytop in New York is apparently getting some results, but there has never been this total approach. To prevent drug abuse and to get the most out of the individuals, in terms of productivity, this is what we will have to try.

Mr. Forest: Have you made any examination of the results of the new drugs we have heard about, such as methadone?

Miss Macneill: In Toronto I know a fair number of people who are being maintained on methadone and they are working and functioning very well.

Mr. Honey: Excuse me; is this under the supervision of your Foundation?

Miss Macneill: Yes.

Mr. Honey: Thank you.

Miss Macneill: And I know of others in Vancouver who are functioning under the supervision of a clinic there.

One thing that concerns me about the present situation is that the substitute narcotics that are being used, not under supervision —methedrine, the barbiturates and the amphetamines—are being abused. These are the drugs that cause aggressive, hostile behaviour.

Mr. Forest: There seem to be very few clinics in the country to treat drug-addicts. Do you feel that they should be used on a much larger scale?

Miss Macneill: I believe so.

The Chairman: Are there any further questions?

Mr. Honey: I have one question arising out of Mr. Forest's questioning, Mr. Chairman.

I will use Toronto as an example, because as you have indicated that you have had an opportunity to observe the courts and the drug-addicts there. Suppose a magistrate, in using his discretion, feels that a person charged with possession should be put on probation. Is your Foundation, or are other facilities, available to supervise the probation and to try generally, from a medical and social standpoint, to guide the offenders to cure and rehabilitation?

Miss Macneill: At the present moment, if a magistrate puts a narcotic addict on probation it would first be necessary to admit him to hospital for withdrawal and there are, at the moment, limited hospital facilities in Toronto for such treatment. Then, if the condition of probation was accepted by the clinic, he would leave the hospital and come to the clinic where he could be interviewed by various people; and the treatment the clinic felt desirable would then be supplied.

But we need far more facilities to conduct this type of program.

Mr. Honey: But it is available on a limited scale.

Miss Macneill: Very limited; I know of only one hospital in Toronto that will admit a narcotic-addict for withdrawal—that is, a street addict. For a professional person it is a different story. There are private hospitals who will accept them. The street addict, however, has a very difficult time getting into hospital.

Mr. Honey: You told us previously that there should be far more facilities.

Miss Macneill: Yes; much greater facilities.

Mr. Honey: Why would hospitals refuse to admit drug-addicts?

Miss Macneill: All hospitals are very crowded and there are certain problems in the management of narcotic-addicts during withdrawal. There is always the possibility that they will take off from the hospital.

Mr. Forest: How many drug-addicts would there be in Toronto?

Miss Macneill: This is a very interesting question because, from my observation, there is a very great shortage of heroin at the moment in Toronto. I think there are probably 100 narcotics-abusers and perhaps another 100 who use them occasionally. There are people who use heroin perhaps on week ends, or once a month, but I cannot give a close estimate at this time. I might be able to six months from now.

• (12:10 p.m.)

Mr. Honey: In your estimate of 100—pardon me—were you thinking about the...

Miss Macneill: Heroin.

Mr. Honey: ...heroin in the Dundas area?

Miss Macneill: No.

Mr. Honey: Is there any heroin being used in the Yorkville area?

Miss Macneill: Possibly yes. There are various areas of Toronto and you do not see any more of this concentration of the street culture in one area. There is some of the drug in Yorkville, I believe.

Mr. Honey: When you say 100, you have in mind only the heroin addict. Is that correct?

Miss Macneill: Well, the narcotic addict, excluding marijuana.

Mr. Honey: But you included the ones who are abusing barbiturates?

Miss Macneill: Oh, no. You could not possibly estimate. Barbiturates and amphetamines are in the hundreds, I should think, in all areas.

The Chairman: Does anyone have any more questions? Have you any comment to make, from your personal observations, with regard to the operation of the clinic and the use of the drug methadone?

Miss Macneill: I am not really qualified to comment on this, but I will say that the patients that I know who are using methadone seem to be either working or, if they are women, assuming the responsibilities of their homes; they are not engaged in crime.

The Chairman: It seems to counteract that feeling of withdrawal and inadequacy that they have. It seems to make them inclined to go out and get back into normal living again. Would that be a correct summation of it?

Miss Macneill: Yes, I would agree with that. I have found in meeting these people in cheap restaurants that in many cases they would like to get treatment. It is a pretty unhappy and miserable life, particularly at the moment with the drug so expensive and in short supply.

The Chairman: But is there available treatment in any large sense of the word?

Miss Macneill: That is true. When they come to ask, very often they must wait two or three weeks for an appointment, and then they become discouraged. But it is a question of availability of staff.

The Chairman: Apart from methadone, have you any information you could give the Committee in regard to other treatment that they could take which would help them to conquer this habit?

Miss Macneill: I referred briefly to Synanon and I think it is possible that in Canada we might explore this idea of ex-addicts—people who have been clean of drugs for 10 years or so—forming a small community. This is a very rough sort of treatment.

The Chairman: Instead of alcoholics anonymous, it would be drugs anonymous, is that it?

Miss Macneill: Not exactly, although it is comparable. Synanon was created by an ex-alcoholic in California—a man called Didrich. He gathered five or six drug addicts together and their philosophy is simply that drug addition is stupid. They give the person who comes into the program a very rough time.

The Chairman: It is a matter of education, then?

Miss Macneill: Yes.

The Chairman: Does anyone have any more questions?

Mr. Forest: Do you believe in the treatment of drug addicts as out-patients of a hospital if there is no space available?

Miss Macneill: If they are withdrawn I think they can be treated as out-patients, but it is a very difficult thing to have a patient come to a clinic who is sick and who has been using a large quantity of heroin and expect him to go through the withdrawal process without hospitalization.

Mr. Forest: He would tend to relapse?

Miss Macneill: If he could get enough methadone for a substitute and be gradually withdrawn then he could be treated on an out-patient basis.

Mr. Honey: At the conclusion of the withdrawal treatment in a hospital, is the patient then on a limited supply of narcotics?

Miss Macneill: It depends on the patient. Some patients are withdrawn completely and they attempt to abstain and they need group therapy support. They need someone who will help them get a job, someone who will ensure that they have a decent place to live. Then these people can make it. But the majority of them do seem to require, for a period of time—more than three weeks very often—a hospital withdrawal period.

Mr. Honey: Then this is available if they require limited amounts of narcotics? And it would be available to the clinic for treatment under supervision?

Miss Macneill: Well, that is doctor's decision.

Mr. Honey: Yes.

Miss Macneill: It is entirely a medical problem and it could be a doctor's decision.

Mr. Honey: Thank you.

Miss Macneill: Mr. Chairman, I noticed in reading the Proceedings that there was reference to the violence of the crimes. I think there is a great misconception that the narcotic addict is a violent, aggressive person. I think that Judge Ploscowe, who was a director of studies in the American Bar Association, made a very sensible comment on this. He states:

> ...the realities of the relationship between narcotic addiction and crime appear to be much more sombre than the romantic myth, "that hold up men, murderers, rapists and other violent criminals take drugs to give them courage or stamina to go through the acts which they might not commit when not drugged". Dr. Kolb has labelled this notion an absurb fallacy. The crimes committed by addicts are generally of a parasite predatory non-violent character...Since opiate drugs do not as a stimulant...should not confirmed addicts have a means of obtaining such drugs legally, so they will not have to engage in crime in order to raise the money necessary for their needs?

Now that is the quotation of Judge Ploscowe, but I would say that in my experience with people using drugs now, in my studies, I would agree that they do not commit violent offences; they commit offences of shoplifting—

The Chairman: Dr. Fraser said the same thing.

Miss Macneill: Yes.

The Chairman: Thank you very, very much indeed, Miss Macneill. I wish to thank the members of the Committee for their attendance here this morning. Before we adjourn, may I announce that on Thursday our witness will be Dr. B. Cormier, Associate Professor at McGill University's Clinic and Forensic Psychiatry section. The meeting will be at 11 a.m.

Thursday, November 30, 1967.

• (11:10 a.m.)

The Chairman: Gentlemen, we have a quorum. I will introduce the witness and then we will proceed. We are still studying the subject matter of Mr. Klein's Bill, No. C-96, "An

Act respecting observation and treatment of drug addicts." Our witness this morning, who is sitting immediately to my right, is Dr. B. Cormier, Associate Professor of the Department of Psychiatry at McGill University. He is the Director of Forensic Psycho-Psychiatry at McGill University and Psychiatrist-in-charge at St. Vincent de Paul Penitentiary. This indicates that he has the qualifications of a witness from which we would very much like to hear.

Dr. Cormier, it is a great pleasure on behalf of the Committee to welcome you to our meeting today. We are looking forward with interest to hearing your statement.

Dr. B. Cormier (Associate Professor, McGill University Clinic and Forensic Psychiatry): Thank you, Mr. Chairman. I would like to comment about one of my titles, namely, Psychiatrist-in-charge at St. Vincent de Paul Penitentiary. I would first like to say above all that I am here as a doctor and as a professor, and any views that I may express or any problems that I may raise, do not by any means reflect the policy of the Solicitor General's Department. I would like to make this point clear.

I think I will probably leave you with a lot more problems, a lot more questions, than I will be able to provide answers and solutions for, because when people are sentenced under any law, if you work in a penitentiary and live with these people for many numbers of years as I have done, you will find that the penal institution comes at the end of a long judicial process and is the result of that. If it is possible that something can be done before sentencing or at the sentencing level, then you will have one type of penal institution with a certain type of offender. On the other hand, should these resources not be available or if the law is imperfect, and so on, then you still have the type of penal institution that can be run by law. By the very nature of a penal institution itself we have no say in who enters there. As a clinician in a penal institution—and it is not that I have had a very great experience with the treatment of addicts but I think I have had long experience—the problem that I would like to confront you with is seeing those people who, in one way or another, come to the penitentiary and who are drug addicts.

My first observation is that the laws which deal with drugs as a whole do not make a distinction between types of drugs. What are these drugs? I suppose some expert might come here and tell you what heroin is, what morphine is, what LSD is, what marijuana is, what the barbiturates are, and what their effects are, and what their chemical composition is and so on. I am not competent to speak about these. However, as a physician I am competent to tell you that these drugs are not the same, they do not have the same effect and in my view they should not be treated in the same way. For example, the heroin addict and the marijuana problem are clinically entirely different and also very often the user is a different type of man. That is the first challenge. I do not think we take into account that the people who end up in a penitentiary under any law are a sort of mixed bag and they cannot be treated in the same way. This is a problem which I draw to your attention. I have no answer to it. All I can say is that these drugs are not the same. They do not have the same effect. Socially, as well as being the aim of the law—and law enforcement is for the protection of society—they do not have the same social implications.

Another matter is the problem of making a distinction. It is indeed very easy to make a distinction on paper between the user, which I think this Bill refers to and, in the jargon of the milieu, the one who is called the pedlar or, using further jargon, the one who is called the pusher.

The person who is exclusively a user—this speaks for itself; he buys drugs. I wish to speak as a clinician and as a person who is down to earth with respect to this problem, and if a person happens to belong to the rich class of society he will have a lot of money with which to provide himself with drugs in one way or another and no one will ever hear about him. However, if he is a member of the underprivileged or working class he will have to go to the pedlar and so on, and his chances of becoming involved with the law are considerably greater. I think this is a fact and again I have no answer for it. I merely say it is a fact.

It is very easy to say that a pedlar is simply a pedlar and not a user. This is quite arbitrary. You have to assess that in the case of every individual you see. A pedlar might well start by being a user and in order to get drugs he becomes a pedlar. Medically and psychiatrically speaking you then make a distinction between the pedlar-user and the pure user. I might see the necessity for making a distinction, but as a psychiatrist and a doctor I can tell you that the pedlar-user is simply a drug addict in the same way as the user is who can get it without peddling. I

would like to apply this same remark to another type of drug addict who is a user not a pedlar, but who may resort to illegal means, such as robbery, to get his drug. I am not referring here to someone who is a full-fledged criminal in his own right and uses drugs at the same time. I am referring to people who, like the pedlars, use illegal means, although they do not sell drugs, and commit offences to have enough money to buy the drugs.

• (11:20 a.m.)

Again, we need to take into account that legally, psychiatrically and medically, you are facing the same problem. This man is a drug addict and it is the drug addict that you have to treat.

In my view of the conditions as I see them, I face the same problem of treating for addiction the people described by others who come before you and present papers using the well-defined terms users, pedlars, pushers, and so on—the men who commit crimes to get drugs.

I am fully in agreement with the general principle of this Bill which I gather is that if it is a medical problem, it should be dealt with medically. I am fully in accord with this. But I think my remarks will indicate that we would be making an artificial distinction, from a psychiatric and medical point of view, in treating only the users, those who resort to criminal activity to get their drugs, and not the pedlars, those who have a full-fledged criminal career.

Now, also, this is the problem of how these people come to court. I would say that evidently if somebody from British Columbia were here as a witness, he would speak differently, as they have there a problem of addiction that is incomparable with the one we have had in the east for the past 20 years. It is coming now, it is going up, but it is incomparable; so, his experience might be different. In the penitentiary—and here I can only rely on my memory—I do not remember many men, maybe a few, two or three, who came for drug addiction. All the others came to the penitentiary through what I call the "back door", because they were peddling, because they were processing, because they were committing other crimes in order to have drugs. I make the distinction here that these men are drug addicts basically and deserve the same medical treatment, and I think that realistically speaking, although I feel that this Bill in principle should be put forward, at the same time it would be illusory. I would mention to you that we can treat the drug addicts while they are serving their sentences because, in fact, they come into the penitentiary not because they are drug addicts but they merit nevertheless to be treated as such because that is what they are. I am referring to those who come for possession, peddling and so on or who commit robbery in order to afford to get drugs; but basically their problem is addiction.

This raises then an important question. I am all in favour of treating all the drug addicts that we can under medical and psychiatric facilities, which we might discuss later on. But what sort of handicap do we have in treating them while they are under legal sentence? I am afraid these days you cannot avoid the problem of jurisdiction. Some may well fall under the provincial jurisdiction if they receive a sentence of two years and less. Two years and more, they will fall under the penitentiary system. So you cannot but make this distinction.

In any case the Bill here makes this distinction, but on the other hand, although the criminal law is under the federal jurisdiction from coast to coast, the problem of treatment and of providing the medical and psychiatric facilities to treat these people is entirely provincial. So that in studying this problem, if the law is essentially federal, then necessarily there must be some place where our provincial and federal governments come together to arrive at some agreement as to what sort of facilities will be created. Because once more, as a clinician, I can tell you this: that you can pass the best laws in the world, you can have the rights of men defined in the United Nations and in the Canadian Bill of Rights, but if you have no institutions to see that the citizens enjoy these rights, I am afraid this is just a start.

You might be surprised to hear me talk this way but I think that 15 years of life in a penitentiary allow me to say certain things that others cannot who have never gone to prison, never worked in it. They can plan nice, schematic programs of treatment and distinguish between users, pedlars and so on, but I am afraid that that does not correspond to what it is when you are—what I call in French— "dans la soupe" (in the soup). Well, I am "in the soup" and I want this because of the men who are "in the soup" today. I happen to be an academician,

too—a university person involved in research. You will have had other professors here, but I think very few who can tell you that their work is to be with the boys in the penitentiary. So here I am.

Now I will just say a word about treating addicts under sentence. The type of sentencing that these people will receive is exceedingly important. I am afraid that anyone here is under some sort of illusion if he feels that by sending a drug addict to a penitentiary for two years and more even if he receives treatment while he is in the penitentiary, he will come out and not face the same problem. This does not correspond to my notion of treatment.

• (11:30 a.m.)

Addiction is a chronic problem, and anyone who has the notion that a single intervention would succeed in rehabilitating a person would be expecting a miracle. I have never known it to happen with alcoholics or with any other type of addiction. We proceed by a trial and error method. We give the person a series of treatments to begin with, and at a certain time we feel that person is ready to leave. He may, for the first time, succeed in abstaining from drugs for four months but in the fifth month he will relapse and then a short return to the penitentiary to rehabilitate him is necessary. With the necessary withdrawal treatment, he may succeed and be sent back into society.

In other words, any system of sentencing drug addicts which does not include a proper program of treatment will fail; it never has succeeded and it never will succeed. I think this is pretty clear. Many examples could be given in respect of other types of illness and this one does not differ from the others either from the psychiatric or the medical point of view.

In practical application, this means that if we are to treat in the penitentiary setting it is obligatory that we have a system of sentencing that provides for a quick return to society under supervision as well as a quick return to penitentiary, if necessary, within the sentence period. However, we must recognize immediately that in a federally-involved prison system for the treatment of addicts federal jurisdiction states the day, the hour and the minute the sentence is to terminate. This does not necessarily mean that the person who is in need of treatment does not need treatment any longer. Again I have no solution. But those who skirt the problem of jurisdiction in that field miss the most important aspect of the problem, the necessity of ensuring the continuation of treatment.

There are those who may come and present to you a nice picture, saying that they will set up an institution where drug addicts will be voluntarily committed and so on. We must recognize from the very beginning that drug addiction poses a very difficult, if not an impossible, problem when treatment is begun on an out-patient basis. So, call it voluntary commitment, if you will. If it is really voluntary on the part of the addict and he is well motivated there will not be too much difficulty. However, if he volunteers to be committed to a provincial institution for treatment I doubt very much, legally, if after two months he decided to leave that you could hold him. This question is now under very close scrutiny in certain parts of the United States where civil liberty organizations have brought cases, and of course I cannot anticipate court decisions. It remains that a citizen is a citizen and the state of mind he is in when he commits himself voluntarily under the influence of drugs, and the state of mind he is in two months later when he is free of the influence of drugs are two different states of mind, so you can see that the question of civil commitment of the drug addict poses a fairly complicated problem.

I would like to point out another legal aspect in the treatment of drug addiction. In reality, we are not so much dealing with drug addiction itself because a drug addict never comes to our attention unless he has interfered with some phase of our society by creating a social disturbance, and so on. Let us use the example of drunkenness: one is really not arrested because he drinks too much but because, having drunk too much, he performs certain acts in public that interfere with social life. Members should keep that in mind when legislating drug addiction. As a doctor I feel that drug addiction is a very serious problem; so is alcoholism and all the others. As much as I would like to make clear that somebody living permanently under the influence of drugs is not living a healthy life, the arrest, trial and condemnation of somebody who does not interfere with society and whose detention is not necessary for the protection of society is another problem we have to deal with if we are to cope with the total problem.

In respect of these drug addicts who are in and out of penitentiary and living with criminals, let me say to you that there is a lot

to be said for this treatment. There is ample evidence, despite all the problems I outlined today, that with new treatments, new approaches and the type of education we use in mental health, some years from now we will have about the same degree of success with drug addition. And if we want to take a very broad view of it, it may well be that in the future, if a drug addict does not interfere with society, does not damage himself unduly and others, we will be obliged to respect his wish in the same way as we respect the wish of the alcoholic who does not interfere with society. This is the sort of thing we should always have in mind when dealing with a man's habits, character and so on. When we draw up laws I think it is paramount to keep in mind the individual right as well as the rights of society. You know, if a person knows he has a fatal illness he may have the right simply to say that he prefers to die with his answer rather than have someone intervene. On the other hand, in cases of contagious illnesses we have laws to enforce treatment—an example would be syphilis —where society is involved.

• (11:40 a.m.)

To conclude, may I say that this Bill is opening many doors in respect of many problems, and it is for that reason I was happy to come here. I think I kept my word. I told you that you would have more solutions and more problems than answers, and here I am.

The Chairman: Thank you very much, Dr. Cormier. Before throwing the meeting open for questions by the members I would like, if possible, to have a motion regarding Tuesday's proceedings. You will recall that we did not have a quorum during the proceedings and the motion would be to the effect that we print as usual the evidence taken at Tuesday's meeting as part of the Minutes of Proceedings and Evidence of this Committee. Would someone make that motion?

Mr. Otto: I so move.

Mr. Gilbert: I second the motion.

The Chairman: Is there any discussion? All those in favour?

Motion agreed to.

The Chairman: Then, would you make a note of that, Mr. Stewart?

Now the questions.

Dr. Cormier: Mr. Chairman, as these things are printed, I give my permission to put my text in very correct Queen's English.

The Chairman: I have on my list, Mr. Stafford, Mr. Otto, Mr. Cantin, and Mr. Gilbert, in that order.

Mr. Stafford: Mr. Cormier, we had here—

The Chairman: Dr. Cormier.

Mr. Stafford: Oh, Dr. Cormier. We had here the other day a Miss Macneill, formerly superintendent of a girls' training school in Galt, between 1961 and 1966; superintendent of a prison for women, and now a consultant with the Alcoholism & Drug Addiction Research Foundation in Toronto, who testified to the effect that users need to build up their confidence. They must be given responsibility in conjunction with treatment, which can be done more successfully outside an institution than inside. What would you say about that? Those may not have been her exact words but they were to that effect. How would you comment on that?

Dr. Cormier: My comment would be a down-to-earth inclination to deal with these people either as drug addicts or as criminals. The last stage of treatment is necessarily in free society; otherwise you cannot assess the effectiveness of your treatment. The test is in re-entry into society. That is what I had in mind when I said that a system that will sentence a drug addict to five years in the penitentiary will do nothing for him except to deprive him of his sources during his stay there.

As far as I am concerned, when I see them in provincial jails waiting for trials and so on, most of them are, so to speak, dry when they arrive. And they serve their sentences relatively well. So the test is always in society and it is encouraging today, especially if provincial governments create facilities and encourage research and treatment, to see that the drug addicts themselves take the initiative and participate in their own treatment. It is a little like the AA, if you wish. To sum it up in a phrase, treat the product by the product. My answer to that is that the last test of any treatment of drug addiction is in free society.

In this sort of thing I am talking about now, the drug addicts, as in AA, now make a very serious attempt to help the professionals by helping themselves and teaching each other. I think there was an excellent film made either by the CBC—I think it is the CBC—or the National Film Board on a house in New York State. I have personally used this film, both for teaching and treatment. It is called

"The Circle". In it you will see a residence for drug addicts where there is only one professional; the addicts try to cope with their own problem. The name of the house in New York State is Daytop Village and the name of the film is "The Circle". It is certainly available because I have used it for teaching and for treatment. As much as I feel from my contact with the addict that a withdrawal period is a necessary stage in the treatment, in the last run it is in the community that you must send these people. In that sense they are not different from the criminals. You can give all kinds of treatment in the penal institutions but it is in free society that you see the result. And may I point out again, if I have not made this clear enough, that any treatment program under any sort of commitment, legal or otherwise, that is not followed by a program of treatment in free society, is bound to fail.

Mr. Stafford: So then, if I understand you correctly, you say that treatment is much more effective or, perhaps, can only be given in a free society in cases like this, and not in the institutions. Is that correct?

Dr. Cormier: No, I did not say that exactly. As I think Dr. Naiman said last week, we have to distinguish between drugs, you see. Again I am coming back to my point. You cannot treat heroin as you do marijuana because the matter of addiction for the last that I mentioned is questionable; it is not as if you are an addict to heroin. Any one of us here can become an addict. You know that after a certain amount of injection or intake you are, as I would say in the jargon, hooked, whether you want it or not. So there is not the same problem of treatment as with another drug that is not addictive in nature. So again this comes to my point that I am always worried about. People sometimes look at the problem as a whole and not at the specific aspects of it. Some specific aspects of the problem are that all drugs are not the same, neither in their nature or in their effect on the body and on behaviour. For example, some drugs produce behaviour unacceptable to society.

Mr. Stafford: Would you just explain once again where you feel that treatment should be given in a free society outside an institution and treatment inside an institution. Could you just make it a little more clear?

• (11:50 a.m.)

Dr. Cormier: If we take it the way things are now, when a man comes to a penal institution, provincial or federal, and he is under sentence, the problem is a clear-cut one; you have no choice. This man has to be treated within the legal restrictions of his sentence. So this makes the problem clear. So my point is that during this period of sentence you should do everything you can to prepare this man to go out. My point was made also that if the man comes to serve a sentence of five years I might as well do nothing because the treatment resides in sending him into society under surveillance, and so on, and if he relapses he is brought back. This applies to somebody who is being treated under sentence. If somebody is treated under some form of civil commitment, and there is a question at what point it can be done, it then becomes a medical problem entirely. The doctor must decide after the patient has been there three months that he can go out and that a follow-up will be done. He will be treated as an out-patient, and so on.

The technique of the follow-up will be determined medically as to whether methadone, which is a substitute for the drug, should be given or whether any of the new techniques that are used should be tried, and so on. If this man is being treated as a voluntary patient the doctor may say, "You have to come back because you are again on the drug". This can sometimes take place years after his discharge. Knowing Miss Macneill I think what she probably meant —I know she did not say this but I think she will agree with me—is that treatment in a hospital or in a penitentiary, no matter where it is, is bound to fail if there are no facilities to carry on treatment after discharge. It is as simple as that.

If you want an example in another field which is related to this, consider the matter of drunkenness. You see these drunkards in the penitentiary and sometimes they are merely charged with vagrancy or some other charge, but when you go beyond the charge you find that their behaviour was associated with intoxication. You sometimes see pages of charges of drunkenness and they are sentenced to two weeks, two months, and so on. When I say pages I mean literally pages. These men are put in jail for three weeks or two months during the winter season, that sort of thing, and then out they go. A judge on seeing these many pages of charges may say, "That is enough. I sentence you to two years in the penitentiary".

I have in mind a specific case that came before me in the FPS two days ago. I do not know if you are familiar with the FPS but there were three pages of charges for drunkenness, vagrancy, and that sort of thing, and two sentences of two years each, one of which was current and one ten years ago. What did we do for that man? Absolutely nothing. He was on the street in a state of intoxication and he went to jail. He also came out of jail. The problem is still unsolved. Apparently nobody wondered who this man was who was breaking the law. Apart from putting this man in a cell for so many months, and that sort of thing, what can we do for him?

Mr. Woolliams: I have a supplementary question. The situation is even worse than you suggest because if there is a difference in the material worth of A and B, B will be as you describe but A will probably have some means of living at home even in his alcoholic and drunken state. It is the fellow without means—a law for the rich and a law for the poor—who is confined to jail and who eventually has to steal or resort to false pretences in order to make a living or to buy whiskey.

Dr. Cormier: I am pleased to hear you say that. I would like to say once again, and this is my personal thought, that even in an advanced country like Canada where we have been working with prisoners for many years—and I say this not with cynicism but with sadness—that there is a justice for the rich and a justice for the poor.

Mr. Woolliams: You are right.

Dr. Cormier: I would also like to say that there is a law for the poor drug addict and a law for the rich drug addict.

Mr. Stafford: On that same question, if the person who is charged under the Narcotic Control Act and who, as you put it, uses narcotics will co-operate in receiving treatment can it be done better outside or inside an institution? That is the question I am trying to get you to answer. If he will really co-operate, and take the treatment do you think it can be done better outside an institution, for example, or can it be done better in an institution like Matsqui?

Dr. Cormier: I would like to have the advantage which a psychiatrist, who never entered a jail or who never worked in this field would have because the answer would then be so simple, sir. It would be, "Yes, you are right, he should be treated that way." However, from my experience I am obliged to tell you it is not as simple as that. You referred to an institution and, as in the other points I tried to make, one is obliged to make a distinction. What is the institution to which you are referring? Are you referring to a federal institution where men are sent under sentence or to a provincial institution where men are sentenced to the due process of law but where the jurisdiction is not the same as the federal penitentiary? Are you referring to an institution where civil commitments for drug addicts are accepted—and I point out that the legality of this is in question—or to an institution where drug addicts or alcoholics simply come to your door and say, "I have reached the bottom; do something for me".

The answers are quite different if you are dealing with four types of institutions. I can think of some other types but I think four will be enough for the moment. All I can say is that the answer is quite different for each of these four institutions. I would like to be able to give you a yes or no answer. I can give you an answer in order of priority. In my view if you can reasonably avoid legal sentence for treatment I would say this would be the priority of choice. However, it would be unrealistic if I told you that this was always possible because drug addicts enter the prison system through the back door. They are not charged with drug addiction but they are basically drug addicts. You have to deal with each institution on its own merits as to what can be done. All I can say in answer to your question, if you want my personal feelings, is that I do not like to see a user sent to a federal penitentiary.

Mr. Stafford: If you can avoid imprisonment—

Dr. Cormier: Yes.

Mr. Stafford: —and the user will take the treatment—

Dr. Cormier: At all costs.

Mr. Stafford: —keep him outside.

Dr. Cormier: Yes, but I must point out to you in order to have a very complete and practical view of this thing that under the Constitution it is a provincial problem. As I understand the Constitution of this country health comes under provincial jurisdiction and we know that the facilities in our provinces vary from nil in most cases to some in few.

Mr. Stafford: I wanted to ask if you knew anything about the institution at Matsqui?

• (12 noon)

Dr. Cormier: I know of the institution although I did not visit it. I have a lot of misgivings about this institution. This is not a criticism of federal penitentiaries, it is just my views on it. Mr. Koz is here and I hope he will take a note of that. It is my personal view that wherever possible drug addiction should be treated outside penal institutions. You have my views about Matsqui. I should say, in fairness to the federal penitentiary system, the fact that you have a great many addicts within your system has nothing to do with the Commissioner of Penitentiaries, the Minister or the Solicitor-General because they cannot stop a drug addict entering a penitentiary; it is a matter of court decision. That is why I insist so much on the importance of the law. I mean if the law allows you to commit people into the federal or the present provincial system, and those people should not be there, what can you do? You should tackle the problem at the root. They still say that the judge sitting on the case should be able to exercise his own discretion and say, "What are you ready to do?" In most provinces the judges are not in a position to do this, but at least it will stimulate them to think. If a judge has at his door, at one stage, 25 addicts is he not obliged to think?

Mr. Stafford: I just want to point out that we are interested in what should be done and not the situation as it exists today. What do you think should be done?

Dr. Cormier: Well, I will take the positive approach and say, in respect of my province, that I would like to see the Minister of Health and the Minister of Justice join forces and create institutions of treatment and research, affiliated with universities, and institute very progressive measures to tackle this problem immediately.

Mr. Stafford: What measures do you propose?

Dr. Cormier: Different measures may be required for different provinces. The solution to the problem in my province may differ from the solution in British Columbia where they have had the problem for some years.

In my position as a psychiatrist at both the university and the penitentiary I have noted, over the years, that the problem they in the West have is moving slowly toward the East. One of the apparent reasons for this is that these people tend to migrate to centres where the law enforcement agencies are not yet acquainted with the seriousness of the problem and they know they can more freely get away with it. I think now is the time for the provinces in the East and the Province of Quebec to do something, when the problem is not acute—although it is rapidly approaching this stage.

Mr. Stafford: You keep saying they should do something. What we want to know is what is that something that the Province of Quebec should do. Forget the laws as they exist today; what should they do? What practical steps should we take to try to alleviate this problem and cure those people who are using narcotics?

Dr. Cormier: I thought I had answered your question. If you want me to be specific, I say build a centre, build a hospital, train people, interest psychiatrists in the problem, give them fellowships, let them visit other centres that have experienced this problem, let them visit California and New York State to see what they do about it there, select the best solutions found in other countries, and above all, study the complete legal aspect of it so that we do not end up with what has been described as one threatment for the poor and another for the rich and so on. Also, we should clearly establish what the social problems and the individual problems are. This is what I feel should be done.

Mr. Stafford: I have one final question. Once you did all of this—closed the institutions and trained people in the way you just mentioned—do you feel it would be better to let those people come to that centre and take treatment voluntarily rather than lock them up behind bars while they were taking it?

Dr. Cormier: Once again, I cannot answer with a yes or no, but where such a solution is possible we should select it. I did not come here to say that a man in the street in a state of rage and in a destructive mood should not be arrested and something not done for his own protection and that of society. So I cannot answer yes or no.

Mr. Stafford: Of course my original question was: If the user would co-operate and take the treatment, would he be better outside than in?

Dr. Cormier: Then my answer is unequivocal: this is the treatment of choice.

Mr. Otto: Dr. Cormier, you have indicated by your remarks here that after 15 years you have gotten down to the basis of the whole question of drug addiction; you mentioned that each of the drugs poses a separate problem. I understand that in effect the reaction on the user is more or less the same with the opiates—that is, heroin and its derivatives. Is there a similar reaction with the use of the psychedelic drugs? I understand that the opiates allow a user to pass out of this world quietly, so to speak, but there is no reaction on society because the tendency is to be inactive. What is the reaction in the case of marijuana and the other psychedelic drugs?

Dr. Cormier: I cannot say too much on that but I can suggest, Mr. Chairman, certain experts who can really give you the absolute answer. All I can say is that if a person takes heroin, for example, for a certain period of time that person will be "hooked". On the other hand, one has to admit that there is a tremendous amount of difference in the individual's tolerance. Some of our greatest writers have taken it for years and years and it seems not to have impaired their intellectual functions or their capacity to live in society and be productive. One has to make all sorts of distinctions. It would take an internationally known expert like Doctor Lehmann of the Douglas Hospital to really answer what the specific effect of each drug would be. I do not think I should venture into this field.

Mr. Otto: I asked the question I did because you had given us your philosophical view of what society's reaction is, and since you have made a distinction between certain drugs it would seem, from your viewpoint, that a person who is, say, addicted to heroin does not as a rule cause any danger to society.

Dr. Cormier: I did not say that. I said some do and some do not.

Mr. Otto: Well, other than stealing in order to buy heroin—I am presuming that heroin is available very cheaply—what is the effect on society other than the fact he becomes a non-productive person?

Dr. Cormier: Well I cannot give you a simple answer to that question. I can say, for example, that they have a freer approach to the problem in England and they will make available to their people medical drugs to keep them in society provided they do not endanger that society. That is one approach to the problem. Another country might prohibit the use of a drug rather than regulating it. I am not here to discuss the merits of one or the other but to point out that it is not a simple problem and many attempts are being made to control the problem, medically and otherwise. Even medically speaking, I cannot describe the treatment techniques and tell you the principle of it. Again here I can suggest to your Committee experts in the field who do research and treatment. In this famous methadone treatment where methadone is substituted for heroin, for example, you will have some addicts taking methadone for years, and sometimes for the rest of their lives, possibly, while others will take that substitute for a certain number of years and then give it up entirely. So the methadone treatment is a medical treatment that substitutes one drug for another because it is felt that the second drug is less damageable to the individual who, with this drug, can lead a successful, law-abiding life. This is the sort of thing we have to think about.

• (12:10 p.m.)

Also, as I think Dr. Naiman in his presentation here mentioned, a lot of research has to be done on drug addiction; for example, on what I would call medically the natural history of drug addiction, which is not unlike the natural history of criminality. The reason for this, as my associates and I at McGill have found in our studies, is that we know that criminals, even the persistent criminals, do fade away in life. Where they go is another matter I do not want to discuss here because it is not exactly relevant, but they take many pathways.

It is the same thing in drug addiction. There is more and more study now that reveals that after a certain age, we all mellow; for some life starts at forty. I find that a very sad statement because there are so many things that you can do before you reach forty. But it remains a fact that sadly enough some people start to live at forty and possibly stop at that age to be drug addicts or alcoholics. So we are really facing the fact that—and I will underline it—drug addiction is more than a man who takes drugs. It is the problem of a man who has difficulty in all areas of his life in adjusting to life compatible with his immediate family and friends

and with the society of which he is a member. This is the problem of drug addiction. For that matter this is the problem of alcoholism. For that matter this is the problem of the criminal. We make a mistake if we see the problem of taking drugs, and we make a second mistake if we see the problem of the criminal as only the problem of doing certain things that are indeed forbidden by law and should remain forbidden by law. When we have said that he has done this act, then it is there that the problem starts. It is in that perspective that I look at the question.

Mr. Otto: That is exactly what I wanted to get from you. If we are going to differentiate between the drug addict and the alcoholic, and the criminal, then we must try to find a reason. We know that criminality probably has the same basic cause as addiction—the inability to adjust. We know that the criminal may be and is of danger to the rest of society. Therefore we lock him away. We know that the alcoholic is partly productive and does not present the same danger and therefore we have different laws. Now what I am asking you is: when you come to the drug addict, is he in the same class as a danger to the rest of society because of his addiction as the habitual criminal, that we should also apply criminal law to the addict and put him away? Or is the addiction in itself—and I am not speaking of the crimes perpetrated to buy the drugs; I am speaking of the addiction itself—as much a danger to society or to property as the habitual criminal?

Dr. Cormier: I think you have made the distinction yourself and that my answer is just to repeat it in some other way, in other terms. If somebody happened to be an alcoholic and a criminal at the same time there is no doubt in my mind that the due process of law must take place and we have to treat him both as an alcoholic or as a drug addict and as a criminal. On the other hand, you know and I think that is what you want to say, if he is only a drug addict, even if he is not productive to society, because some are and some are not, and does not endanger society, I think that we have no right to treat him as if he did. This is my point. I think that is the point you were making, too.

Mr. Otto: That is the point. In fact, I was going to mention that at one time when a productive member of society was very, very important, this may have had some application, but today it is questionable whether every member of society must be productive because obviously we have hippies and others who go their own non-productive way, and society not only tolerates them but can accept them. Production is no longer as important as it used to be.

The only other question I would like to ask is this. You mentioned there were some cases of drug addiction which probably in your experience you have come across, which were caused originally either by accident or by medical treatment; in other words, by the introduction of drugs not caused by a lack of adjustment to society but strictly accidental. Have you found in your experience that those cases, once they have been treated, have been successful as compared to the other ones who became drug addicts because of some inability to adjust?

Dr. Cormier: I will answer from my experience in the encounter of such cases. I would say that drugs of the pain killer or anxiety reducing types such as morphine or demerol—I do not think heroin is much used in the hospital—are used, evidently, and that maybe many of us here have had them on medical prescription in hospital while undergoing surgery, or that sort of thing. It is obvious that in hospitals, on principle the drug is reduced, as it should be, and when the person is discharged the experience terminates there. He does not have a craving for it. In my experience, those who, after having received drugs in hospital for killing pain, or reducing anxieties or pre-operation or that sort of thing, become drug addicts before and after leaving the hospital, and the craving remains are personalities that are pre-disposed to become drug addicts and they had found in that experience what the great majority of people do not find: that is, what I found when I received it personally; that it was only to make me more comfortable and be a better patient and allow the doctor to treat me better. For the others, it might be an occasion of mobilizing latent potentiality to become a drug addict. You will find that a certain number of these people become very skilful indeed in faking all sorts of symptoms in order to get the drug again. This may happen. We are becoming more and more acquainted with this in hospitals. It is like the men who come in with all sorts of symptoms and under normal conditions we would be justified in giving them these drugs. They always come back. Then somebody starts to become suspicious. The person who does this

is usually a special type of addict who will try to use the doctors and the facilities of the hospital to obtain his supply of drugs but fortunately the hospitals are becoming more equipped to detect these types of cases.

• (12:20 p.m.)

Mr. Otto: This is my final question. Presuming this bill becomes law and presuming some of the ideas that you and Mr. Stafford expressed become fact, in your opinion do we have enough trained people and enough staff to make any headway at all with this whole problem of drug addiction?

Dr. Cormier: As I now know the over-all picture in Canada, my answer is absolutely not.

Mr. Otto: Thank you.

[*Translation*]

Mr. Cantin: Dr. Cormier, this morning you raised problems of priorities and treatments, and legal and constitutional problems, and I remember from your testimony that you did not believe the law could provide a lump solution to the problem as a whole. Would it not be a practical solution if the law were amended—and here I should like to have your openion—so as to ablige the court to offer a person charged with this crime (for the law now makes it a crime), to offer him treatment before the sentence? And to the extent that this person submits to treatment voluntarily, the sentence would be suspended for the duration of the treatment?

Dr. Cormier: Not knowing your personally, I can say that inasmuch as I am the one who presented this solution, I find it excellent. To tell the truth, I am not an expert on drug addiction, but since these problems come in through the back door, if one may say so, I shall tell you about an experiment tried in California and which is, at the moment, if you like, in the working in period. Let us take the case, for example, of a multiple repeater of habitual or persistant criminal, call him what you like. The judge examines the pre-sentence report and tells him something like this: You have received so many sentences, here is your record, and so on. One of two things: either I sentence you to five years (or any other number of years) in prison, or else I give you the following alternative: you are going to prove to me that during those five years, you are capable of living freely in society while respecting the freedom of others, and that you, yourself, will live in conformity with the laws. We are going to give you some assistance, however, so that you can do that. You have a choice: which of the two alternatives do you choose? This corresponds to a similar experiment which was done in another field. It seems, for the moment a least according to the article I read, that this experiment still going on is a success. Therefore, in my opinion it applies not only to drug addiction or other problems of the same kind, but also to other criminal problems. Once again—I am repeating myself for I want to emphasize those problems, that is the problem of drug addiction and that of crime in general—it is not only a problem limited to the taking of pills and doing illegal things; it all constitutes a total problem of a man's personality and a total problem of society face to face with this man also.

Mr. Cantin: Yes, I understand. But for the moment, do you not believe that it could serve as a solution to the problem of those who are addicted to drugs?

Dr. Cormier: It would be an experiment worth trying, in other words, we now have all the data to enable us to say that such an experiment which, I believe, has some chances of success, would be wonderful.

[*English*]

The Chairman: Mr. Gilbert, Mr. MacEwan and Mr. Whelan.

Mr. Gilbert: Mr. Chairman, the previous questioner asked the very question I was going to ask.

The Chairman: Did you get the answer you hoped to receive?

Mr. Gilbert: Yes. I am just going to develop it a little more with Dr. Cormier. You said that among the people you treat in the penitentiary a few come to you by way of being directly charged with the possession of narcotic drugs but many more come to you by way of the back door. They are addicts but they are charged with a criminal offence and enter the penitentiary that way. It seems to me we have an analogy here with people who are charged with an offence and plead insanity. If the plea is proved the accused is then committed to an institution at the pleasure of the crown until he is fit to stand trial. It strikes me that when a person appears before the court who is either charged with possession under the Opium and Narcotic Drug Act or with an offence under the Criminal Code and he lays before the magistrate the defence of addiction, and we now

know that addiction to a drug can be proved quite easily by a simple test, and if he is "hooked", the magistrate should have the power to refer him to an addict research centre rather than to a penitentiary. There he can be treated by men like yourself and others who treat not only the addiction but the social and psychological problems of the man as well. I also believe he should be retained at the pleasure of men like yourself until you feel that he can take his place in society. You said that men who have been charged with addiction and receive a five-year sentence merely go to jail and dry out and then stay there until their term is ended. I do not believe that is the solution to the problem. As you said—and I thought you said it very eloquently—it is a matter of getting the man adjusted back into society, and it is men like yourself and psychologists—

Mr. Otto: But we do not have the men and we do not have the institutions, and we will not have them for many, many years.

Mr. Gilbert: Mr. Chairman, I should say to my hon. friend on my left that we always start from our present position and then move on to the position we would like society to reach.

• (12:30 p.m.)

Dr. Cormier: I think this is correct. I do not know if I am old enough to reminisce about my past. I have some right to, I suppose, being the first psychiatrist attached to a federal penal institution in the Province of Quebec; this was in 1955. I think we have travelled quite a long way since. Also, in being attached to a university as a professor, I am pleased and rewarded—you meet some rewards sometimes in that field—to see that students of mine are working in the field. So it is the same thing with the field of addiction. We must make a start, and I think the start will be likely to come with men who may be encouraged by their government to enter the field and make a career at the highest standard possible. This is very important. I have personally enjoyed, despite many problems and difficulties, and sometimes great difficulties, every year that I have spent in the penitentiary, not because I was in the penitentiary but because I was at the same time a professor involved in research and teaching and training and that was a full career for me. If you cannot offer that to doctors entering this field, I doubt if you will succeed.

I would like, however, to comment on the question of indeterminate sentences at the discretion of the court. I have very great reservations—not to say I am practically opposed to any type of indefinite preventive detention. In other words, if you speak of the type of sentence that allows a reasonable minimum and maximum, both minimum and maximum, then I will buy this. But if it is absolute indeterminateness, I am afraid that you will put your clinicians in situations where they can hardly do anything. The second thing is that as a psychiatrist, if I may be frank, I have enough of my work to do without doing the work of the court. If somebody is sentenced under a court, I think it should be the court's responsibility to release him. My duty, I feel, is not to make the decisions for the court but to give them all that I honestly know on this individual, his future and his capacity to re-integrate into society. I do not know if you meant that the psychiatrist should make the decision, but if you meant that, I would disagree.

Mr. Gilbert: What you are saying is that there should be two safeguards.

Dr. Cormier: Yes.

Mr. Gilbert: First of all, the accused should be brought back to court say six months or three months later or whatever term would be agreed upon, and then should be subject to the report that you have submitted to the court.

Dr. Cormier: Yes.

Mr. Gilbert: And the magistrate or judge would make the final decision.

Dr. Cormier: If I may cite here an example of the type of indeterminate sentence that I am all in favour of, it is the Danish type of indeterminate sentence. I am not too sure about the minimum but the numbers are about right. It is two to six years; the minimum two, for example, and the maximum six years. This applies, for example, in the case of the dangerous sexual offender. Then in the institution, which is one of the best known institutions for the treatment of habitual criminality in Europe, the medical staff have to make their decisions and so on, and sometimes during the time of the indeterminate sentence—two to six years, for example—they come back to the court and give all their evidence and then the man is released on parole for the rest of his sentence. If, after the end of six years, the judge

feels, after he has received all the evidence, that it is not safe to return this man to society then, again, new procedure has to be taken to renew the six years. I know from Dr. Georg K. Sturup, Medical Superintendent of the Herstedvester Detention Institution for Abnormal Criminals in Glostrup, Denmark, that it is the exceptional case that is not released after six years. You see that this philosophy is quite different from the indeterminate sentence that we have in Canada under the Criminal Code and the dangerous sexual offender.

Mr. Gilbert: One more short question, Dr. Cormier. You made a distinction between (a) a user, (b) a user-pedlar and (c) a pusher, who would be a non-user, I would assume.

Dr. Cormier: Sometimes.

Mr. Gilbert: I was not sure whether you had made the distinction on three grounds: the first on the user and the second on the user-pedlar and the third on just the pusher, who is a non-user. But with regard to the pusher, the reason he is pushing is that he is making money from the drug. The question arises, should we take the profit motive out of the drug and make the drugs available to the addict under controlled conditions?

Mr. Whelan: There is no advertising involved in that either.

Mr. Gilbert: That is right. The pedlar is the same as the bootlegger with regard to alcohol. We make alcohol available to the public and what I am saying is that possibly we should use the same system as they use in England in the narcotic clinics—making the drugs available to them under controlled conditions.

Dr. Cormier: My answer to this is that we have to start to build a house right from its foundation and sometimes we try to solve the whole problem by a drastic measure without having taken all the central measures that we should first take. For example, if we have these institutions and these facilities for treatment, if we have a number of addicts that elect to be on maintenance treatment like methadone or others, which I hope your experts talk about, if we have all these facilities, then certainly the pusher will not have the same role in society. If we create that first, we will be facing the real problem. Now we are not facing the real problem because of this lack of facilities. So at present I have very great reservations about a law in this country that would allow free distribution of the drugs before we establish—and I would say this is urgent—these foundations. Is that clear?

Mr. Gilbert: Yes, I understand it. I think you are quite right. Thank you very much.

Mr. MacEwan: Dr. Cormier, to your knowledge, what type of treatment, if any, is carried out in prison for these addicts? That would be St. Vincent de Paul, with which you are familiar. Is there any treatment other than...

Dr. Cormier: Are you referring to a specific regional complex of federal penitentiaries the same as St. Vincent de Paul?

Mr. MacEwan: Yes.

• (12:40 p.m.)

Dr. Cormier: We have no special provisions. The man comes with his problem and, in so far as we have the staff, the time and so on to give him treatment, we will. Evidently, in the penitentiary system, it is not a problem of withdrawal; it is trying to tackle the personality as a whole. According to whether he is paroled or not, the issue may be quite different. For example, if we think a man serving a sentence of five years is likely to be released on parole after two and one-half years or so—the decision is not with the penitentiary system—and he comes to us and says: "Well, what can I do, Doctor?" we will make suggestions and we will try to direct him, we will try to imagine facilities. Is that clear again? We will try to imagine facilities that will help him to tackle the problem. So that is what we do. As I say, that problem in the treatment of addiction does not exist in the penitentiary because they are withdrawn. At St. Vincent de Paul we have all the time about 40 to 45 psychiatric cases hospitalized; and may have many more in the out-patient clinic which we also have within the penitentiary.

In the case of some of these men, one of the problems was drug-addiction which even the law did not know about. It was just one other problem they had. I would meet most of those people in the penitentiary, you know, and they would never tell me that they had been taking drugs. However, after they had gained confidence in me I would just ask the straightforward question: "How about drugs?" He would tell me: "Well, I take it sometimes. I was hooked a few times," and

would give me his history. This is part of the total personality.

In other words, there are two phases in the treatment of drug addiction. There is their specific facing of the withdrawal period, and after that there is the more general problem of treating the person.

Mr. MacEwan: Finally, I think you said that treatment facilities in the provinces ranged from nil in most to some in a few? Is that what you said? If I may just read this quickly, Miss Macneill in her evidence, said at page 2:

> The ultimate answer to drug abuse rests in social attitudes. If society agrees that drug abuse is a medical-social problem with medical-social solutions legal consequences for abuse must be rejected.

And, then supplementary to that:

> Any alternatives to legal sanctions will be expensive initially, many approaches must be tried with clinical research to determine which approach is effective for whom.

Certainly, from what you say, the first move will be very expensive because of the fact that there are very few clinical facilities in this country.

Dr. Cormier: I completely agree with what you say. I am also very pleased that Miss Macneill brought forward this new concept, which we see more and more in the literature, of not speaking only of drug-addiction in reference to specific drugs but of drugs or medication abused as a whole, although certain types of drugs are more specific. It is a question of cost. I doubt very much that we have a businessman here who knows the cost of maintaining penitentiaries, prisons and so on, and who could figure it out, taking into account the social assistance that the family needs and so on. I am of the opinion that, measured in dollars and cents, the approach that we feel is ideal is the most economical one. Do not forget that if a man can succeed in re-integrating into society without having been institutionalized you not only economize in terms of what it costs to maintain him in an institution and to pay for social welfare for the family, but you have also to take into account that the man is productive, in that he earns his living. It would be for an administrator to figure it out, but, offhand, I would say that the scientific and rational approach is somehow always the most economical one.

Mr. MacEwan: Doctor, as you have pointed out, health and drug-addiction are provincial matters. Because this is going to be such a costly thing, could you envisage the federal government not shopping in directly, but contributing financially so as to assist the provinces in this very serious problem?

Dr. Cormier: Yes; I think that the problem cannot be looked at in its entirety if all governments, provincial and central, are not involved. First of all, it cannot be denied that the legal aspect of it is entirely federal. There may be many constitutional aspects that are in question now, but that we have one Criminal Code has, to my knowledge, never been questioned, and I hope it never will be. Therefore, there necessarily must be this dialogue between the provinces and Ottawa.

I hope that every government, including mine, will never forget that we are dealing with human material. We are not dealing here with, say, breaking and entering, which also is entirely illegal, but it must be remembered that that involves property. We are dealing here with human material.

Mr. MacEwan: Thank you.

Mr. Whelan: Mr. Chairman, I came into the meeting late and perhaps this question has already been asked: We read from time to time about violent criminals. How many criminals who commit, say, murder and on "dope"? Do you have any records on that?

Dr. Cormier: Yes. Again, it would be so simple for me to answer this question if I were not working in the field. The relationship between the taking of drugs, or alcohol, or any intoxicating agent, and the commission of crime is not a matter of a pure equation in which you have one set of data that equals another.

For example, it is certainly fortunate that the great majority of alcoholics and drug-users do not commit crimes. This is the basic thing that we have to realize.

What, then, is the difference between the group that takes drugs and commits crime —and fortunately they are few in number —and those who take the same drugs, or drinks, and do not commit crime? This is the basic scientific investigation that we should do.

There are now all sorts of approaches to the study of this problem. Some feel that people

react to alcohol because of certain metabolic disturbances, and so on and so on. For example, the character structure of one drinking person as against that of another drinking person is also a very important determinant. It would be nice propaganda, to get a research grant or something of that sort, to say: Alcohol is another cause of crime", and so on and so on, but I must say that I know criminals who are completely sober when they commit crimes.

• (12:50 p.m.)

Mr. Whelan: I am thinking of the specific case, doctor, of Marcotte, the man who, I think, was called "the Santa Claus killer". At that time some of the press releases said that he was full of "junk", or "dope", or whatever you want to call it. He was at the prison. I think he got a life sentence. Do you know if he was actually on "dope"?

Dr. Cormier: I request the privilege of not answering that question, because being the physician in this penitentiary I cannot discuss this case.

The Chairman: That is perfectly understandable, Mr. Whelan. Have you any further questions, sir?

Mr. Whelan: No. I was just thinking of this particular case and wondering what percentage of people do take "dope" before they commit serious criminal offences. Every now and again we read about this in the newspapers, and I just...

Dr. Cormier: I can answer your question now only in its broadest perspective. We have heard during this meeting that taking drugs, drinking alcohol, or anything like that is only one aspect of the total personality problem. You can have as a fact, that a man drinks ans steals—because we have said also that stealing is one aspect in this global personality—but to separate them and say that one is on account of the other is entirely unscientific. Are these two things combined in this individual to make the whole, or how does it act? I will give you my approach to it. From my experience in the penitentiary, if I were to accept, uncritically, all that the men say, such as "Oh doctor, I drank a little bit too much", I would come to the conclusion that 90 per cent of criminality is caused by alcohol, which would be entirely unscientific. Does that answer your question?

These two problems should be studied together, within the one person. Again, fortunately enough, it is a minority of people who drink and steal or are criminal at the same time. Perhaps one way of studying it would be to find out what is the difference between them and the great majority who drink and do not become criminals.

Mr. Whelan: Yes, I think I understand what you mean. I think we even recognize that some politicians are probably at their best when they have partaken of some spirits, and others may be at their worst. We know that certain people use alcohol for other reasons. I have been in public life for a long time. I know that in many instances they need alcohol to give them the thrust or drive that they require. It may be that they are more relaxed, whether they be a criminal, or a lawyer, or a politician, or whatever they may be. My concern is about how much more dangerous they could be if they were on "dope" and committing a crime.

Dr. Cormier: Can I say something off the record here that will not be registered?

The Chairman: This answer will be off the record.

[*In Camera*]

[*Upon Resuming*]:

Mr. Otto: My question is related to what Mr. Gilbert was saying, and, indeed, to the whole question of reform in this Bill. You recognize, doctor, as you have said that you will require a vast number of trained personnel to handle this. I was speaking recently to a group of psychiatrists who were under the impression that the pressures of urbanized life in the next 25 years will make such great demands on trained psychiatrists that they will never be able to keep up. My question to you is this: At the present time, in order to qualify as a psychiatrist one must also take the whole course in medicine. From your work in the institution and from your experience, would it be possible to change this whole system and produce people who can treat problems such as this without their having to go through the training in medicine?

Dr. Cormier: I would not only say that it is possible but that it is desirable; and it can be done. I am a psychiatrist and I have spoken as a psychiatrist, but I wish to state very clearly that a psychiatrist is only a man who perhaps has more knowledge and experience of more things in certain fields; but when it comes to the carrying out of the

treatment itself, we have what we call the "personnel auxiliaire". For example, in the hospital it can be the nurse, and in a penal institution, so far as I am concerned, it can be the correctional officer if we consider it a proposition and he has been trained accordingly. Therefore, it is not only desirable, but possible; and it is done. If you elect to see this film, "The Circle", you will see that this home for treatment of the addict has only one professional person attached to it, and that a tremendous amount of work is done.

• (1:00 p.m.)

You have another example in AA. It is not a universal solution for alcoholism, but I must accept that they succeed in doing certain things for certain people, and sometimes get results that we in medicine cannot produce. If, for example, as is claimed, alcoholism is a symptom of a manic-depressive illness, similar to episodic drinking, then AA is not its place. There should be treatment of the underlying illness.

In giving the treatment we must not be paralyzed by the idea that we need so many hundreds of psychiatrists. If you have a certain number of dedicated, well-trained professionals, who know how to surround themselves with all the necessary auxiliary personnel, then you can do a tremendous amount of work.

Mr. Otto: Are these auxiliary personnel of whom you are speaking members of a recognized profession, or are they merely equivalent to nursing assistants? Have they a profession? Can they command respect because of their training, even though they cannot call themselves psychiatrists?

Dr. Cormier: In certain aspects of addiction, or, for that matter, in all the social problems, when it comes to visiting homes to try to help the wife with the budgeting, and all that sort of thing, I can tell you that I do not have the training for that, and my social assistant does that work and does it much better than I could.

Apart from that, I have on my staff psychologists, social workers and even lay people who, under professional direction, sometimes do things a lot better than I could.

Last week I sat in on a session of group therapy for persistent offenders. I mean every word of this. In a group study, where the professional is only one person, a right interpretation, given by one prisoner to another who is ready to receive it, carries a lot more weight than anything I might say.

Secondly, and I mean this sincerely, a right interpretation, on the right help given by a correctional officer to a prisoner who has come to respect him, carries much more weight than anything I could do.

These auxiliary personnel can do that if I am there to guide them on how to create the necessary atmosphere. This, in itself, illustrates that we must not think in terms of thousands of psychiatrists, but of a few who, using the global approach to this problem, can work and form treatment teams.

The Chairman: Thank you very much, doctor.

Mr. Stafford: This is not a question, but a matter for the consideration of the Committee. Further to, and in support of, a conversation with Milton Klein, who is the sponsor of this bill and who is not a member of the Committee, and in view of what Dr. Cormier has said this morning, that a user charged under the Narcotic Control Act, who is accepting and co-operating in treatment, and that such treatment is more effective in society than in prison, I would move, seconded by Mr. Whelan, that this Committee recommend—and I realize it is only a recommendation—that:

> Proceedings against any person charged under the Narcotic Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

The Chairman: We do not have a quorum. I would like to take your motion under advisement. I do not know whether we have reached the stage in the proceedings where members feel that they are competent to make the decision that the motion implies.

If you have no objection, Mr. Stafford, I will reserve it for consideration, so that when it does come up for final decision we will have fairly full representation on the Committee and all members will have had an opportunity to study the evidence. Is that agreeable?

Mr. Stafford: That is fine.

Mr. Otto: Could the motion be put on the record?

The Chairman: Yes; the motion can be recorded in the Minutes. Perhaps the Clerk may have some procedural difficulties with regard to that.

The Clerk informs me that it will be recorded.

Mr. Stafford: I have one other matter, Mr. Chairman, for your consideration and that of the Steering Committee. Possibly Mr. D. Creigen, who is in charge of the pilot treatment unit at Matsqui Drug Institution at Matsqui, British Columbia, could be called as a witness.

The Chairman: I think that is a very good suggestion. I will ask the Clerk to get in touch with him. It will be referred to the Steering Committee, and we will assess whether or not Mr. Creigen will be able to add materially to the evidence we have already heard. I think we should certainly consider it. With your approval I will leave it at that.

Dr. Cormier, when you had finished I simply said "thank you". I would like to say a great deal more than that. You have been a very informative and very valuable witness. In fact, I cannot remember a witness who has made a greater contribution, and in such an interesting and very human way. Speaking for myself and for the members of the Committee I wish to thank you most sincerely for your presentation here this morning.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, DECEMBER 7, 1967

RESPECTING

The subject-matter of Bill C-96,

An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27677—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (*Hamilton South*),	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
Mr. Guay,	Mr. Otto,	Mr. Woolliams—(24).
Mr. Honey,		

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, December 7, 1967.
(14)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Cameron (*High Park*), Forest, Gilbert, Guay, Howe (*Hamilton South*), McQuaid, Otto, Ryan, Stafford, Wahn and Mr. Whelan (11).

Also present: Mr. Howard, M.P.

In attendance: Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

The Chairman referred to the Minutes of the Subcommittee on Agenda and Procedure, which read as follows:

SUBCOMMITTEE ON AGENDA AND PROCEDURE

TUESDAY, December 5, 1967.
(4)

FIRST REPORT

The Subcommittee on Agenda and Procedure of the Standing Committee on Justice and Legal Affairs met at 3.35 p.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest and Wahn (3).

Also present: Mr. R. B. Cowan, M.P.

I Order of Reference dated Wednesday, November 22, 1967—Notice of Motion No. 20.

Members discussed the Notice of Motion with Mr. Cowan. He explained its purpose and his views on how it might be implemented. Mr. Cowan mentioned the names of interested Members of Parliament, related Statutes and official studies of various Parliaments in Canada and overseas, and suggested *Professor Edwards,* Head of the Department of Criminology, University of Toronto, as a possible witness.

The members also noted a letter received from Professor Linden, Osgoode Hall, who offered his assistance in this matter.

Decision—Members agreed to recommend that Mr. Cowan, M.P. should be invited to appear as the first witness, on Tuesday, December 12, 1967. Mr. Cowan will prepare an opening statement for the Committee. Members also agreed that Professors Edwards and Linden should be invited to appear.

27677—1½

II Motion of Mr. Stafford—Thursday, November 30, 1967.

Members discussed Mr. Stafford's proposal, which is as follows:

Mr. Stafford moved, seconded by Mr. Whelan,

That proceedings against any person charged under the Narcotics Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

Decision—Members agreed that the proposal should not be entertained as a motion at this stage because the hearings are continuing and no decision has yet been taken on the nature of the Report to the House.

III Committee Meeting on Thursday, December 7, 1967 re Bill C-96

Members noted that Mr. D. Craigen has accepted an invitation to appear as a witness and will be here on Thursday, December 7, 1967.

Decision: Members agreed to recommend that Mr. Craigen appear as the next witness.

IV Draft Report to the House—subject-matter of Bill C-115

Members discussed and amended the draft report on this subject. The Clerk was instructed to prepare amended copies for the Main Committee to consider, at an in camera meeting on Thursday, December 14, 1967. It is hoped that a draft report dealing with Bill C-4 will be ready at the same time.

Decision: Members agreed to recommend a meeting of the Committee on Thursday, December 14, 1967, to consider reports to the House on the subject-matter of Bills C-96 and C-4.

V Dr. J. Robertson Unwin, Director of Adolescent Service, Allan Memorial Institute, Montreal.

Decision: Members agreed that Dr. Unwin should be invited to appear as a witness re Bill C-96. Dr. Unwin will be available about the middle of January next.

VI Mr. J. de N. Kennedy—Retired Magistrate, Peterborough

Decision: Mr. Kennedy's letter to Mr. Klein was noted. The Clerk was instructed to inform Mr. Kennedy of the meetings re: Bill C-96 thus far.

The Subcommittee meeting adjourned at 4.40 p.m.

On motion of Mr. Ryan, seconded by Mr. Otto, the First Report of the Subcommittee on Agenda and Procedure was adopted.

On a motion by Mr. Howe (*Hamilton South*), seconded by Mr. Gilbert,

Resolved,—That reasonable living and travelling expenses be paid to Dr. D. Craigen, who has been called to appear before this Committee on December 7, 1967, in the matter of Bill C-96.

The Chairman introduced the witness, Dr. Daniel Craigen, Medical Specialist at the Matsqui Institution in Abbotsford, B.C. Dr. Craigen addressed the Com-

mittee and was questioned by the members concerning his training and experience in relation to the subject-matter of Bill C-96, (*An Act respecting observation and treatment of drug addicts*).

The members agreed that copies of the following documents received from the witness, should be filed as Exhibits (*Exhibits C-96-4 and C-96-5* respectively):

The Pilot Treatment Unit: The First Seven Month Developmental Program In The Treatment Of The Narcotic Addict

The Pilot Treatment Unit: A Preliminary Report Of Treatment Research—Program II: An Experimental Treatment Program For The Narcotic Addict

(by D. Craigen; D. R. McGregor; B. C. Murphy, Canadian Penitentiary Service, Department of the Solicitor General).

The witness agreed to send a further research report to the Committee for its information, when the report has been completed and published.

The Chairman thanked Dr. Craigen, on behalf of the Committee, for his expert testimony.

The Committee adjourned at 12.30 p.m., until Tuesday, December 12, 1967 at 11.00 a.m., when the Members will consider Notice of Motion No. 20. Mr. Cowan, M.P. will be the witness.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, December 7, 1967.

• (11:11 a.m.)

The Chairman: Gentlemen, I see a quorum. Your Subcommittee on Agenda and Procedure met at 3.35 p.m. yesterday and its report reads as follows: (See Minutes of Proceedings)

Could I have a formal motion to approve this report?

Mr. Ryan: I so move.

Mr. Otto: I second the motion.

Motion agreed to.

Mr. Ryan: Mr. Chairman, reference was made to Professor Linden of Osgoode Hall. Is that Professor A. M. Linden and, if so, is he from California?

The Chairman: Yes.

I would like someone to move that reasonable living and travelling expenses be paid to Dr. Craigen who is appearing before the Committee this morning.

Mr. Howe (Hamilton South): I so move.

Mr. Gilbert: I second the motion.

Motion agreed to.

The Chairman: It is now my pleasure to introduce to the Committee Dr. D. Craigen, a medical specialist at the Matsqui Institution of the Canadian Penitentiary Service at Abbotsford, British Columbia. Dr. Craigen comes to us with the blessing of the Solicitor General of Canada. He is highly qualified and I am sure he can supply the Committee with much useful information on the subject of addicts.

Dr. Craigen, will you proceed with your statement.

Dr. Daniel Craigen (Medical Specialist (Psychiatry), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.): Thank you, Mr. Chairman. First of all I would like to thank the Committee for the honour of this invitation and then go on almost immediately to make an apology to the Committee in that owing to a number of circumstances I have been unable to prepare a written brief to read to you this morning. I opened a new unit on Monday and this occupied most of my time up until my leaving yesterday. I did however send on a copy of two reports that the staff of the pilot treatment unit and I have written. I am afraid they are rather lengthy and garrulous at times but there may be some data in them that will be of eventual interest.

What I think I might do first—and if I am not speaking to the point please interrupt me—is mention what I am actually doing at Matsqui which is, as you know, an institution for the treatment and custody of drug addicts. There are two parts to the institution; a male satellite and a female satellite and in each of these satellites there is what they call a pilot treatment unit. These are intended for the treatment of and research into narcotic addicts. I run both the male and the female units. I have a staff of psychiatric nurses rather than custodial staff. I have a research officer on the institutional staff but he works in very close relationship with me, the theory being that it is from the pilot treatment unit that all the good ideas come.

We are operating a series of seven-month programs. There is nothing magic about the duration of this figure. When we were working it out initially with the parole board and amongst ourselves we felt that this was a reasonable length of time to get to know these people and to decide whether we could in fact let them out of the institution on parole.

The program to date has consisted of daily group therapy in the morning based on a sort of here-and-now attitude rather than a more formal psychiatric interviewing technique where one goes back and studies their childhood and so on. We are more concerned with the deviant behaviour which they exhibit from day to day than we are with what happened to them 15 or 20 years back.

The reason for developing this type of program was that when we were trying to plan a treatment program for the institution we found out there was in fact relatively little known about the treatment of drug addiction and there certainly seemed to be even less known about an effective measure of treat-

ment for drug addiction. The warden and the superintendent and I went down to places like Lexington and the California Rehabilitation Centre to see what they were doing there. We felt the recidivous rate at Lexington was sufficiently high that we did not want to follow their type of program. But the program at the California Rehabilitation Centre in Corona did impress us. It is based to a certain extent on the therapeutic community of Maxwell Jones. Their rate of success, although, again, it is not all that impressive, seemed to be better than most. They have about a five-year program. After the first year about 34 per cent of the people are still on the street, and this drops to about 18 per cent on the street after the second year—that is, people who are still free from drugs. Perhaps you do not find these figures very impressive but in the year and a half that I have been working with drug addicts I think this is quite good.

• (11:20 a.m.)

Mr. Otto: Did you say that 34 per cent were still on the street?

Dr. Craigen: Were still out of prison after the first year.

Mr. Otto: What kind of success do you consider "on the street" means? Does it mean that they are off drugs, or that they just have not been apprehended?

Dr. Craigen: This is something that is very difficult to ascertain. It is the subject of one of our current research projects. I think most people to date have taken failure to return to prison as their criterion of success, but I tend to agree with you that you have to also include those who are using but have not been apprehended.

Mr. Howe (Hamilton South): You say the criterion of success is the fact that they have not returned to jail. For how long a period do you mean?

Dr. Craigen: Most of the statistics from Lexington cover only a two-year period. They say that 34 per cent are still out of jail at the end of the first year after discharge, and that 18 per cent are still out at the end of the second year. They do not go further than that. I think these people should be followed up for a mimimum of about five years.

Mr. Howe (Hamilton South): You would consider five years as a minimum length of time to deem it a cure?

Dr. Craigen: To deem it a cure, yes.

In attempting to put this program together we also tried to have a look at the literature on how people felt about the norcotic addict —what made him an addict? This became, and still is, of course, a great puzzle to us. We would find that these people are defective in inter-personal relationships; that they have difficulty in communicating on a genuine and emotional level with people; that they have a low tolerance to stress; that they react to frustration by avoidance, or by pseudo-aggressive activities; and that they have an internalized sense of values that they have developed in the environment from which they came.

I should perhaps stress that the addicts I am dealing with are not professional people, or nurses; they are not, on the whole, people who have become accidentally addicted as the result of medical treatment. They are people who, in the great majority of instances, have been delinquent as children, who have entered into criminal activities at a relatively early age and who have subsequently become addicts. In a sense, I feel at times that we are dealing with a dual pathology. You have the addiction as the symptom perhaps of an underlying illness, or of a personality disorder, and then perhaps there is a separate pathology for the delinquency and preceding criminality. Therefore, in a sense, we have to treat two things: the illness under the addiction and the criminality. We may find that they are one and the same thing; I do not yet know.

I mentioned earlier that we were running a series of seven-month programs. We are currently in our third program, and have therefore discharged two programs to parole. The numbers involved are small and I do not think we can as yet claim any statistical significance from them. In the first group there were only ten people involved and they were discharged in November-December 1966. Of these, two have come back to us on suspension—that is, their parole has been suspended but not revoked—and we have been able to send them back out into civilian life again. Three paroles have been revoked; that is, three of the ten have been returned to jail —which means that seven of them are currently out of jail and in the community.

Mr. McQuaid: May I ask you a question just at this point? Of those ten, would you have any record of how many are people who have family responsibilities?

Dr. Craigen: Do you mean specifically that they are married and have children?

Mr. McQuaid: Yes, that they have responsibilities of that nature.

Dr. Craigen: Roughly three in that first group.

Mr. McQuaid: Would you be able to tell us whether any of those three returned?

Dr. Craigen: Yes, one of those returned. It has been my experience that where marriage is concerned an awful lot of these chaps seem to be married to female addicts and have a common law relationship with them rather than to be legally married to a non-addict.

Mr. McQuaid: What I was actually getting at is that it has been suggested that among addicts the stresses and the strains of modern living are some of the things that perhaps contribute a great deal to drug addiction, and that when an addict gets into a prison or some place where this responsibility is more or less lifted from him, he has no desire, or not as much desire anyway, for drugs. Do you go along with that theory?

Dr. Craigen: Yes, I would go along very much with that. I actually feel that prison existence is, in fact, almost a parasitic existence for these people in the sense that almost all responsibility is removed from them. They are no longer in the position where they have to worry about paying the rent or buying their food. All the decisions are made for them to the extreme sometimes; you know, where someone rings a bell and you get up in the morning, and you function by a bell throughout the day. This is one of the things we have tried very hard to get away from a Matsqui Institution. We have tried to push the responsibility for many things back on to the addict himself.

Mr. McQuaid: In other words, your treatment is directed towards that end.

Dr. Craigen: It is directed towards replacing the responsibility on them.

Mr. Howe (Hamilton South): Then this is not a prison in the ordinary sense; rather this is an institution that comes out of people who are incarcerated into prison by a court. Is that how you get in to this institution, by having been given a sentence in a court?

Dr. Craigen: Yes.

Mr. Howe (Hamilton South): In a sense it is a part of a prison but not run in the manner of an ordinary prison.

The Chairman: It is not voluntary.

Dr. Craigen: No, it is certainly not voluntary. I do not think we would have very many patients there if it were run on a voluntary basis.

Mr. Howe (Hamilton South): This still casts the stigma of a police record, or whatever you would call it, on these people who are in this Institution because they are there because they are forced to be there. Therefore, you are not alleviating perhaps one of the main things that needs to be alleviated with an addict and that is the stigma of a police record.

• (11:30 a.m.)

Dr. Craigen: I think this is very important, Mr. Howe, and I could not agree more with anything than the principles expressed in this Bill. Almost with a feeling of reluctance I have to perhaps underline again what I said earlier, that the majority of the people I personally deal with have been in trouble before they became addicts.

Mr. Howe (Hamilton South): In what kind of trouble? With their addiction?

Dr. Craigen: No, prior to that; they have either been on the fringes of the criminal world or they have sentences for things like breaking and entering.

Mr. Howe (Hamilton South): In order to get money to get their drug?

Dr. Craigen: No, in many cases prior to becoming addicts.

Mr. McQuaid: After you have had them as patients for, say, a period of a month, Doctor, do you find that the craving for drugs has disappeared? In other words, if drugs were available to them while they were in your institution, do you think they would take them?

Dr. Craigen: This is something I would very much like to find out. It is something that does sound rather ridiculous. I mentioned earlier that I tend to look on prison as a parasitic existence for these people and I mentioned they are removed from the realities of life to a certain extent. I see heroin as one of the realities of their lives and while they do not have a physical addiction after being in prison for a while I am quite certain the psychic dependency is still there. In my own mind I am pretty certain that if heroin were available, whenever they were under stress they would use it.

Mr. McQuaid: Yes, I agree, when under stress, but what I am trying to determine is whether or not this is actually an addiction or whether it is something that someone takes just because he cannot stand the stress and he takes drugs to relieve the stress.

Dr. Craigen: I think they may start off either for excitement or for the relief of stress but it does become very much an addiction. It is something they have to have whether stress is present or not.

Mr. McQuaid: Well, it cannot start as an addiction.

Dr. Craigen: No; I am saying that it may start from seeking further excitement; it may start becuase they want to be one of the crowd, one of the addict sub-culture; it may start as a result of stress. It does not start as an addiction, but it becomes one.

The Chairman: Do you want to carry on with your statement, or do you think you could give the Committee more information if we threw it open for them to ask you questions?

Dr. Craigen: This is entirely up to you, Mr. Chairman.

The Chairman: If you have something more to say before we start the questioning I would like you to say it.

Dr. Craigen: I think I probably have just a few points that I would like to make. I mentioned that of the ten who went out seven were still on the street and this pleases me immensely, of course. I wanted to point out that we have since discharged the second group and I do not anticipate that we will repeat the degree of success that we had with this first group.

The second point I want to make is that I was fortunate enough to read on the plane coming up the Minutes of one of your previous meetings, Mr. Chairman, and I noticed, I think it was Dr. Naiman's remarks, about research in the Institution. I would just like to assure the Committee that there is a very active research program going on there and that we do have a full time research officer. In the next month we hope to have a research report available on the data we have compiled so far.

The Chairman: If you would send it to the Clerk of the Committee we would appreciate having it.

Dr. Craigen: Those were the only two points.

Mr. Otto: Dr. Craigen, you said in answer to a question that in the Institution they would probably go after heroin at a time when, within the institution, they are under a certain amount of stress and then you seemed to indicate that the need for heroin is almost directly connected with stress. Could you say that possibly there is one avenue other than just stress? That is, a division between stress as an inability to cope with a problem compared with a desire for some sort of feeling of dominance which is not directly stress but a desire for some other feeling. Has that anything to do with it?

Dr. Craigen: Oh, I would say it very much has. I mean, in the absence of stress they would still use heroin to get what they would regard as the beneficial effects of the drug, the euphoria; the withdrawal, in a sense, from reality. I think I mentioned "under stress" because in institutions at the moment certainly there are penalties attached to the use of heroin and I feel that probably when the drive for the drugs was enhanced by some other factor they would be prepared to risk the penalty they would pay if they were caught using it in the Institution.

Mr. Otto: The experience from an institution—this is not your institution; this is from another experience—indicates that after one year 34 per cent were still on the street and after two years 18 per cent were still on the street.

Dr. Craigen: This is the California Rehabilitation Centre.

Mr. Otto: Projecting that, it would seem to be that after a period of five years you would have very few successes. Is that correct?

Dr. Craigen: This is what worries me about that set of statistics.

Mr. Otto: In line with that and with the experience you have had at your own Institution, presuming that stresses in urban living will become more and more acute rather than less, and presuming also that man is going to find himself more unable to cope with these stresses, what then is the answer to this increase in drug addiction? In other words, if this is going to be one of the indications of the stress, and we do not seem to have any concept of a solution from what you point out as the record, in the next 15, 20 or 25 years, what is the answer to this?

Dr. Craigen: Obviously I do not have the answer for that. I think again it was Dr. Naiman who was emphasizing the need for a

multiplicity of approaches to this problem and I think we have to have this. I feel that the work I am doing in Matsqui is a small part of the picture. The work Dr. Fraser is doing in Toronto is another, but perhaps wider, part. The work Dr. Williams in Vancouver is doing is another part. I think it is going to take a lot of people using a lot of approaches eventually in time to answer your question. On these statistics that I mentioned I think there is another factor that I feel reasonably strongly about; we are in the business of gathering data and assessing at this stage the effectiveness or otherwise of treatment approaches. Perhaps in five years time—

• (11:40 a.m.)

Mr. Otto: Well, Doctor, the reason for my question, and I was trying to illustrate it, is that over the period of the last several centuries or, say, almost a couple of millennia society has recognized that some people will not be able to cope with stress and will take to whisky and we have adjusted to it, and we say, Oh well, he has taken to whisky; that is inevitable. Now Mr. Klein's Bill seems to be directed towards the acceptance of narcotics as a natural progression of that same philosophy society has adopted in connection with alcohol. This is what I am trying to get at in connection with the basis of his Bill. Do you think that, until such time as society is able to cope with the problem of the inability of certain individuals in that society to adjust, narcotics should be put on the same basis as alcohol?

Dr. Craigen: Well, I am very much of the opinion that addiction is a symptom of an underlying illness, just as alcoholism is. On that basis I do not really see how one can call it a crime and thereby punish a fellow for an illness.

Mr. Otto: Thank you.

The Chairman: What solution do you offer?

Dr. Craigen: I do not offer any solution at this stage.

The Chairman: Doctor Howe?

Mr. Howe (Hamilton South): Dr. Craigen, does there seem to be a sort of attitude that this is a hopeless thing and that the small percentage is not worth while saving? Even if it is only the remaining, say, 20 per cent, or 15 per cent, or 10 per cent, these are still human beings, and I would suggest that the work that you and others are doing to treat these people is well worth while regardless of how small this percentage is; that it must be treated as an illness rather than having punitive measures taken to break it down.

Dr. Craigen: I personally feel that we cannot look for the degree of success that we have in injecting someone with penicillin for the treatment of pneumonia, or something like that. We have to aim for something less than that while we are still collecting data and assessing the treatment efficiency. One can say 34 per cent, or 20 per cent, but I take Dr. Howe's point very well. It is, in fact, people with whom we are dealing.

There is, in particular, one inmate from the first group who comes to mind. I think his total working time prior to entry into our unit was half a day in 28 years, of which he was inordinately proud. He was out working for a year, and he actually wrote to us, told us he was in trouble, and subsequently phoned and asked to come back in.

It is possible with some of these people to develop a genuine doctor-patient relationship even in a custodial setting. What is important, of course, now that he is back in, is that we get him out again and back to work.

Mr. Otto: Is it not, then, a matter of placing our values somewhere? We may have to look at things in a different light. Surely we are going to progress to the extent of realizing that at least this part of so-called crime is illness, and that the work that you and others are doing on their behalf is going eventually to increase this percentage? At least we must look upon it as being something worthwhile, or it would not have been started in the first place.

Therefore what is now perhaps 10 per cent after five years may, 20 years from now, conceivably be 20 per cent and so on, until we eventually come up not with a cure such as a shot of penicillin for an infection but rather a psychological type of cure that we can rely on. In other words, we can face up to this program differently and eventually improve it.

Mr. Craigen: Well, those of us who are working in this field would not stay in it unless we felt that was eventually possible, because, like the addict, I guess, we all have our own levels of frustration.

Mr. Howe (Hamilton South): Would you not say that that is all this Bill is asking for, in principle?

Dr. Craigen: I would agree with that. I would have to add a rider to that. I feel that in dealing with the class of addict with whom I am dealing a certain degree of compulsion is necessary. I do not think that these people, on the whole, would go voluntarily to an outside centre, and even if they went I am almost certain that the majority of them would not stay.

Mr. Howe (Hamilton South): And you can still have compulsion without a stigma?

Dr. Craigen: Yes, in a sense; we have with mental illnesses.

Mr. Howe (Hamilton South): It has taken many centuries to get rid of that stigma, and I often wonder if we really have.

Dr. Craigen: I do not think we are fully rid of it yet. But it is interesting, in a way, that mental illness also passed through a punitive stage.

Mr. Howe (Hamilton South): Oh yes; the chain-them-to-the-wall treatment.

The Chairman: We have Mr. Gilbert and Mr. Ryan.

Mr. Gilbert: Mr. Chairman, for my information I would like to direct a few questions to Dr. Craigen.

You say that you have small groups and that you have a seven-month program with daily therapeutic treatment. Of what do these consist?

Dr. Craigen: What happens in the groups?

Mr. Gilbert: That is right.

Dr. Craigen: I was almost tempted to bring with me a tape of one of the better groups to answer that question. The idea, on the whole, is to look at the individual's devious behavior. Initially, when we start a group, we spend perhaps a month or more trying to get rid of the traditional staff inmate barrier that is present. These people have been used, for lengthy periods of time—10, 15 or 20 years in some cases—to regarding any authority in prison as a punitive authority, as someone who, in a sense, is out to put them down. Before we can undertake an effective treatment relationship with them we have to have this out and discuss the hostility that goes with it, and, quite frequently, put up with hostility.

Once we have done that we then have an opportunity to look at the effect of the devious behaviour of the exhibit on the ward. This can range from minor to major things. Usually we have to take a minor thing because, as I said earlier, reality is not there in a prison. A man is kept waiting half an hour for his x-ray; he becomes very irritated; he is not going to go near any sort of doctor who keeps him waiting for half an hour. You know that this is a pattern in his life—an avoidance reaction—so you bring this up in the group. You talk to him about it; you relate how this might affect him on the outside. Other equally quick-tempered people in the group relate to him. The idea is to have a group of people projecting his behaviour at him so that he can look at it.

Mr. Gilbert: At the beginning, do you treat these patients with methadone to get them off the drug?

Dr. Craigen: Normally, the patients, or inmates—whatever we call them—prior to coming into the Institution have been withdrawn while awaiting trial. However, since I started sending them out on parole there is the odd one who is addicted and who comes back direct to us and in these cases we use methadone.

Mr. Gilbert: What is your opinion of narcotic clinics for people who have been discharged from prison and who, if treated with methadone, may be able to carry on daily activities?

Dr. Craigen: I think this harks back, in a sense, to what I said earlier about a multiplicity of approaches being necessary. I have recently been voted on to the Board of Directors of the Narcotic Addiction Foundation of British Columbia in Vancouver. They have a maintenance method on projects under way, and I will be very interested in the results of this.

Mr. Gilbert: Are your patients addicts on the hard drugs such as heroin, or have you any on some of the other new drugs?

Dr. Craigen: No; to qualify for admission to the Institution you have to be a heroin-addict.

Mr. Gilbert: You have brought up the interesting point, too, that there seem to be two aspects; one is the addiction, with the underlying mental problem from which the person may be suffering, and the second is the criminal aspect, that the person has been in trouble before, whether it has been as a result of wanting money for drugs or not is

• (11:50 a.m.)

difficult to determine. According to Dr. Cormier very few of these cases come in by the

direct approach of being guilty of possession of a narcotic under the Opium and Narcotic Drug Act. According to him most of them come in by the back door as a result of some other offence that they have committed. There was some discussion last week that perhaps an accused would have to set up a defence of addiction in the very same way he would set up a defence of insanity, and then on a quick test you can determine whether a person is an addict or not. You could then refer him to a treatment centre like yours without proceeding with the criminal offence. What do you think of this approach?

Dr. Craigen: I like it very much. As I understand it, this is roughly the process of civil commitment in the sense that it is used in California. If an addict is taken before a judge on, say, a charge of breaking and entering and it is established that he is an addict, he is sent, as you say, to an institution for treatment, and I gather that the actual charge for breaking and entering, or whatever it is, is held in abeyance in some way until he either successfully completes or fails to complete the course of treatment. At the end of that time he returns to court on that charge.

Mr. Gilbert: That is all, Mr. Chairman.

The Chairman: Mr. Ryan, you are next.

Mr. Ryan: Dr. Craigen, do you find a tendency amongst addicts to group on the outside? Do they get together in small groups of four or five people who have an influence upon one another, which makes it very difficult for you to cure them or their addiction? In other words, they get back into this group and into the same old routine.

Dr. Craigen: Yes. I think association is one of the very great dangers. I think in the cases that have come back to us that this has already been a factor of great importance. I think you will probably find that a lot of these addicts can go out and even manage over a period of time, to put in an 8 hour work day, but they are unable to use their leisure time. When they come to me they have been in prisons so frequently that they are unable to talk to the non-prisoners. I am trying to avoid the use of this word "squarer" as distinct from "rounder", but they are completely lacking in their ability to communicate, they cannot even dance and they do not know how to talk to a normal woman. They are at home with a prostitute.

I feel that in the long term we may have to teach them social skills because the only environment they are currently happy in is their own addict subculture. Apart from the drugs, the actual culture has a great drawing influence on them. They want to go where the action is, as they put it.

Mr. Ryan: In my early days after graduating in law I defended quite a few of these types free of charge. It was the custom in those days to put your name on the jail list. It struck me at the time that a lot of these addicts seemed to be very passive people, although amongst them there might appear someone who was extremely active, a real leader, who was setting the tone as it were for some of these groups. This would not be a type of person who could not stand stress. He seemed to be more a type of person who sought stress, who really got an exhilaration out of a hold-up or doing something to lead the band, as it were. Have you noticed this to any large extent?

Dr. Craigen: In a sense I think this is the attraction of the addict subculture, the game they almost play of getting the drugs, avoiding the police, getting the money for the drugs, the continuous sort of vicious circle of action that they are in. I am not sure as yet, just how important this is but I think it is certainly playing a large part in the relapses that I have had to date. I also understand that some of the Canadian addicts who went over to the U.K., and were supplied with drugs there, have in fact returned to Canada for this very reason. The only place they are happy in is this addict subculture.

Mr. Ryan: They miss the atmosphere of thrill and adventure.

The Chairman: Mr. Otto.

Mr. Otto: Dr. Craigen, I am going to twist things around a little more. The presumption is that the addiction to or the desire for drugs is a mental illness or, in turn, the inability to cope with social stresses is an illness. I am going to put it to you that it is not an illness. It is a normal part of man as an animal. That is, man is not a gregarious creature like the deer, the elk or the duck, but very much like the ape or the monkey and collects in small tribal groups, and therefore his inability to cope with an urbanized and a very highly social structure is not an illness at all but a natural tendency. If that is the case, then I ask what is particularly wrong with alleviating this inability to cope

with social problems by the legal use of drugs or narcotics?

Dr. Craigen: What is wrong with making heroin legally available?

Mr. Otto: What is unacceptable about recognizing the fact that social stress built up in a very highly technical urban society is not the element of man? Consequently, if certain numbers of our people cannot cope with this stress, what is particularly wrong about allowing them to make their adjustment through the organized use of narcotics?

Dr. Craigen: To start off, I think you are making an assumption that is fallacious. You are assuming that these people have attempted to cope with this technical society. The ones I deal with have not. They are not using drugs as a reaction to modern business methods, or anything like that. In my opinion they are using drugs almost as a natural part of their development. They have failed to grow up emotionally. They are immature. The degree of stress that our modern society provides them with is perhaps an easy way of rationalizing their use of drugs, just as it is an easy way of rationalizing the widespread use of barbiturates and tranquillizers. I do not think it is the cause for their drug addiction.

Mr. Otto: You are saying, doctor, that it is their inability to grow up, or their attempt to try to be responsible or to react to the stresses of society. I have put it to you that man as an animal is not that type of creature. By nature he is not a gregarious animal. He is a dominating creature within a very small tribal group, such as a family or a small tribe. Consequently, how can you say that it is not natural for him to act perfectly natural, unless you presume that man is by nature a very gregarious creature and loves lots of company and he is like the bee or the ant, where he is almost born into it. I put it to you that if indeed man is not a gregarious creature, then the difficulty he encounters in adjusting to this urbanized life is a normal difficulty. In fact, those who adjust are abnormal. In this event what is particularly wrong with society recognizing the fact that it is against his nature?

• (12 noon)

Mr. Howe (Hamilton South): Mr. Chairman, may I interject at this point. Would the taking of drugs help to alleviate the situation.

The Chairman: That is the point that Mr. Otto was getting at. He has established his thesis, and now he wants to know...

Mr. Howe (Hamilton South): Well, it is getting so highly philosophical.

Mr. Otto: No, it is not. What is objectionable to society to have these people sort of drop off from the world, or get off the world temporarily until such time as—what is wrong, in your opinion?

Dr. Craigen: In my opinion?

Mr. Otto: In your opinion.

Dr. Craigen: Well in my opinion, I think that if we are going to legalize marijuana and if we are going to legalize heroin, just as we legalized alcohol and we legalized cigarettes, which I smoke, we are going to have an awful lot of people dropping off. I am not speaking for a moment of the side effects of any of these drugs, of the possible abuse or the possible malnutrition or the possible side effects which you know accompany alcoholism too. There has to be a stage somewhere, assuredly, where people have to stay in touch with reality, and not just escape from it. To my mind you are not legalizing heroin; you are legalizing withdrawal from the world.

Mr. Otto: Surely, then, on that same basis, Doctor, you are legalizing withdrawal from the world if you legalize television. There are great numbers of people who are addicted to television because they drop off from the world. As long as society can exist with the productive capacity remaining—and it seems that it certainly can—then I ask you, what is wrong about putting narcotics on the same basis as alcohol and cigarettes and television and beer and everything?

Dr. Craigen: I think you are taking it for granted that if heroin were legally available, the addict would use it sensibly; that he would take perhaps a little in the morning and go out to work. I do not think this is the case. They did some studies on this in Lexington, where they did make heroin available to a number of people, and they started off as we all hope they will when we are advocating legal drugs by using a little and by spacing it out. Within a remarkably short period of time the dose had increased out of all proportion. The drug was supposed to last for a certain time—I forget what it was, a week or a month—and by the middle of the month the fellow had gone through what he had been given.

Mr. Otto: In other words, if he is in a constant dream world, or whatever it is, the greatest harm to society then is that he is completely removed from productive capacity, is that correct? Other than that, is there any other harm that he can do to society? Does he become violent?

Dr. Craigen: No. In my experience, violence is not too often associated with heroin addiction, but I am almost tempted to return the question. We are discussing society; what about our responsibility to the individual? As a doctor I cannot accept this fellow lying there, using heroin and not being in touch with reality any more than I can accept a schizophrenic in a catatonic stupor, or an alcoholic in DT's.

Mr. Otto: Then my answer would be that as soon as you have some feasible, possible potential treatment to this great, vast problem of maladjustment to society, then I think you can put more stress on the illegality of it. Until that time, it is difficult to differentiate between alcohol or any other sedative—cigarettes, narcotics. We are still trying to solve the problem of alcoholism.

Dr. Craigen: Very much so.

Mr. Otto: But we do not necessarily make the taking of alcohol a criminal offence. When the medical profession, when we have alcoholism, I think at that time to continue the taking of alcohol a criminal offence. When the medical profession, when we have all finally been able to solve the problem of alcoholism, I think at that time to continue the taking of alcohol might be considered a little more criminal than it is now. But the question I ask is, why do you differentiate between narcotics and alcohol?

Dr. Craigen: I do not think I differentiate between them.

Mr. Otto: I thought from the tenor of your answer, or your question to me, you said that surely you, as a medical man, cannot have an individual who has left this world, so to speak, with narcotics and be satisfied to allow him to do this. In others words, you have said to me that it is your holding that there is something wrong with the taking of narcotics.

Dr. Craigen: Just as I consider there is something wrong with the excessive use of alcohol.

Mr. Otto: I see. As long as they are both the same.

Dr. Craigen: Very much so. I am sorry if I misled you there.

The Chairman: Mr. Forest.

Mr. Forest: Doctor, this institution of yours in British Columbia which seems to be unique in Canada, is it run by the provincial government, or the Canadian government?

Dr. Craigen: It is run by the federal government.

Mr. Forest: The federal government. Is it the only one?

Dr. Craigen: It is the only one in Canada.

Mr. Forest: Is it a pioneer experiment to determine how to treat drug addicts, to assess its value, to promote or to organize other facilities in Canada the way yours has been done?

Dr. Craigen: It is a pioneer effort, as you describe it. The idea is to aid, treat, and do research into treatment methods. As to its possible duplication or otherwise, I am uncertain; I feel there would only be one other area where such an institution could be built at all, and that is in this province. There are about 3,500 known addicts in Canada; there are about 1,900 of those in British Columbia, and I think the larger part of the remainder in in Ontario.

Mr. Forest: But do you feel that in large cities like Montreal and Toronto, such facilities organized by the federal government should exist?

Dr. Craigen: I feel they should exist, organized by somebody.

Mr. Forest: I understand that at present, outside of British Columbia, addicts are just thrown in jail, while in Vancouver they are sent to your institution. Is that correct?

Dr. Craigen: I believe they have the option of transferring to Matsqui from other parts of the country.

Mr. Forest: From other provinces, too?

Dr. Craigen: I have in my own program several people from Toronto, and I know that some of the ladies from Kingston Prison for Women came down, but I understand this was on a voluntary basis.

Mr. Forest: It was previously suggested here in this Committee that in your institution there is a correctional atmosphere, and that by labelling the individual as a criminal, it is not as useful as it could be. Would you agree with this?

Dr. Craigen: I would like to draw a comparison. I previously worked for a brief period of time, part-time, in another penitentiary, and I was very much struck there by the correctional atmosphere, and I felt that it was a barrier to the treatment of any inmate. I know that in the Matsqui institution a very genuine and continued effort has been made to try to stop this dichotomy between the treatment and the custodial approach. I do not think we are ever going to be 100 per cent successful in that, and I wonder how far we can go. Surely in these circumstances we cannot remove custody completely because these people are sent to us for custody and treatment. Even if you adopt a civil commitment procedure, as they have done in California, you still have to have guards. You can give them another name but that is what they are and that is what the inmate knows them by.

• (12:10 p.m.)

Mr. Forest: Is the same treatment given at Lexington that you give at your place?

The Chairman: Is that a question?

Mr. Forest: Does Lexington follow the same procedure as you?

Dr. Craigen: At the moment they are developing a project which is very similar to ours and we are in correspondence with them on this. There is nothing novel, of course, about the idea of group sites. This idea has been used for many years in a variety of places and for a variety of conditions.

The Chairman: Are there any further questions? Dr. Howe, Mr. Stafford and Mr. Ryan.

Mr. Howe (Hamilton-South): I have decided to proceed along the philosophical line that Mr. Otto started. I thought it was rather interesting. You say that you do not accept a person who is in a catatonic stupor or one who is in a stupor over the use of drugs, and so on. Do you think perhaps we tend to reject these people from society because they are not useful to it, and we presume that we are? They have accomplished something that we have been unable to do, so we have to work for ours.

Dr. Craigen: I think we probably could reject the addict for that reason but I think we reject mental illness, and perhaps addiction and alcoholism, because of our fear of it, because of our ignorance of what causes it, because of our ignorance of how to treat it and perhaps some fear in ourselves that one day something in us might crack and we might be allied with them.

Mr. Howe (Hamilton South): If we assume that the ultimate goal in life is happiness, then certainly they have achieved it.

Dr. Craigen: I have spoken with them frequently and I certainly do not think they achieve happiness. They might have achieved in the early stages of their addiction a transient euphoria, but once they are addicted they are certainly not happy.

Mr. Howe (Hamilton South): All we have to do is relieve their frustration from one dose to the next. If we provide it, then it is going to be a total state, is it not, and there will not be the frustration so that happiness would be sort of ultimate by these standards. I do not want you to misunderstand but I just cannot accept it. It is proceeding along this same line. What are we going to do, have half of society under the influence of heroin and the other half working to provide it?

Dr. Craigen: I have been trying to—

Mr. Otto: Is it 1984, that sort of thing?

Mr. Howe (Hamilton South): We are now getting into another philosophy.

Dr. Craigen: I have been trying to avoid a question like that because I do not have any factual data or research figures to back it up, but certainly if the aim is to have half of society comatose, or approaching it, or if we want 1984, then let us go ahead and legalize the law.

Mr. Howe (Hamilton South): I am going to change the subject, then, and ask you if you could give us an assessment of the value of these institutions within the penitentiary structure.

Dr. Craigen: The value of an institution such as Matsqui in the penitentiary structure in relation to the penitentiary population in general?

Mr. Howe (Hamilton South): An assessment of how you feel this fits into the penitentiary structure. Is it where it should be ? Is it serving the purpose it should serve or should it be elsewhere? How do you assess it in its present position?

• (12:15 p.m.)

Dr. Craigen: Geographically I think it is extremely fortunate. They build a freeway between Vancouver and Abbotsford and I think the more remote you make these insti-

tutions the more difficulty you will have in getting professional staff. I think the only reason we have our present staff is because Vancouver is available.

I think—and I am trying to encourage this at Matsqui—there should be a very close liaison between institutions and the relevant university departments, and I would like to see interns come into the penitentiary service as part of their university course more frequently. I think the penitentiary has an unfortunate public image among professional people and we will not be able to do anything about this unless we can get them to visit as interns.

Mr. Howe (Hamilton South): In a sense that really did not answer my question. Perhaps I did not make it too clear. I did not mean the geographical fitting in, I meant if you thought the type of work that you are doing in the institution that you run fits as such into the penitentiary or should it be separated from it, and I do not mean geographically. I cannot think of the word I want.

Dr. Craigen: Are we getting back to this correctional atmosphere again?

Mr. Howe (Hamilton South): That is right. That is really what I meant.

Dr. Craigen: Perhaps I am over-cautious. I would not like to suggest that we re-organize everything overnight but I would like to see a structure built perhaps half a mile from a penitentiary, where the penitentiary perhaps would still be the parent institution but in this smaller unit we could treat people in a non-correctional setting, a non-custody setting, to see just how much effect the absence of this setting has on their progress.

Mr. Howe (Hamilton South): What is the need for this geographical connection with the penitentiary at all?

Dr. Craigen: I must admit I am perhaps thinking on too small a basis. I am visualizing such things as food services and the necessity for not duplicating administrative staff, and this type of thing. This is the only reason for its nearness.

Mr. Howe (Hamilton South): This being the case, if you wanted to save on truck deliveries of food, and so on, you could possibly associate it with a hospital and accomplish the same thing. In other words, does it have to be part of a penitentiary set-up? Could it not be part of a hospital or some other institutional set-up, a mental hospital, or something like that, rather than a penitentiary?

Dr. Craigen: I would very much like to see it as part of a mental hospital.

Mr. Howe (Hamilton South): Do you think it would fit better into this type of surrounding than into a penitentiary environment?

Dr. Craigen: I think treatment might well be more effective under such circumstances.

Mr. Howe (Hamilton South): Thank you very much.

The Chairman: Mr. Stafford, you are next, followed by Mr. Ryan and Mr. Whelan.

Mr. Stafford: Dr. Craigen, I have only been here for a few minutes, I had to go elsewhere this morning, but it was at my request that you are present. I should have been here because I do not know what you have covered. When I was out at Matsqui about a year ago, and certain of your officials were good enough to show me all through the institution on a Sunday, I talked to quite a few prisoners or inmates as well. I noticed one thing that was bothering a lot of the prisoners —not only the ones affected—was the fact that several inmates, and especially the ones from British Columbia, had been declared habitual criminals on the application of the Attorney General of that province and this seemed to bother the confidence of many people there. First of all, do you not think it is very important to build up the confidence of the inmates?

Dr. Craigen: Their confidence in what?

Mr. Stafford: That it is very important to build up their self-confidence.

Dr. Craigen: Of course, I think this is important. We have to give them the confidence to go out of prison—

Mr. Stafford: I want to make one point quite clear. I remember when we first went out there the inmates were all watching a show. There was a man in a kilt with bagpipes and there were bands and everything else going on at the time. As I mingled among them I was asked by several people to go and see these inmates who had been declared habitual criminals. It seemed to really bother them. Do you feel you can say anything about whether this should happen or not?

• (12:20 p.m.)

Dr. Craigen: I can speak only for the small group of people I have been dealing with. Of

the 14 involved in the last program about four were habitual criminals and we had three in our control group making a total of seven going out. I think this time we have about nine habitual criminals involved in the program. Of the three who went out from my program one has come back, on suspension, and it would appear that in his case the habitual criminal section of the act was not the deterrent that it is meant to be. Of the other two I think there is an awareness of what they have at stake in failing to keep to the conditions of their parole.

I am in favour of having a degree of control over people after they leave the institution. To put it another way, I would not be in favour of an habitual criminal act that is just going to put somebody in a cell and leave him there forgotten for the next forty years. I am in favour of it only as a means of getting a person into prison for the purpose of treating him and then putting him back into society under parole supervision of decreasing intensity over a number of years, but I feel there should be some provision after, say, five years or whatever period is determined, to remove him from that Act.

Mr. Stafford: A couple of witnesses felt that if prisoners, or any accused, responded effectively they could be better treated outside. Do you agree?

Dr. Craigen: Oh, if they respond effectively, yes, they should be outside.

Mr. Stafford: That is all, thank you.

Mr. Ryan: Doctor, of the addicts you have had in your custody what has been the incidence of attempted violence and actual violence?

Dr. Craigen: There was one instance of sort of minimal violence, and this is the only thing that has occurred in the year and a half that I have been working with them.

Mr. Ryan: Thank you.

The Chairman: Is that all, Mr. Ryan?

Mr. Ryan: Yes, Mr. Chairman.

Mr. Whelan: I just wanted to ask the doctor one question, Mr. Chairman. I asked the witness last week the same question and maybe the doctor does not care to answer either. In your experience dealing with these people who have been taking drugs of some kind what percentage would you say have committed violent crimes?

Dr. Craigen: I am afraid I could not give you a percentage offhand.

Mr. Whelan: Do you think people are more inclined to commit violent crimes if they are on some type of drug?

Dr. Craigen: I do not associate the commission of violent crimes with the use of heroin. I regret I cannot give you statistics to back this up at the moment.

The Chairman: Our previous evidence indicated narcotics addicts are not inclined to be violent types and are more inclined to commit minor crimes to get heroin.

Dr. Craigen: This is of some concern to me because every seven months we are sending a certain number of these people out on parole. While I am interested in them as patients I also feel that I have a certain responsibility to society and I would not like returning those people who were prone to committing violent acts.

The Chairman: Mr. Wahn, have you any questions?

Mr. Wahn: No, Mr. Chairman.

The Chairman: Dr. Craigen, what is your view with regard to the use of methadone on a voluntary patient who goes to a clinic and voluntarily takes this drug on a regular basis of once a day. Do you think such treatment has real merit?

Dr. Craigen: I think the work that Dole and Nyswander are doing in New York would appear to at least indicate the necessity of our looking into this. A project on this as I think I mentioned is currently on the go at the Narcotic Addiction Foundation in Vancouver. I was a little worried about it at first because I did not feel the methods of control were as good as they might be but as they now have a thin layer chromatography lab they should be able to control it.

The Chairman: Do you use methadone at your institution?

Dr. Craigen: For withdrawal only.

The Chairman: But not as a regular daily treatment?

Dr. Craigen: No, we do not use it at all.

The Chairman: So you have not too much experience in the benefits or otherwise that might be derived from that particular drug which is also an addictive drug?

Dr. Craigen: No, I have no personal experience of maintenance methadone.

The Chairman: And is not the type of patient you are dealing with one that would be the least likely to respond to therapy and so on?

Dr. Craigen: I would say they are more poorly motivated than the people that attend voluntary out-patient clinics.

The Chairman: And do you agree with the theory that if a person is charged with being in possession of heroin or is an addict the magistrate, instead of sentencing him to a term in jail, should have the option of referring him, if he agrees, to a clinic where he will receive a treatment such as methadone?

Dr. Craigen: Yes. I think the criteria for which type of patient should be put on maintenance methadone are still in the stages of being worked out.

The Chairman: It would be at the discretion of the magistrate. Do you feel it would be a sensible approach to put him on probation while taking treatment and if it worked out satisfactorily then he would not have to return to the magistrate's court for adjudication on the carge of possessing heroin.

Dr. Craigen: From our current knowledge I see that as a very reasonable alternative to sending somebody to prison. I would prefer of course to continue our attempts to try and treat these people to enable them to live a drug-free life.

The Chairman: Would that be along the lines that I suggested or along other lines?

Dr. Craigen: I think there should be different approaches. I think the line you suggest would work admirably with certain people but for others I think a degree of complusion in some way would be necessary because I believe they would abuse the methadone.

The Chairman: To your mind, that is the difference between a selected group and a non-selected group.

Dr. Craigen: Yes.

The Chairman: Has anybody else any further questions? If not, before adjourning the meeting I want to thank Dr. Craigen for his attendance here today and for the assistance he has given to the Committee.

Is it agreed that Dr. Craigen's reports on the treatment of patients at the Matsqui Institution in Vancouver be filed as exhbits to today's proceedings.

Some hon. Members: Agreed.

The Chairman: Again, thank you very much, Dr. Craigen. I am sure we all have benefited from your presentation. We certainly appreciate your coming all the way from Vancouver.

• (12:30 p.m.)

Dr. Craigen: Thank you.

The Chairman: The meeting will stand adjourned until Tuesday, December 12 at 11 a.m. at which time we will be considering Mr. Cowan's Notice of Motion No. 20 in respect of compensation to victims of crime. Mr. Cowan will be the witness on that occasion.

The meeting stands adjourned.

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,

The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 14

TUESDAY, DECEMBER 12, 1967
THURSDAY, DECEMBER 14, 1967

CONCERNING

Notice of Motion No. 20 (Criminal Injuries Compensation Board).

and also

The subject-matter of Bill C-115,
An Act to amend the Criminal Code (Destruction of Criminal Records).

INCLUDING THIRD REPORT TO THE HOUSE
(respecting the subject-matter of Bill C-115)

WITNESS:

Mr. R. B. Cowan, M.P.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

27679—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (*Hamilton South*),	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
Mr. Guay,	Mr. Otto,	Mr. Woolliams—(24).
Mr. Honey,		

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,
WEDNESDAY, November 22, 1967.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion:

That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.—(Notice of Motion No. 20).

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

27679—1½

REPORT TO THE HOUSE

TUESDAY, December 19, 1967

The Standing Committee on Justice and Legal Affairs has the honour to present its

THIRD REPORT

Your Committee had referred to it the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records). Your Committee also had referred to it the Minutes of Proceedings and the Evidence taken before the Committee during the past Session in relation to an identical Bill (Bill C-192).

In considering the subject-matter of these Bills, your Committee held six formal meetings and heard the following witnesses:

Mr. Donald R. Tolmie, M.P., sponsor of the Bills
Mr. Georges-C. Lachance, M.P.
Mr. A. M. Kirkpatrick, Executive Director
John Howard Society of Ontario
Mr. George Street, Chairman, National Parole Board.

Representing the Ontario Magistrates Association

Senior Magistrate W. J. Tuchtie, Q.C., President
Magistrate L. A. Sherwood, First Vice-President
Magistrate F. C. Hayes, Second Vice-President.

Representing the Canadian Association of Chiefs of Police

Mr. E. A. Spearing, M.B.E., President
Mr. James P. Mackey, Past President
Mr. Arthur G. Cookson, Second Vice-President
Mr. D. N. Cassidy, Secretary-Treasurer
Mr. Walter Boyle, Crime Prevention and Juvenile Delinquency Committee.

Your Committee has given the subject-matter a thorough study and now wishes to make the following recommendation:

Legislation should be enacted incorporating the principle of expunging of criminal records based on the following considerations:

(a) There should be no distinction between infants and adults in any legislation dealing with the expunging of criminal records;

(b) The elapsed time for the erasing of a criminal record should be a period of five years after service of sentence imposed, whether such period commenced before or after the coming into force of this proposed legislation;

(c) The process of expunging the record should be initiated by an application by the applicant to a Board of Convictions Review set up by the Department of Justice;

(d) The expungement of the adjudication of guilt should be made mandatory upon petition of the offender if the Board finds he has not reoffended. Any judgment denying expungement should be made appealable by the applicant;

(e) The statute should reach not only the officially adjudicated case, but cases of arrest-release and cases of acquittal as well. It should extend the order of sealing to all law enforcement and other agency records. Because limited inspection of the records at a later time may be necessary, the statute should provide for sealing rather than destruction of the records. Records so sealed should be required to be removed from the main or master file and kept separately;

(f) The statute should expressly set forth the effects of the order in restoring the civil rights of the redeemed offender, and it should expressly annul the conviction and the offence. In addition to specifying that the person will thereafter be regarded as never having offended, it should provide, to the extent that it is within federal authority to do so, that in all cases of employment, application for licence or other civil privilege, examination as a witness, and the like, the person may be questioned only with respect to arrests or convictions not annulled or expunged. A person might be questioned about his previous criminal conduct only in language such as the following: "Have you ever been convicted of a crime which has not been expunged by a competent authority?"

(g) The statute should provide that the expunged record, upon subsequent conviction, may be reactivated and considered by the Court for the purposes of sentencing or appropriate disposition.

Copies of the Minutes of Proceedings and Evidence relating to Bill C-115 (*Issues Nos. 5 and 14*) and to Bill C-192 in the past Session (*Issues Nos. 30, 31, 32 and 33*) are tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, December 12, 1967
(15)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Honey, Otto, Stafford, Tolmie and Wahn (10).

Also present: Mr. R. B. Cowan, M.P.

The Chairman read the Order of Reference dated Wednesday, November 22, 1967, which empowered the Committee to consider and report upon the provisions of Notice of Motion No. 20.

The Chairman introduced the witness at today's meeting, Mr. R. B. Cowan, M.P. Mr. Cowan delivered a prepared statement, copies of which were distributed to the members present. The members questioned Mr. Cowan on subjects related to his presentation.

At 11.55 a.m. there being no further questions, the Chairman thanked Mr. Cowan and the Committee adjourned until Thursday, December 14, 1967 at 11.00 a.m.

THURSDAY, December 14, 1967
(16)

The standing Committee on Justice and Legal Affairs met *in camera* at 11.15 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Gilbert, Howe (*Hamilton South*), MacEwan, McQuaid, Tolmie and Wahn (9).

The members considered a draft Report to the House, respecting the subject matter of *Bill C-115, An Act to amend the Criminal Code* (*Destruction of Criminal Records*). Certain amendments were agreed to and the report, as amended, was adopted.

It was agreed that the Chairman should present the report as the Third Report of the Standing Committee on Justice and Legal Affairs.

The Committee adjourned at 12.25 p.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, December 12, 1967.

The Chairman: Gentlemen, we have for consideration today Notice of Motion No. 20. The Committee's Order of Reference reads as follows:

> Wednesday, November 22, 1967.
>
> Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion:
>
> That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.

That is attested to by Mr. Fraser, the Clerk of the House of Commons. The sponsor of the Notice of Motion is Mr. R. B. Cowan, M.P., the member for York-Humber. As Mr. Cowan needs no introduction to this Committee, I will call upon him to make his presentation.

Are there sufficient copies of Mr. Cowan's statement to go around?

Mr. R. B. Cowan, M.P., (York-Humber): Yes, Mr. Chairman. Everybody has one.

Mr. Chairman I do not believe that I need to take the time of this Committee to elucidate the Notice of Motion. I believe that all members of the Committee have been in the House on one or more of the five different dates when it has been discussed as shown on the last page of the submission. I do not know that it is necessary for me to read the brief. I think this subject matter is well known to the members of this Committee.

The Chairman: I think it might be advisable for you to read it and then it will be on the record.

Mr. Cowan: All right. On January 20, 1966, I placed a Notice of Motion on the Order Paper of The House of Commons, reading as follows:

> That, in the opinion of this House the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.

This Notice of Motion was called for discussion on Wednesday, June 8, 1966. It was on the floor of the House for one hour and was talked out, and of course immediately dropped to the bottom of the list. Inasmuch as I believe there is a matter of justice involved in the case of compensation for the innocent victims of criminal acts, I reintroduced this Notice of Motion into this Parliament on May 9, 1967, the day after the Second Session began. It was not called for discussion again until November 22, 1967. Full reports of those hours of discussion are to be found in *Hansard* on pages 6160 to 6168 for June 8, 1966, and pages 4585 to 4593. At the end of the second hour of discussion, the House of Commons unanimously adopted the following motion, moved by the member for Vancouver Quadra, Mr. Deachman, and seconded by the member for Lotbinière, Mr. Choquette:

> That the said proposed motion be deemed to have been withdrawn and that the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions thereof.

This is the reason for this matter being before the Justice and Legal Affairs Committee at this time.

When I spoke on this Notice of Motion on June 8, 1966, I was influenced exclusively in my thinking by the fact that murderers are looked after during their time of trial and imprisonment at the expense of the Canadian government, but nothing is done for the families of the victims of their acts, even though the father or mother of a large family of small children might have been the victim.

As I mentioned on June 8, 1966, I have spent considerable time on various occasions, raising money to be given to the families of the victims of criminal acts. I became provoked during the course of my voluntary actions in soliciting funds on behalf of the little Massey girl who was an attendant in the Sunday School of Victoria Presbyterian Church at the time of her murder. I began to wonder why the good people of Victoria Presbyterian Church and Sunday School in West Toronto should have to solicit funds on behalf of the victim's family, when I knew that the government had already arrested a man in connection with the case, and was feeding him and giving him a bed. Since then he has been committed to an insane asylum where he is maintained at the taxpayers expense, including taxes collected from the mother of this man's victim. Is this right?

It was not until the hon. member for Greenwood, Mr. Andrew Brewin, spoke on June 8, 1966, that I learned that in Great Britain the White Paper on Compensation For Victims of Crimes of Violence was approved by way of Motion on May 5, 1964. Mr. Brewin also pointed out that New Zealand and California had introduced similar legislation, and commented that he agreed that Canadians are entitled to ask for precisely similar legislation to be approved in Canada. Following Mr. Brewin's comments, I had long discussions with Mr. John Gilbert, the member for Broadview. I have secured copies of the legislation. When the law officers of the Crown were preparing this resolution, they said to me: You do not want this resolution prepared simply as though all the victims were murdered. They remarked: We know your heart and we know your mind on this point. If a girl were being attacked by, let me say, an ape, a word synonymous with this type of man, and she cried out, perhaps as a result of having vitriolic acid thrown in her face to blind her, and gentlemen came rushing to her aid while the ape disappeared, that girl might be left blinded for life, although she had not been murdered. These officers of the Crown said that they had prepared this resolution to cover a case like that, also, where a person has been attacked by a criminal and has suffered permanent injury, the family has suffered damages and compensation should be made available to the family.

Now, of course, the situation is much worse in case where the breadwinner is murdered and a widow may be left with children to look after. What compensation does the State provide?

On April 1, 1967, the Province of Saskatchewan put into force an act to provide for the payment of compensation in respect of persons injured or killed by certain criminal acts or omissions. That Act is known as The Criminal Injuries Compensation Act 1967.

In December, 1966, the Province of Manitoba issued a White Paper entitled "Citizen's Remedies Code", which was presented to the Legislature of Manitoba by Stewart E. McLean, Provincial Secretary. This White Paper commented "There appears a need to alleviate hardship which many crimes of violence are inflicting upon innocent people. The Increase in crimes of violence in recent years has focused attention on this need". The White Paper indicated that an act along these lines might be introduced, but due to a provincial election in Manitoba, no action has yet been taken by the Manitoba Legislature on this matter.

The Province of Ontario Legislature in 1967 passed an Act known as "An Act To Provide Compensation For Injuries Received By Persons Assisting Peace Officers". Under this Ontario Act, where any person is injured or killed by any act or omission of any other person occurring in, or resulting directly from assisting a peace officer, the Law Enforcement Compensation Board may make an order for the payment of compensation.

I understand that on February 28, 1967, the Legislature of the Province of British Columbia introduced an Act known as the British Columbia Crime Casualties Act. It allows the Municipalities in the Province of British Columbia to award compensation to the innocent victims of crime.

• 1120

Reference has been made to the actions taken in four provinces of Canada regarding

compensation to the innocent victims of crime. I would like to point out that in one of the provinces, it is not necessary for the innocent victims to await a court conviction before they may appeal for compensation. In another province, no compensation may be paid to a victim or victims until a conviction has been secured, which may be never, if the assailant is never caught. In a third province, the compensation is payable by municipalities, which may vary in their ability to make compensation, from a very poor mining district, to an ultra-wealthy community incorporated as a tax haven. In a fourth province, compensation is available only to people who have assisted police officers in the performance of their duties.

This variation in compensation available to innocent victims of criminal acts, indicates the absolute necessity of a Canadian statute that would make the award of compensation uniform, in the same manner as The Criminal Code is uniform throughout the Dominion of Canada. The taxpayers of Canada are taxed to keep murderers within prison walls. Why should not the taxpayers of Canada be taxed to compensate the families of the victims of criminal acts? If a Royal Canadian Mounted Policeman is killed, as has occurred in Edmonton, Alberta, and Grande Prairie, Alberta, the taxpayers of Canada pay the compensation available to the widows of such policemen. Why should not the innocent victims of criminal acts be compensated by the Canadian taxpayers, as well as the widows of RCMP officers?

If an argument is advanced that compensation is a provincial matter, I wish to express my belief that no province would object to the federal government making compensation available to their residents from a Canadian tax fund. When there are floods in Italy or earthquakes in Japan, the Canadian taxpayer makes donations to those areas from the Canadian government's revenues. Why should the Canadian taxpayer be allowed to make contributions to foreigners in distress but be told that as Canadian taxpayers, they should not be making compensation to Canadian residents who have suffered from a family disaster?

In addition to the compensation funds that exist in New Zealand and Great Britain, there are similar funds in the State of California and the State of New York. An expert witness who might be called to testify before this Committee, is Professor J. LL. J. Edwards, Director, Centre of Criminology, University of Toronto. Studies along the lines of compensation to victims are at present being conducted by Osgoode Hall Law School, Toronto, Ontario, and the Law School of Dalhousie University, Halifax, Nova Scotia.

If there should be any feeling that the question of compensation for the innocent victims of criminal acts is one for the provinces and not for the Dominion of Canada, might I point out that criminals convicted under the Criminal Code who are sentenced to two years or more in the penitentiary are maintained at the expense of the Canadian taxpayer. If there is a belief that the provinces should pay compensation towards the innocent victims, might I suggest that the Canadian government pay compensation to the innocent victims if the crime involved calls for a sentence of two years or more. While the provinces might be asked to pay compensation for crimes involving sentences of less than two years, if there should be any province or provinces that would not accept Canadian government payments in the case of all crimes, I believe the Canadian government should pay all the compensation.

I discussed this question in the House of Commons on five occasions. They are reported in full in *Hansard:*

April 5, 1966, pages 3899 to 3902
June 8, 1966, pages 6160 to 6168
Jan. 10, 1967, pages 11649 to 11650
May 19, 1967, pages 434-438
Nov. 22, 1967, pages 4585 to 4593

The Chairman: Thank you very, very much, Mr. Cowan.

Do you wish to enlarge on your statement or are you ready to answer questions?

Mr. Cowan: I will endeavour to answer questions now if there are any.

The Chairman: Mr. Otto is first and then Mr. Tolmie.

Mr. Otto: Mr. Cowan, I have no objection to your resolution. Frankly, I think it is a good idea. However, do you think that the compensation should be paid directly out of a specific fund, or should it be somehow attached as a sort of insurance plan to some other piece of legislation?

Mr. Cowan: In Great Britain, which is the fund I know the best because I spent some time discussing it with the compensation board there, it is just paid out of the general revenues. There is no special fund set aside for it because they do not know what the incidence of criminal acts is going to be.

Mr. Otto: Judging by the figures of the insurance people it would seem, since they are willing to cover such an eventuality very, very cheaply, that the cost would not be too great as far as the Canadian taxpayers are concerned.

My only question is: Are you suggesting the same compensation regardless of the means of the victim's family?

Mr. Cowan: No, not at all.

Mr. Otto: There would be a means test?

Mr. Cowan: No, not a means test. In Great Britain there are many families of victims that do not even apply for compensation. Those who do not apply state that they do not need compensation for financial reasons, or, secondly, they state that they will suffer what they call the injustice that has occurred to them as a family and that they are not asking the state to participate. The number of people in that category is very small, and the law was brought in in England because the great majority of the people required compensation because of the hardship inflicted on them by the injury they had sustained.

Mr. Otto: I have one other question. Have you given any thought to the contributory factor of the victim? In other words, have you given any thought to what would be the situation if the victim had in some way instigated an attack on himself, even though it was accepted that the accused was guilty and was punished?

Mr. Cowan: There has been a tremendous amount of thought given to that in those jurisdictions where such a law now exists. In every one of them there are sections of the law pointing out that if there is an internecine crime committed the families cannot collect in any manner, shape or form.

About the amount of compensation, New York State is the best example I can give you. There they have a compensation law that families cannot collect . . .

I suppose this is all being taken down?

The Chairman: Oh, yes.

Everything you are saying is being recorded on tape.

Mr. Cowan: I was going to make a reference and I wondered. In New York State there is a limit of $15,000 as a maximum payment to the innocent victims of crime. Because of marriages between Ontario and New York City I have some very close relatives in the State of New York. When the State of New York put a limit of $15,000 on the payment to any one family I was quite interested and I got in touch with the proper officials in Albany, New York. These were not by any means clerks in a division. I asked why they had put this maximum of $15,000 on and I was told, as everyone who knows New York State knows, that it is roughly divided into two parts—what they call upstate New York, above Westchester, and the City of New York and Long Island.

When the Bill was introduced into the New York State legislature all the members of the assembly voiced approval of it, particularly, the upstate New York people; but the great bulk of the membership from Long Island and New York City said "Wait a minute, wait a minute. We cannot go for unlimited compensation such as in some areas where they may make a payment of $30.00 a week for life to some child. We cannot go for this unlimited compensation".

The high officials in Albany to whom I was speaking said that these assemblymen pointed out that there are two great elements in New York City who unfortunately live in very great poverty. They said, "The poverty in certain parts of New York City is so great, and since this act would allow us to pay compensation to the victims even if the assailant is never caught, we know that in the dire poverty that exists in two great sections of New York City there are relatives who would cut off one another's arms, put out one another's eyes, or cut off their legs if they thought they were going to get what they would call a pension for life," or what you or I would call compensation.

Therefore, the City of New York assemblymen said that the State could be bankrupted by the actions of these two sections of New York City and that they would not support it unless there was a limit on the compensation. So they put a limit of $15,000 on the compensation on a test period basis; and it is now under test on the basis that they do not

think there will be an increase in serious crime in order to collect $15,000; but they are checking the applications that come in for compensation. Does that cover your question?

• 1130

Mr. Otto: Yes, thank you very much. That is all.

Mr. Tolmie: Mr. Cowan, you mentioned the main problem being one of jurisdiction. In other words, evidently the federal government is reluctant to go ahead because there is a question that it might be under provincial jurisdiction. Now, as I understand it, Saskatchewan already has an act.

Mr. Cowan: A wonderful act, too.

Mr. Tolmie: If this is so why could not other provinces have similar acts?

Mr. Cowan: Well, I point out in the brief that of four provinces three have taken definite action and one plans to take action, but they all have different plans. I wish they all had the same act as Saskatchewan because I think it is a very fine act.

But they did not copy Saskatchewan all the way. British Columbia has not copied Saskatchewan holus-bolus; Manitoba does not plan to copy Saskatchewan holus-bolus and Ontario certainly has not followed Saskatchewan holus-bolus.

Mr. Tolmie: Then your point is that you feel it is a very desirable type of legislation and the only way we are going to get it nationally is to have the federal government initiate it.

Mr. Cowan: I think so.

Mr. Tolmie: Now, if this legislation were introduced, would you suggest that it should follow the British system? As I understand it the British system is very flexible. They do not list the types of offences whereas the system in New Zealand specifies certain offences. In your opinion, which would be the most desirable type?

Mr. Cowan: The British system. When I was in Great Britain talking to the men on the Board and the staff, they made the statement to me that in Great Britain it is considered the biggest step forward they have made in social welfare legislation since the turn of the century. I said I thought that unemployment insurance would take precedence over it but they said, no, not necessarily. That is how highly they regard their own compensation fund work.

Mr. Tolmie: You have mentioned that Saskatchewan has a good system.

Mr. Cowan: They have.

Mr. Tolmie: They list their offences.

Mr. Cowan: It is still the best law we have in Canada.

Mr. Tolmie: Yes. It could be improved upon?

Mr. Cowan: Yes.

Mr. Tolmie: Now, as I understand it, none of these systems give compensation for damaged property?

Mr. Cowan: No; just to victims.

Mr. Tolmie: Would you suggest that this type of legislation should be extended to include compensation for property loss?

Mr. Cowan: Well, looking over the Committee, I am a witness and the only man here that is not a lawyer, and I understand property damage is a provincial matter. That is why I do not talk about the property angle.

Mr. Tolmie: Well, if it is possible, do you think that this should be included?

Mr. Cowan: I would be willing to, myself, but I did not want to lose the argument on behalf of the victims by getting involved in one about property.

Mr. Tolmie: You did not want to make it more difficult, in other words.

Mr. Cowan: Quite right.

Mr. Tolmie: What type of agency would administer this compensation? Would it be a compensation board? Would it be a judge?

Mr. Cowan: In Great Britain they have a committee of three or a board of three of which, I believe, two have to be legal men and they have a former judge sitting on the Compensation Board over there. It is one of what you fellows call laymen and two legal men in Great Britain.

Mr. Tolmie: What bothers me, Mr. Cowan, is that Great Britain has a system of this type of compensation. It is a unitary state. Now, the United States is a federal state and

so far they have enacted this type of legislation through the respective individual states.

Mr. Cowan: Just two.

Mr. Tolmie: Yes, California and New York. Do you still think it is feasible, even in a federal state, to enact this type of legislation?

Mr. Cowan: I will be quite frank with you. I admire the Hospital Insurance Act so much, I have said publicly on more than one occasion, and am quite willing to repeat it, that of all the feathers in Paul Martin's cap, there is none that compares with the Hospital Insurance and Diagnostic Services Act which is uniform for the whole ten provinces. If that can be made to operate for the good of the people—and I know it is working for the good of the people—I think this might be modeled on the same type of legislation that made the Hospital Insurance and Diagnostic Services Act feasible in this country.

Mr. Tolmie: Thank you.

The Chairman: Mr. Aiken, then Mr. Cantin and Mr. Honey.

Mr. Aiken: Mr. Cowan, I want to ask a couple of questions—because obviously you have made a study of it—about the collection of funds from convicted criminals. Have you given any thought to the possibility that if a fund is set up a convicted criminal who has the means should be ordered to contribute to it and also the question of having fines go to this compensation fund?

Mr. Cowan: Mr. Chairman, Mr. Aiken has asked me a question but I preface my answer by stating that if you will read one of those *Hansard* references that I make on page four, I expressed my indebtedness to Mr. Aiken for having brought up the sheep. —What is the name of the Act, Gordon?

Mr. Aiken: The Dog Tax and Livestock, and Poultry Protection Act (Ontario).

Mr. Cowan: The Dog Tax and Livestock and Poultry Protection Act (Ontario), where Mr. Aiken pointed out to me, and I told the House, that if a farmer loses a sheep by dogs he can collect from the municipality but if his daughter is murdered, as happened in Dublin, Ontario, some years ago, there is no compensation available to him for that loss.

I might point out that in some of these jurisdictions, particularly in Great Britain, when compensation is awarded to the victim the criminal action against the criminal proceeds and if an award is made to the victim as a direct result of the judgment that money is paid into the compensation fund. But the victim does not have to wait until such judgment is received, and if no such judgment is made, the victim does not suffer. As for fines, I do not know of any one of the four jurisdictions outside of Canada where any mention is made that fines should be contributed to the fund but it is a good idea, I would say.

Mr. Aiken: I would not want to suggest that the collection from the criminal would be in any way related to the compensation paid. I merely want to ask whether you think the compensation fund might be built up or whether, in any of your investigations, you found it would be a waste of effort?

Mr. Cowan: No. It is the law in Great Britain and I understand it is also the law in New Zealand that any compensation available from the criminal is put into the fund.

Mr. Aiken: Thank you.

[*Translation*]

Mr. Cantin: In your brief, Mr. Cowan, . . .

[*English*]

Mr. Cowan: Well, I have told you before that my daughter and son-in-law will not vote for you any more. They have moved out of your riding.

Mr. Cantin: Yes.

[*Translation*]

In your brief, Mr. Cowan you state that there are only certain states in the United States where there exists a law for compensation to the victims of criminals which means that there is not a federal law.

Do you then believe that the Canadian government should first of all request the consent of the provinces prior to the adoption of such a law?

[*English*]

Mr. Cowan: I know of no federal legislation in the United States on this point. In fact, I believe the criminal law in the United States is a state matter. I doubt there is any federal law on crime. But so far as Canada is concerned, I have mentioned that I cannot believe any province would refuse to allow its citizens to accept compensation from the federal government under such circumstances as criminal acts. I mean every word of that.

• 1140

[*Translation*]

Mr. Cantin: Then, presuming that the federal government seeks the consent of the provinces and that we come to adopt a federal law for compensation to the victims of criminals, would the victims of the automobile be included in this law, provided, obviously, that the accidents are the result of a criminal act?

[*English*]

Mr. Cowan: Of course, when you get into automobile situations—I have tried to save the Committee's time today—you should take the time to read those *Hansard* references I gave. We had quite a good discussion in Parliament on two occasions, and some members pointed out that in the provinces, if your wife is run over by a motorcar and killed you can sue the owner of the motorcar and collect damages as set out by the courts; and if the man driving the motorcar does not have insurance then they have the Unsatisfied Judgment Fund set up by the Department of Transport.

As the Toronto *Globe and Mail* said in an editorial supporting this idea when it was on the floor of the house, if you are going to lose a loved one in Ontario, be sure to have them run over by a motorcar, because you can collect under the Act in Ontario, rather than have her murdered by a criminal who comes in the window; because if she is murdered in her own home you cannot collect from anybody.

I would say that answers the specific question about automobile damages. This is pretty well covered right now by the laws of the land.

Mr. Stafford: Only for the person who is in the right.

Mr. Cowan: Well, I should hope so. I hope you would not be making allowance for a person who is in the wrong.

Do they not have the same kind of law in Quebec?

The Chairman: Mr. Honey?

Mr. Honey: Thank you, Mr. Chairman.

Mr. Cowan, I want to say immediately that I support and agree wholeheartedly with the principle of your motion, but I have two or three questions that might concern us on the constitutional aspect.

In the latter part of your answers to Mr. Tolmie, you referred to what one might call hospital insurance legislation, which is, as I understand it, federal-provincial legislation administered by the provinces, with the federal authority making substantial contributions. Is this the sort of legislation you envisage arising out of your resolution?

Mr. Cowan: I have set out in the brief that if they are going to argue that point, I would say that if the Dominion of Canada is going to maintain criminals at the taxpayer's expense, such as under sentence of two years or more, then the victims should be compensated by the Canadian taxpayer. If, on the other hand, the criminal is being treated at the provincial taxpayer's expense, such as those that are sent down to Guelph Reformatory in Ontario, then the Ontario Government should pay the compensation to the innocent victims of that criminal's act, if you want to get down to that division of responsibility.

Mr. Honey: I am not sure that I want to get down to it. I am asking for clarification really. It seems to me that you will have problems with this legislation on a strictly federal basis if you do not have the co-operation of the provinces. I may be wrong, but I throw this out just as the basis of my question. I think it would be easier constitutionally and probably politically—and I use that word in a broad sense here—if it were feasible to have federal legislation which was of a permissive type that, in effect, said to the provinces: We think it is a good idea, and if you concur and pass complementary legislation we will pay a certain portion of the debt.

Have you considered this sort of legislation or are you thinking only of a federal act that would be effective across Canada?

Mr. Cowan: Well, if I can get down to a very personal basis, Mr. Honey, Mr. Cameron and I have been friends for something over 35 years, and we are members of the same church, and we have often discussed this question. I attend quite regularly.

Mr. Stafford: So does Mr. Cameron.

Mr. Cowan: In fact, before the Committee met this morning, he asked me what I thought of the sermon last Sunday morning, so you can see that we both attend.

We have discussed this question frequently, and Mr. Cameron, a lawyer, has often

raised this point of provincial and federal jurisdiction. My attitude, as I have often said to Mr. Cameron, is: Heavens above; in our church, Victoria Presbyterian in West Toronto, about thirty years ago there was a policeman by the name of McQuillan who was shot dead in a field which is now the corner of Jane and Bloor Streets in Toronto. His murderer was caught near what is now the Queensbury Hotel. He was tried and after some delay was hanged. That murderer was maintained up to the date of his execution at the federal taxpayers' expense. In the case of other murderers in West Toronto, who have had their sentences commuted to life imprisonment, they are maintained at the federal government's expense.

To refer back to the little Massey girl of whom I make mention in the brief and who was in our Sunday school, the man who murdered her was adjudged insane. What happens to him? He is sentenced to the Penetanguishene Hospital for the Criminally Insane and is maintained at the Province of Ontario taxpayer's expense.

I am not a lawyer, but I must say, on behalf of tens of thousands of people, that it strikes me as a little ridiculous that in the case of the McQuillan murder in our own congregation about 30 years ago—McQuillan being a member of our congregation at the time, and his widow and children remaining there for some time before they moved—the murderer was maintained by the Canadian taxpayer until the date of his execution. In the case of the little Massey girl who attended our Sunday school, her murderer is now being maintained at the Province of Ontario taxpayer's expense at the Penetanguishene Hospital.

I ask you again, you who are lawyers, does it not strike you as somewhat ridiculous to be arguing about the financial responsibility when in such a limited area as our one congregation in West Toronto we have had those two cases, admittedly over a period of 35 years?

The Chairman: Thank you, Mr. Cowan. Are there any other questions? If not, I guess that concludes the meeting, I would, however, like to ask you, Mr. Cowan, if you have any statistics from the United Kingdom about the amount of compensation paid, the amount claimed, and so on?

Mr. Cowan: As you know, quite recently I secured from Britain last year the only annual report that they said was available. I have it here. I will give it to you.

The Chairman: Perhaps we should see some of the figures in a general sort of way.

Mr. Cowan: Do you want to look at the Saskatchewan Act, Don?

Mr. Tolmie: I would not mind. Incidentally, it may be of interest to note that it is not governed by statute. Is that...

Mr. Cowan: I do not know anything about that; that is up to you people.

I have a report from Britain somewhere here.

The Chairman: Since you cannot find it, the Committee will agree to its being filed as an exhibit.

Mr. Cowan: Very well.

•1150

The Chairman: Thank you very much indeed, Mr. Cowan, for your presentation. We have listened to it with a great deal of interest. As Mr. Honey says, and certainly speaking for myself, we are agreed on the principle here. We may have some qualifications on just what is the best way to do it; whether, as Mr. Honey suggested—which, it would seem to me, would be the proper way—it should be through a meeting of the various provincial ministers of justice and working out a scheme something along the lines of the Hospital Insurance and Diagnostic Services Act or the Canada Medicare Act, and so on. There is no question at all about the principle being a sound one and one, I am sure, that this Committee, in making its report, will certainly bear in mind.

Thank you, again, very, very much.

Before I announce the adjournment of this meeting, I want to inform you that we will meet *in camera* on Thursday at 11 o'clock to consider the draft report on the expungement of criminal records. We hope at that time also to have before the Committee the draft report on Bill C-4, An Act concerning reform of the bail system.

There being no further business, the meeting stands adjourned.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

THURSDAY, JANUARY 25, 1968

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESSES:

Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal, Quebec.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

27681—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe	Mr. Pugh,
Mr. Cantin,	(*Hamilton South*),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	[1]Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

[1]Replaced Mr. Mandziuk on December 20, 1967.

ORDER OF REFERENCE

HOUSE OF COMMONS,
WEDNESDAY, December 20, 1967.

Ordered,—That the name of Mr. McCleave be substituted for that of Mr. Mandziuk on the Standing Committee on Justice and Legal Affairs.

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

27681—1½

MINUTES OF PROCEEDINGS

THURSDAY, January 25, 1968.
(17)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Forest, Howe (*Hamilton South*), MacEwan, McCleave, Pugh, Stafford, Tolmie and Mr. Wahn (11).

In attendance: Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal, Quebec.

The Committee continued its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*). The members agreed that the following documents, received by the Committee and pertaining to the subject-matter of Bill C-96, should be filed as Exhibits:

Submission To The Prevost Commission On The Administration Of Justice In Matters Related To Crime And Penology In The Province Of Quebec By The John Howard Society Of Quebec, Incorporated—September 1967 (*Exhibit C-96-6*)

A Case for Cannabis? (An Article in the British Medical Journal, 29 July 1967, p. 258; and 5 Letters to the Editor on the same subject; 1 on 5 August, 1967, p. 367, 2 on 12 August 1967, p. 435, 2 on 26 August 1967, p. 504) (*Exhibit C-96-7*)

Afternoon of an Addict (An Article in the Waiting Room Digest, September-October 1967, p. 2) (*Exhibit C-96-8*)

Drug Addiction, Psychotic Illness and Brain Stimulation: Effective Treatment and Explanatory Hypothesis (An Article by Peter Roper, M.B., Ch.B., D.P.M., and reprinted from The Canadian Medical Association Journal 95: 1080-1086, November 19, 1966) (*Exhibit C-96-9*)

Brief dated November 5, 1967, submitted by Inmate No. 3941, F. Walch, of the Kingston Penitentiary (*Exhibit C-96-10*)

Letters from the Province of Ontario dated January 5 and January 18, 1968, from the Province of Saskatchewan dated January 15 and January 19, 1968, from the Province of Nova Scotia dated January 15, 1968, and from the Province of Prince Edward Island dated January 12, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts (*Exhibit C-96-11*)

Illicit Drugs Currently In Use Among Canadian Youth (A Review Article by J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht., C.R.C.P. (C) presented for publication in the Canadian Medical Association Journal, 1968) (*Exhibit C-96-12*)

The Chairman introduced the witness, Dr. J. Robertson Unwin, mentioning his training, his experience and the scientific papers which he has presented or published. Dr. Unwin delivered a prepared statement, copies of which had been distributed to the members. The members questioned Dr. Unwin on subjects related to his presentation.

On a motion by Mr. Forest, seconded by Mr. McCleave,

Resolved,—That reasonable living and travelling expenses be paid to Dr. J. Robertson Unwin, who has been called to appear before this Committee on Thursday, January 25, 1968, in the matter of Bill C-96.

On a motion by Mr. Aiken, seconded by Mr. MacEwan,

Resolved,—That reasonable living and travelling expenses be paid to Professor A. M. Linden, who has been called to appear before this Committee on Tuesday, January 30, 1968, in the matter of Notice of Motion No. 20.

The Chairman thanked Dr. Unwin, on behalf of the Committee, for his expert testimony.

The Committee adjourned at 12.30 p.m., until Tuesday, January 30, 1968 at 11.00 a.m., when the witness will be Professor A. M. Linden, Osgoode Hall, dealing with the subject-matter of Notice of Motion No. 20.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, January 25, 1968.

• 1110

The Chairman: If it meets with your approval I think we will start. During the recess we heard from Dr. Roper and retired Judge Kennedy who expressed an interest in appearing before us and we have also received material from both these gentlemen. We received a copy of a brief from an inmate of Kingston Penitentiary, one Mr. F. Walsh, and we have received replies from the attorneys general of Prince Edward Island, Nova Scotia, Ontario and Saskatchewan concerning their program for the treatment of drug addicts.

Dr. Unwin who is our witness this morning has prepared a review dealing with certain drugs which will be published very shortly. It is a copyright article but I think, Dr. Unwin, it will be in order if we file it as an exhibit. It will not be printed in the *Minutes*, but it will be an exhibit, so that anyone wanting to research amongst our papers can find it. Is it agreed that these documents we received be filed as exhibits?

Some hon. Members: Agreed.

The Chairman: I have great pleasure, gentlemen, first of all in welcoming you back after the Christmas season and the holidays. I am glad to see you all looking so hale and hearty and looking so happy and optimistic.

I have great pleasure in introducing Dr. J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht. I suppose that is Doctor of Psychology...

Dr. J. Robertson Unwin (Director, Adolescent Service, Allan Memorial Institute, Royal Victoria Hospital, Montreal): Psychiatry.

The Chairman: ...C.R.C.P. (C) who is a director of the Adolescent Service, Allan Memorial Institute, Royal Victoria Hospital at Montreal and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal.

Dr. Unwin was born in Australia, where he carried out his basic medical studies and obtained his degrees in medicine and surgery from the University of Queensland in 1956. His post-doctoral graduate work in psychiatry was conducted in Australia, London, Paris, and at McGill University, where he was Chief Resident at the Allan Memorial Institute in 1962-63. Dr. Unwin, in addition to his medical and surgical degrees, holds diplomas in psychiatry from the Royal College of Physicians and Surgeons of England and from McGill University. He was also awarded a Master of Science in Psychiatry by McGill University in 1965 for his study of fraternity initiations. He holds certification as a Specialist in Psychiatry from the Royal College of Physicians and Surgeons of Canada.

From 1963 to 1967 Dr. Unwin was awarded each year a Research Fellowship from the Canadian Medical Research Council to conduct studies into the problems of teenagers and college students. He has done research in the areas of juvenile delinquency, the stresses to which college students are exposed, and identity problems in college students, and is at present involved in research on the psychoses of adolescents and on the "hippie" movement and the use of drugs by young people.

Dr. Unwin has published papers on a wide variety of topics connected with the problems of youth. He specializes in the psychiatry of adolescents and college students, and is at present the Director of the Adolescent Service of the Allan Memorial Institute of Psychiatry at McGill University and a member of the Psychiatric Attending Staff of the Royal Victoria College. He is also in charge of the teaching of psychiatry to final year medical students at the Allan Memorial Institute. He is Assistant Professor of Psychiatry in the Faculty of Medicine of McGill University.

• 1115

I will not read the brief, but I think you all have his background of training and researching and the many, many articles that he has written.

Without further comment, gentlemen, I have great pleasure in introducing to you Dr. Unwin, our witness this morning.

Dr. Unwin: Thank you, sir. I just might point out I am on the attending psychiatric staff of the Royal Victoria Hospital. The

Royal Victoria College is an institute for young ladies and I have not yet had the privilege of being attached to that college.

Mr. Chairman and gentlemen, I should like to express at the outset my gratitude for the privilege of appearing before your Committee to outline the current problem of drug abuse among young people in Canada.

Before making a very brief statement, I should like to make two comments, first that the opinions I will express are the outcome of clinical work with young people, discussions with various people in contact with youth, and discussions with adolescents and college students themselves, and in no way should my opinion be considered necessarily to represent the beliefs or policies of the Institute, hospital or University with which I am associated.

Second, as stated in my letter of December 1, 1967, to Mr. Cameron, accepting his invitation to appear before this Committee, I cannot be considered an expert on drug addiction, as my experience in this field is quite limited. I am appearing as a professional who has some knowledge of the current use by Canadian youth of what are, in the main, non-addictive but nonetheless undesirable drugs.

As I said, my opening statement will be very brief; I understand that a copy of a professional paper on the topic of drug abuse by youth, written by me and at present in the process of publication by the Canadian Medical Association Journal, has been distributed to the members of this Committee. Though it is rather long, this is the only form in which the problem can be reasonably outlined. I expect that members of the Committee who have had the opportunity to read this paper may want to question me further on it. Though the use by young people of non-addictive drugs may be essentially outside the terms of reference of Bill C-96, I note in the minutes of previous meetings of this Committee that both witnesses and Members of the Committee have frequently expressed concern about the use of a wide variety of drugs by our Canadian youth. Although precise statistics are not available, there can be no doubt that the problem has reached serious proportions and there is no reason at this time to believe that the situation is improving. Even since writing the article for the *Canadian Medicinal Association Journal* I have become aware of yet another drug fad in several areas of Canada and I think those of you who have been reading the *Montreal Gazette* yesterday and today will be aware of this so-called "Witches' Poison". The current fad is the taking of proprietary preparations containing the drugs stromonium and atropine with consequent delirium, convulsions and allegedly some deaths.

• 1120

Obviously, as drugs such as stromonium are at present legally available from pharmacies without prescription, any approach which focuses purely on the legislative control of non-addictive drugs is unlikely to solve the problem. Young people will continue to experiment with new substances and, judging by the current situation, will continue to have access to even those drugs which are controlled. The only realistic approach in my opinion is to regard drug abuse by young people as a symptom of a wider social and personal problem and to instigate programs of research, education and therapy for young people and their families. These young people, this age group, already represent close to 50 per cent of the North American population.

The Chairman: Thank you very much, Dr. unwin. Is that your statement? Do you wish to answer questions now or do you want to say something further?

Dr. Unwin: No, I think based on my paper plus this statement I would be happy to answer questions now.

The Chairman: Is anyone ready with a question? I guess all members have not read that article yet.

Dr. Unwin: I do not blame them.

The Chairman: Mr. Pugh?

Mr. Pugh: I might start off with just a few normal things. We have had a good deal of evidence that drug addiction of one sort or another is a form of sickness. Do you agree with that as a straight statement?

Dr. Unwin: Yes, I do.

Mr. Pugh: We have had witnesses here who have gone so far as to say that smoking cigarettes or even drinking coffee regularly every day is sort of an addiction in itself.

Dr. Unwin: I prefer the term "dependency" which the World Health Organization has recommended.

Mr. Pugh: What is the difference between "addiction" and "dependency"?

Dr. Unwin: None essentially because the term "addiction" had become so widely misused. Also because it has a value judgment attached to it now the World Health Organization and the United Nations have recommended that the term be dropped and the more precise term "dependency" be instituted in its place.

Mr. Pugh: As against "addiction". In other words an addiction is something within a person's self and is extremely hard to fight?

Dr. Unwin: Yes, so is dependency.

Mr. Pugh: You stated that you are not here really on drug addiction but more as an expert with views on certain habits of youth. In your research and in regard to addiction itself—I mean addiction not with regard to youth and I do not mean "dependency"—in your knowledge has there been an attempt to cure this treating it as a sickness? Les us say of a person that is in prison. Our previous witnesses have said: Well no, they do not really go after the cure, they merely toss them in the can, keep them there and at the end, when they are let loose, the first thing they do is try to get some more of these heavy drugs.

Dr. Unwin: Mr. Pugh, as you commented, I am certainly not an expert and not experienced in this field at all widely and people like Dr. Cormier and others who have spoken here are much more qualified and, I think, have commented on this. It is my strong impression that on the whole people do not receive treatment for drug addiction when they enter prisons. I know of only one or two institutes in Canada that are set up to handle this as a therapeutic and rehabilitative problem rather than purely a punitive incarcerative problem.

Mr. Pugh: Then, as a person who has considerable knowledge and background on the whole situation as it exists in drug addiction on down, would you say that this is something that we should aim for? In other words, curative measures to start off within prison or some other form outside of prison?

• 1125

Dr. Unwin: Yes, I am entirely in sympathy with the intentions of the present bill.

Mr. Pugh: Do you feel that the British experiment of having a drug sentence is a good idea?

Dr. Unwin: Once again I feel that you are questioning me on an area that I am not at all qualified to discuss. The impression I get from reports is that the British are quite unhappy about their system and are reviewing it.

Mr. Pugh: I have one final question. You use the term mainly in Canadian youth non-addicted—their use of non-addictive drugs. In your opinion, as a psychiatrist and with all the other background you have, is there a tendency through the use of non-addictive drugs to graduate to drugs of a more serious nature?

Dr. Unwin: No, there is no evidence of this at all at present, sir: of a marked tendency to go from non-addictive to addictive drugs.

Mr. Pugh: Then you feel that perhaps the best cure for the whole thing is something in the nature of education right on down through the line?

Dr. Unwin: Partly education. I would stress the importance of research now because we just do not have facts about the extent of the problem. We do not have facts about the eventual outcome for young people who take these drugs on anything more than an experimental basis and we must have research on this. There is a certain amount of public hysteria about the whole matter right now as I am sure you are aware. And you are getting people making extreme statements pro and con about the dangers, the lack of dangers, the desirability of legalizing certain drugs, the undesirability of legalizing certain drugs and so on. We do not have hard facts. We have clinical impressions but there are almost no studies going on the long-term effects of a lot of these drugs, particularly, of course, I am talking about marijuana.

Mr. Pugh: There is a question of expense involved in the setting up of any form of research. In your opinion would the expense be justified? Is it necessary that we go ahead?

Dr. Unwin: Yes, I think so, Mr. Pugh and not just from the point of view of therapy of young people who may need it. You see, what we have to be aware of is that this population we are dealing with, the youth population, as I have said, is already up to 50 per cent of the North American population. Like it or not, some of these young people are the potential leaders of tomorrow and studies indicate that positions in the executive branches of various organizations and leadership

in general are being passed more and more to younger people. There have been studies which show that as the years progress the number of people in the executive age group is going to drop from the current executive age group which tends to be in the mid to late 40's and that people are going to have to draw more and more for leadership on younger people. Therefore it is not only a matter of treating these young people with individual problems. It is a matter of having some foresight about the future of society and the needs of society. This is a protective thing for society, not just for the young people themselves as individual psychiatric or medical cases.

The Chairman: Thank you. Mr. Aiken.

Mr. Aiken: Mr. Chairman, my first question is very much along the lines of Mr. Pugh's last one but I would like to ask this. Bearing in mind that other generations have had other distractions and escapes—I refer particularly to military service and so on—do you feel alarm at the drug fads that are developing such as glue sniffing, nutmeg and various other things that have been mentioned in the paper? Do you feel alarmed that the number of these is out of proportion to what a young generation seeking some escape is normally expected to undertake?

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Dr. Unwin: Yes, sir, I feel considerable alarm for several reasons.

You talk about the various fads or thrills which users always sought and always will seek. In the early days of concern about the current epidemic of drug use by young people, it was predicted that this was no more than a passing fad like goldfish swallowing. Goldfish swallowing led, perhaps, to nothing more than the risk of choking yourself. It did not lead to the risk of getting associated with a particular drug cult, of interfering with your education, with your decision making and so on.

The point is, as I have stated in my paper, that I do not believe and I do not think any doctor would believe that any young person, up to a certain age where we think they have reached reasonable maturity, should have free access to any intoxicants whatever. The younger adolescent, as you know, is going through a stage of very critical development in terms of development of social awareness, social responsibility, judgment, intellect and so on and any intoxicating drugs, if they are used frequently, are bound to interfere with this development, with dire results to the youth, to his family and, of course, eventually to society itself.

Although we do not have precise statistics on the extent to which drugs are being used by young people, I hear enough about it and see enough of it to be quite concerned.

Mr. Aiken: Is there really anything that could be done legislatively on these improper uses of normal substances that have to be circulated for normal use? Is there any way that legislatively we can cover that at all?

Dr. Unwin: I think so, sir. First of all, a lot of these drugs—like this current fad of using stramonium and so on—should not be freely accessible where any young person or anybody can walk into a pharmacy and buy anything up to five or ten cans of the stuff and then ingest it. It is meant to be burnt and inhaled for asthma but these kids are taking it by the teaspoonful.

Certainly I think Parliament can legislate control of these drugs but if it stops there I think it is just joining in a paper chase because, of course, by the time you people perhaps get around to controlling the distribution of, let us say, stramonium, these kids have found something else and off you will go again.

I understand that already there is something before Parliament concerning the control of glue. This is an old, old fad among younger teenagers so if we...

Mr. Pugh: We just go stuck with it.

Dr. Unwin: The next thing will come, and the next thing and the kids on the whole, I think, will just keep ahead of us. When you have one thing tied up they will say: Right, now we will have a go at this one. And this will go on and on. We have to get ahead of this and think in terms of prevention and this is where research and education and therapy of the kids and their parents, of course, and society must come in, I think. And I think legislators certainly can do something about that. As one member of the Committee said in an earlier meeting, you cannot legislate morality and if that is all we try to do I do not think we are going to get far. I think we might have learned from prohibition some lessons about that.

Mr. Aiken: Thank you.

The Chairman: Are you through, Mr. Aiken?

Mr. Aiken: Yes, I am, thank you.

The Chairman: Mr. Wahn?

Mr. Wahn: My questions have been answered; thank you, Mr. Chairman.

The Chairman: Mr. MacEwan?

Mr. MacEwan: Doctor, I think most of the pertinent questions have been asked. You said in this regard that not too much by way of educational programs is being carried out. What body would you suggest should actually undertake this most necessary education in this important matter?

Dr. Unwin: I think it has to be taken down at the community level and I think the education should come about through a team approach where there would be medical people involved, legal people, people from the law enforcement agencies and ideally, perhaps some of the young people themselves who have been in on this so-called drug scene, have now got a perspective on it and have come out of it again and can talk fairly matter-of-factly and from experience to youth itself.

Now, of course, society, including parents also have to be informed but I am quite sure the majority of parents already know that drug usage by young people is undesirable and that they let their children know this. The young people themselves, unfortunately, nowadays are exposed to such a barrage of propaganda about drugs, often very one-sided, often coloured with a highly sensationalistic tinge by the communications media and often presented in such a way that it seems highly desirable and almost a personal responsibility to try some of these drugs.

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This happened with LSD and it was quite some time before the voices of the medical and legal people started to come up and say: Now, look, there are dangers in this drug. It has been presented to young people as being soul expanding, mind developing and increasing creativity. We had better watch it.

There are very strong dangers and by the time these contrary viewpoints came up the young people had had such a barrage of propaganda about the alleged benefits that they just thought that doctors were being spoilsports who wanted to spoil their fun.

Mr. MacEwan: Your suggestion is that a team should be set up. Who should undertake the organization of these teams throughout the country, and so on?

Dr. Unwin: Concerning young people still in high school, it could be the responsibility of the various school boards and the home and school associations—the parents—to get teams going between them. I understand this has already happened in certain areas of Canada and I know that meetings are beginning now in Montreal to assess the extent of the problem and the advisability of setting up these educational panels.

Now, there is some controversy about this and some people still say that the last thing we should do is to tell young people about these drugs. They are frightened, allegedly, that if you tell the young people about the drugs they will only become curious. I cannot accept this viewpoint because the young people already know about the drugs and they are already getting more than adequate exposure to a certain type of information through the mass media and we have to counteract this and, hopefully, get in ahead of time.

Unfortunately, I have the feeling that in some areas people are so stunned by the alleged extent of the problem and the complexity of it that they would prefer to pretend it did not exist and just hide it all under the mat. One gets this impression when one hears that certain areas or certain communities are forbidding public discussion of drugs among youth or where, when the medical and legal authorities know that there is a definite problem of drug usage in a particular area, nevertheless public statements will be made by authorities denying this.

Mr. MacEwan: You say right now it stems from the school board or the municipal level. Do you think the provincial government should take a more active part in such programs?

Dr. Unwin: Yes, I think so in terms of encouraging the setting up of these educational panels and, if necessary of course, making facilities, including financial facilities, available.

Mr. MacEwan: In your activities with youth—this is my final question—what type of activities do you carry out? Do you lecture to them or meet with them? What is your normal program in dealing with this matter?

Dr. Unwin: At present, or up until recently, it was primarily seminar type discussion groups with various segments of youth, on invitation. First of all, the "hippie" movement itself invited me to talk when this particular drug called STP arrived in Canada last year because they were frightened of the consequences of the drug and also of using some of the known antidotes for other things. Then there are requests to speak to high school audiences, college audiences, to parents and so on and, as much as possible, one undertakes these speeches along with other doctors who are knowledgeable in this area and have had some experience with it.

Then, of course, there is also the level of therapy where young people are referred to our clinic for treatment for the effects of these drugs or for conditions associated with the drugs.

Mr. MacEwan: Is the clinic a private clinic?

Dr. Unwin: No, sir; it is part of the Department of Psychiatry of the Royal Victoria Hospital in Montreal.

Mr. MacEwan: Does the provincial government contribute to it?

Dr. Unwin: Yes.

Mr. MacEwan: They do? Thank you.

• 1140

Mr. Tolmie: Doctor, you alluded to a point that I am interested in and that is the question of publicity concerning some of these hallucinatory drugs. For example, any new drug that is discovered immediately becomes the subject of discussion, it becomes the subject of articles and newspapers in the mass media. They reveal the way to take these drugs in detail, and perhaps in some cases, the good effects of these drugs.

Now if we are trying to stop the spread of these drugs among our teenagers, do you think that this type of reporting renders a disservice, and if it does, is there any way to counteract it?

Dr. Unwin: I think it does a distinct disservice. But whether it can be counteracted, I am not certain because you are obviously going to run into the problem of freedom of the press and so on, and this has already come up with some of the hippy underground papers. I think the only realistic approach might be that the communications media could be asked as much as possible to be as non-sensationalistic as possible, to be more concerned about giving the facts rather than being concerned about the impact that a given report may have on the readers, in terms of exciting them and drawing their attention and so on. And also, that the communications media might be encouraged to try and always give the other side of the story if a particular piece of reporting tends to highlight alleged advantages or alleged benefits from a drug.

Mr. Pugh: Getting their information from whom?

Dr. Unwin: For the balanced side of it; the other side of it. From professional people who have knowledge of these drugs, whether it be the researchers working with the drugs, people working clinically with them, people who are seeing the side effects of them, and so on.

Mr. Howe (Hamilton South): Perhaps, doctor, rather than rely upon the newspaper media to objectively report the pros and cons, let us say, of certain drugs, would it not be incumbent upon organizations such as the ones you belong to, to take the initiative and try to present the other side of the picture.

Dr. Unwin: This is my personal belief. What you do run into, of course, is the traditional reluctance of the medical profession to be involved with any type of prolonged or prominent publicity, and this is something that is quite difficult to avoid. I have had personal experience with this. I think it is very much a responsibility of the medical profession, and associate professions nowadays to make facts known, particularly in areas like drug abuse, where distorted pictures are being given which may be encouraging young people to try these drugs or to escape into them.

But as I say, one cannot always rely on the complete exactness of the reports that are finally published. I have had some unpleasant experience about this myself, where I was quoted as giving certain figures which I did not give, but the figures were quoted in a paper and caused quite a sensation. This always reflects badly on a professional person, of course. It looks as if you were joining in this sensationalism itself when, in fact, you are trying to avoid this.

Mr. Howe (Hamilton South): Mr. Chairman, I apologize for coming late but we had another Committee meeting first, so I hope I do not

bore you with repetition. For the sake of clarifying terminology, you have been using the word "drugs" and yet as I read your brief, you refer to products that are definitely not drugs, am I correct?

Dr. Unwin: I am using drugs, doctor, in the very wide sense of products which have a physiological effect on the human body and are usually used in medical practice.

Mr. Howe (Hamilton South): Oh, I see. I mean airplane glue is not a drug, or it was never put out as such, therefore I wanted to widen the term just so we could talk more freely.

If these substances, for the sake of another word, are not made freely accessible such as they are now, number one, would it not lead to people finding something else. In other words, it seems that any volatile liquid would fit into this class, therefore if you remove one people are going to get another, which they have been doing. They have been getting another one even without removing the previous one.

Dr. Unwin: Exactly; this is why I feel that any approach which focuses solely on restricting the legal access to these drugs is not going to work.

Mr. Howe (Hamilton South): Legislation is too far behind—the danger has come and gone before it is legislated and then we are into something else, and we have to start and legislate this. You are into a chain reaction that is way behind what is going on.

Dr. Unwin: Exactly; that is correct.

Mr. Howe (Hamilton South): Some of these things are so readily available in household products that the danger is imminent so you cannot legislate. This is not a legislative problem in a sense, is it?

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Dr. Unwin: I think they have to be legislated to a certain extent to get some degree of control and also to provide penalties, which might discourage some people from being irresponsible. But, of course, as we know, even the substances which are now under control nevertheless do end up in the hands of people who have no business having possession of them or using them.

Mr. Howe (Hamilton South): There is another thing and possibly the question is a little bit philosophical but we tend to use the word "teenagers". You have used the term, and everybody here today has used the term. Do you not think possibly that we are wrong in using the word "teenagers", when we put them into a class that makes them feel they have to do something that all the rest do. We do not class them according to their intellect; we do not class them according to their size; we do not class them according to their education or the amount of money we have; we class them according to their age and call them "teenagers". Therefore, if they are teenagers they have to rebel, and they have to do something like this. Do you not think, in part, that we as adults have been responsible for some of the things that have gone on?

Dr. Unwin: I think even much more than you imply, doctor. I feel, personally, that a good deal of youth unrest nowadays is, to a certain extent—of course it is very complex, but to a certain extent, one of the factors at any rate—unwitting encouragement by the adult population towards this sort of disturbed or disturbing behavior.

Mr. Howe (Hamilton South): In other words we are creating the disturbance many times by our authoritative attitude. Perhaps some of these younger groups of citizens are quite right in their rebellion against us.

Not in this way, do not misunderstand me—I do not mean with regard to drugs but this is just one of the forms of rebellion that they have created, because we put them in the position to do so.

Dr. Unwin: Yes, this has gone on since the beginning of time, of course. If you read right back to Socrates and Hippocrates and these people, some of the statements they made about youth in the Golden Age of Greece, you could apply it exactly to youth nowadays; the same lamentations about the looseness of morals, the disrespect for their elders, lack of concern for tradition and so on.

Mr. Howe (Hamilton South): We did not do it that way when I was that age.

Dr. Unwin: You did not.

Mr. Howe (Hamilton South): No, I am saying this as a quote.

Dr. Unwin: Well, there is always the sanctimonious approach.

Mr. Howe (Hamilton South): We tend to say this. We tend to tell them, "Well, I did

not do that when I was that age," and you know damn well if you had had the opportunity you would have.

Dr. Unwin: Yes, I could not agree more.

Mr. Howe (Hamilton South): Do you not think we are going through a transitional stage now with this group, where we are breaking away from some of the mid-Victorian moralistic ideas, and getting into something that is a little bit more progressive and we are wrong, and they are wrong. This is not a one-sided blame, is it?

Dr. Unwin: No, I feel very strongly that a lot of the background to what is going on now is related to this period of transition we are in now. This period of rapid and continual transition, where it is very hard for the adult society, that is supposed to set the tenure of morals and ethics to keep up.

Mr. Howe (Hamilton South): Or even accept.

Dr. Unwin: Yes, and the teenagers are sensing this confusion in the parents and are therefore getting badly confused themselves. I know it has always been a phenomenon of youth to rebel. I think it is also a necessary developmental stage for youth and for society. You have to have the young Turks coming along and challenging hoary traditions and helping the total society check on traditions and long held values, to see if they are still viable, to see if they are still necessary. Hopefully this will be done in such a balanced way, that society will come to a consensus and advance where necessary and stand pat where necessary. There must be some principles of human behavior and relationships and ethics which remain pretty immutable since the beginning of time, and these must be held on to. I am more concerned nowadays, frankly, despite and because I am naturally very pro-youth by the nature of my work; I am concerned that the adult society is backing down too much or dodging responsibility for limit setting and disciplining. I think this has quite a lot to do with at least some of the disturbance in youth nowadays; that the youth are more or less given the impression that adults do not know or do not care, so just work it out for yourself.

Mr. Howe (Hamilton South): And do not know how.

Dr. Unwin: Yes.

Mr. McCleave: The adults are helping to cut the umbilical cord.

Dr. Unwin: It is a mutual process, sir, but I think the adults are being a little hasty and a little irresponsible sometimes in being too willing to get rid of this terrible load which is a demanding and questioning teenager.

Mr. Howe (Hamilton South): I have just one more question and I am sure it will be easy. I gather from the trend of what you have said since I came in that you suggest that education is the answer. Where are you going to start to educate who and in what way?

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Dr. Unwin: Education, in the broader sense, of course, has to involve primarily the family, I think, and encouraging parents to have some confidence in themselves and in their ability to handle and guide through sensible limits and sensible affection the young person as he is growing as much as any organic growing thing has to be guided, protected, have limits put on it, but also be given the necessary impetus toward growth.

Mr. Howe (Hamilton South): I agree, but it should not be a one-sided education, that is what I mean.

Dr. Unwin: No. I mean education in the broader sense. I just do not mean education in the sense of telling young people not to take drugs or why they should not take it. It is a much broader issue. The more we focus on drugs per se the more we are going to get into this paper chase you talked about, of just trying to catch up with them.

Mr. Howe (Hamilton South): You are just trying to educate an end result rather than educate the cause.

Dr. Unwin: Yes, you are treating a symptom rather than the illness itself.

Mr. Howe (Hamilton South): Yes, that is right. Thank you very much.

Mr. Aiken: May I ask a supplementary question?

The Chairman: Yes, Mr. Aiken.

Mr. Aiken: There has been some mention of teenagers, could you give us some idea of what the relative use of drugs is as between youth and young adults?

Dr. Unwin: I cannot give you anything like an accurate answer to that, sir, because we just do not know. You can appreciate the difficulties in getting this sort of material. I think the figures that are quoted are no more or no less reliable than, perhaps, a survey of virginity among college sophomores. Some people will claim to have done things because it is a "done thing" while others will deny it for fear of detection.

Mr. Aiken: I have been thinking, particularly, of your contact with young people. Is there more use of drugs among teenagers than there is among young adults?

Dr. Unwin: It extends into young adulthood, talking of the college population which goes up to 23, graduate school up to 25 perhaps. It extends right through and it is the pattern that tends to differ. The younger kids down around 13 or 14 tend to use things like glue, cough medicines, this "witches' poison" they are talking about. These are things that they can get easily because they are not in the milieu or in the circles where the other drugs that are getting more publicity, like LSD, marijuana, or STP or what have you, are available although more and more young people in high schools are getting access to marijuana and I have certainly heard of and seen young people around 13, 14 or 15 who have been using marijuana.

Mr. Aiken: Would you say that in general, it stops when they start going out to earn a living?

Dr. Unwin: I do not know if we know that, sir, because this has not been going on long enough to even get a clinical impression. Of course, you know, if you stay in your office and wait to see the young people who are going to come to you with drug problems you are going to get a very distorted picture of the total distribution of this because the fact is that the majority of young people will not come near a doctor if they can avoid it for the various reasons I have outlined in the paper.

First of all, they are scared of detection. Secondly, particularly if you move on to the hippie crowd or the people who have this hippie philosophy, they regard physicians as being the prototype of middle-class society against which they are in revolt and they just will not have anything to do with you. Thirdly, within the drug cults or the drug milieu itself a lot of the antidotes are available already.

The young pushers, the young distributors and the young people themselves can get the various medications which they know from reading the medical literature and they know the medical literature enormously well. It is embarrassing to talk to them sometimes. They have the antidotes available. My first contact with the hippie community was when some of them called me to say that they were frightened because there was this new drug STP in town and they did not know the antidote. They knew that if they used the same antidote as they used for LSD they might kill somebody so they wanted to know what were they going to do. This is how I first came in contact with them.

Mr. Pugh: What did they want the antidotes for?

Dr. Unwin: If they have what is called a bad "trip", sir; if they are not enjoying the results of the drug too much and they want to stop it.

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Mr. Pugh: Would they in the course of enjoying or not enjoying this "trip" have the chance to take an antidote or not?

Dr. Unwin: Sometimes; if not, they do have friends around. Particularly, once again, the hippie community is a very self-protective type of community where they care very much for one another. It is rather attractive in some ways to see the sense of community responsibility these young people have.

Mr. Pugh: It is the equivalent of a backseat driver, I guess.

Dr. Unwin: Oh, it is more gentle and more acceptable than that. Backseat drivers to me are equivalent to mothers-in-law.

An hon. Member: Doctor, but your mother-in-law is in Australia which is a long way off, so you can say that.

Mr. McCleave: I think most of the questions have been asked but I have one small point. Our colleague, Mr. Klein, in his explanatory note listed drug addiction as one of the current results from some types of mental illness or disorder. But I take it that the habits we have been dealing with are not parallel to that statement and the use of these substances by young people is not necessarily the result of, or even the makings, of a small type of mental illness or disorder.

Dr. Unwin: That is correct, sir. It is a fact, first of all, unfortunately, that the young people who are attracted to these drugs as a continuing thing—not as a one-shot experiment nor just taking them to rebel or to be one of the gang—the ones who like to take it a lot, these tend to be the very young kids who are developing or already have personality problems and, of course, the whole thing becomes compounded. But, it is quite inaccurate to presume that anybody using, for example, something like marijuana, is necessarily psychiatrically ill. If so, from what I understand from hearsay and also from what I have read, for example, in the *London Times*, we are going to label as psychiatrically ill some very prominent psychiatrists, politicians, members of religious establishments and so on. There is no evidence of this.

An hon. Member: Hear, hear.

An hon. Member: Stay around for a while, we must protect our own.

Mr. Forest: How widespread is the use of drugs by young people in Montreal? What are your feelings about this?

Dr. Unwin: I have become very sensitive, sir, to giving a figure because it has all sorts of complications. Let me put it this way, first of all. Both myself and other members of the medical profession are members of the youth squad of the Montreal Police Force, members of the social security squad and people we have all been in contact with are very concerned about the extent of it and the way it is spreading.

Do you have to have statistics? Do you have to say something is not serious until it reaches a certain figure? I think not. I think a thing becomes a social problem when society becomes concerned enough about it and certainly the significant people in society as regards drugs are very concerned. They are the school boards, the school teachers, the police, the medical profession and so on. I cannot quote figures. I do know of some high schools in Montreal where I have been told by the principal and by the students that 10 per cent of the young people in that school have used marijuana. At the same time, if I quoted that in a public address, I would have two things happening. First of all, I would have accusations made that I am sensationalizing a problem which is not that big. This will come from perhaps the adults, the so-called establishment. On the other hand I will get calls from young people saying: "Why are you playing it down, Doc, you know that it is more than 10 per cent?" So you just do not know where to go in the middle of all this. It has become a serious problem to me because people with a reasonable sense of responsibility toward society have declared it to be such. Is that too vague for you?

Mr. Forest: Oh no, that is all right. What are the facilities for research in clinics apart from yours—the one you are attached with at the Royal Victoria Hospital? Are there any others?

Dr. Unwin: Any hospital in any town or city in Canada, I think, certainly would give immediate assistance to a young person who urgently needs it. In terms of long term treatment, we run into considerable difficulties because of lack of facilities. We do not have the beds; we do not have the trained staff, we do not have the money for paying salaries nor for research at present. It is quite difficult to get this right now. I think the facilities are, in fact, seriously deficient.

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Mr. Pugh: I do not want to have another round, Doctor, but I do have one point with regard to all this sort of hysteria and propaganda that is taking place. Coming back to your education and proper publicity from an educated point of view, the suggestion was that there should be a counter balance or a counterweight to keep the whole thing in balance. You sort of intimated that medical authority could probably give this but we do not have time for a proper clinical result or a balanced opinion from the medical profession itself, just because we do not have the funds to set all this up and it does take time. I take it that it would be a matter of years before you could get any results.

Dr. Unwin: Yes.

Mr. Pugh: What I am getting at is the statement you made previously that youth is always one step ahead. The doctor over here, Dr. Howe, stressed this. Do you feel that on the first intimation by anyone, whether police or parents, that there is some new drug on the market—I do not mean an addictive drug but something the kids can use—some form of authority should, at that time, get something out to the press to be prepared for this well in advance of the general hysteria that goes on when any new drug comes into the market?

Dr. Unwin: I would like to see this very much. I think this is highly desirable. I think it is absolutely necessary.

Mr. Pugh: Do you think there should be a direct responsibility, let us say on the Minister of National Health and Welfare, to be sure that his office is informed immediately there is something new in the wind?

Dr. Unwin: Yes, I think so. I think that would be part of the solution of the problem. Mind you, as I am sure you are aware, it is not so much the fact that somebody should come out with a balanced authoritative statement about a particular drug; it is very much the way in which it is presented because of the perennial capacity of youth automatically to charge at every red flag that authority waves. Quite often just somebody saying "this is a bad drug. Do not touch it," will induce some young kids to do just that, just for the hell of it. We are always going to have this problem.

Mr. Pugh: Yes, but I just want to follow this through. It is a matter of handling things and, as we always say, selling your point of view. If the press, taking its responsibility would, while playing up the one side give all the facts on the other side, not as though it is coming from the government but in a cautionary way saying: "Now, look out boys. This is something that can happen." Would that not be a good way of handling it?

Dr. Unwin. Yes. When we are talking about the press, we are talking about all the media of communication, of course.

Mr. Pugh: Yes.

Dr. Unwin: Television and radio included. Yes, I think so. If they can give a good, balanced approach like this, this is very necessary, so long as it is not put across in a dictatorial or a lecturing type of way to the young people, and if it can be got across in the manner of "Look, we are saying this because we are concerned for your individual welfare; that is all."

Mr. Pugh: I have one other point. It is in regard to availability of all these new substances that come out. This latest one you have just mentioned; in the last two days we have heard...

Dr. Unwin: The so-called "witches' poison."

Mr. Pugh: We will call it the "witches' poison" then. I go back to prohibition days when you heard about people who were on restricted lists for liquor, and so on, as well as in more recent times. There was always a run on extracts—vanilla extract and all the rest. This was the sop that they were able to get and head for skid row—"rubby-dubs" and all the rest. This was their cheap form of something in the nature of liquor.

We do have a certain amount of legislation on that but also—and I am going to the point of responsibility again—there is the responsibility of the normal citizen. Surely to goodness, if there was a run on something, particularly after the publicity the "witches' brew" will get from now on, the sources from druggists and drugstores should dry up. It should not be readily available, not because of a law but because of a sense of responsibility on the part those who have it available for normal use.

Dr. Unwin: I could not agree more but I am told—and I have no reason to doubt this —that there are always druggists available who, for the sake of making a bit of money and usually charging more than the product is actually worth, will make just about anything available to anybody.

• 1205

Mr. Pugh: To 13 year-olds and 15 year-olds?

Dr. Unwin: It appears so. When I wondered how in Heaven young people had some of the antidotes for some of these drugs and asked them, they said: "Oh, you know, such and such a drugstore. You go there and they will give it to you." I said: "Without a prescription?" They said: "Sure, doctor, you know. Do not be naive. Of course, if you pay for it."

Mr. Pugh: I go back to glue sniffing. Obviously that is not something on a drugstore shelf. That is here, there and everywhere.

Dr. Unwin: Yes.

Mr. Pugh: I am thinking about the responsibility of "Mr. Average Citizen" if he happens to be in that particular trade. Is there no way of getting to him by way of publicity and in some way or other trying to dry this thing up to certain extent?

Dr. Unwin: Yes; I am thinking, for example, of what I have read in the press about this current drug, once again the so-called "witches' poison". Fortunately, probably nobody yet has used the correct trade name of this drug by which it is easily identified. Even the newspapers have avoided this. I

think this is very desirable so that kids will not be rushing out to get such and such a drug called "X". They will not know what it is.

The statement made by pharmacists, apparently, was that the College of Pharmacists should ban this drug, implying that they wanted direction from on high before they make a move themselves. One would hope that any reasonably responsible citizen who had the ability to stop the free distribution of this drug would do so on his own undertaking but obviously it is not happening.

Mr. Pugh: Speaking, not clinically, from all your experience on the various things that have come forward, would you say that this latest one, the "witches' brew", could have very harmful effects on youths as they are growing up?

Dr. Unwin: Oh, yes.

Mr. Pugh: I am saying "not clinically" but have you sufficient evidence to feel that this may be most harmful?

Dr. Unwin: First of all, clinically it is an enormously dangerous drug. Apparently the young people are taking one teaspoonful but if they take three probably it will kill them. It is a lethal drug.

Mr. Pugh: Has any publicity to this effect been in any newspaper?

Dr. Unwin: Yes.

Mr. Pugh: It has?

Dr. Unwin: Yes. Now, forgetting the clinical side of it, I think the whole philosophy, the whole ethos surrounding the use by young people of drugs, is extremely dangerous, insidiously dangerous, because it implies certain things which must be of detriment to the growing young person and, therefore, ultimately to society.

First of all, if something looks attractive enough, go ahead and do it. Most of these drugs that the kids are taking are highly dangerous and they know they are—most of them do; the vast majority—but they still go ahead because they are told it feels good.

If you talk to young people about, let us say, marijuana, of which the danger is highly debatable, and say: "Well, why do you take it?" They say: "It feels good." I say: "Yes, but what about the fact that you are contravening a criminal law?" They will say: "Well, you do not get caught." And I say: "You just might be." The answer it: "Well, look doctor, I am under 18 and I know from what I have read in the paper that I will not get much of a sentence at all. I will get a warning; maybe I will get a few days in detention. It is not worth worrying about."

If they are under 18 they do not get a criminal record, of course. If they are over 18 they do and, therefore, they seriously sabotage their chances of getting into any profession, and so on.

Mr. Pugh: You say that it would stop their chances of getting into a profession. It would indicate that they come from all walks of life.

Dr. Unwin: Oh, yes. I want to stress this. You see, traditionally—and let us say even up until two years ago—if anybody talked to me about drugs and teenagers, from my training and reading I immediately thought: yes, kids living in slums, broken homes, economic disadvantages and so on. The classic studies have been done among the Negroes and Puerto Ricans of Harlem.

• 1210

This particular fad or wave that is going on now primarily is a phenomenon of the affluent middle-class young persons coming from homes that are quite comfortable, that have a high level of education in them. As I have said in my paper, it is a mistake to think you can identify a drug taker by looking at him. He does not look like some little kid from the slums and he does not necessarily look like a "hippie". Far from it. He can be any variety of Canadian youth at all and this has spread throughout the various strata of society but is essentially an upper-middle-class phenomenon. With all due respect, any one of your sons or daughters could be involved. There is this philosophy that I was talking about. First of all, there is the fact that young people get the attitude that if they want to do something they may as well do it. This may, in part, be a manifestation of the North American total approach of "buy now and pay later".

Another insidious thing is that they learn that if things get rough they should take some way out. If they feel rather frustrated, or depressed—and I think many of these young people continually taking drugs are quite depressed and unhappy—they may learn the philosophy, or, if you like, become conditioned to the fact, that if they are frustrated, or depressed, or suffering from anxiety, the best thing to do is to "turn on", or to intoxicate themselves to get away from it. Again,

they may be partly learning this from parents who just have to have a martini when they come home in the evening.

Mr. Pugh: I was just going to say that. Is there a parallel with liquor?

Dr. Unwin: Very much so, yes. As part of their sense of values and social responsibility as they are growing up it is very dangerous for young people to have the philosophy that if things get rough they can just pull out of the whole situation. This is not going to encourage them to take responsibility, to give leadership and to persist at difficult tasks when they are older. This will not have very good results for society.

Of course, in talking about this I am sure we are all aware that we are not referring to the vast majority of North American youth. We may be talking of no more than, say, somewhere between 5 and 10 per cent. Let us arbitrarily make 10 per cent the upper limit.

Mr. Pugh: That is a significant number.

Dr. Unwin: Yes; if it is that high *in toto*; or even 5 per cent. The point is that they come from the strata of society with the educational background that traditionally produce the leadership of any country. They are not coming from disadvantaged slums. They are coming from families which traditionally have produced college students. In fact, a percentage of them are college students. Surveys that have been done indicate that roughly 20 per cent of college students in America, England and Canada have had experiences with marijuana.

Mr. Pugh: Doctor, we have the various drugs and the near-drugs. Would you say that there is any organized crime behind the finding of new thrills and the dissemination of them?

Dr. Unwin: First of all, I do not categorically know. One continually gets reports from the young people themselves that crime syndicates are moving in on the scene, as they say.

Some of us predicted quite some time ago that if the approach to these drugs was just one of legislative prohibition this would be an invitation to the various criminal syndicates to move in on what is, after all, an enormously affluent market. The teenage market in North America is an extremely rich one, as you know. The young people themselves say that there is already evidence of this, and that some of the young "pushers" who are selling the stuff independently are themselves being beaten up and warned.

Other evidence of this may be the increasing number of claims by the young people themselves that the drugs they are receiving are being mixed with more dangerous drugs. The kids are not told about this. For some time there has been a strong rumour in Montreal that marijuana is being cured in opium, obviously with the hope that they become addicted to opium and crave for it and, therefore, become a steady market for the suppliers. Some of these alleged opium-cured samples have been tested, and there was no opium in them, but the young people still insist that there is something wrong with the marijuana. There are rumours that heroin is being put in with it, but that has not been proved.

We do know, for example, that in Montreal and in most of North America now the average capsule of LSD contains a little bit of LSD, which is not an addictive drug, and a big, heavy dose of what the young people call "speed"—methadrine, the amphetamine, which probably is an addictive drug.

Therefore, you have this phenomenon of young persons telling you that they are taking LSD. Now I, as a doctor, know that LSD is not addictive and does not produce physical dependency; yet I get the feeling that these young persons are "hooked", or dependent, on this particular thing. What I think they are dependent on is not the LSD but the methadrine.

These insidious things are going on and producing what we know as the classical addiction, or craving—need for the drug—even at a physiological level; and this, of course, creates a steady market.

The other aspect is whether or not crime syndicates are involved. Ultimately, they must be. I do not know where the original sources of these drugs are. We know the countries, to a certain extent, but who are the people involved? How does a young boy of, say, 16, 17 or 18, arrested in Montreal with a suitcase containing marijuana alleged to be worth $50,000, get the money to buy that sort of thing? Perhaps he gets it on credit, but how does he make the contacts, and where are they?

I have asked a number of young people who know the whole scene pretty well. They say, of course, that it ultimately goes back to the same sources as those engaged in the

international traffic in heroin, opium and cocaine, and so on. Therefore, somewhere in the background a highly organized syndicate must be involved. It makes sense. These young people are not going into a field in Mexico and pulling a couple of handfuls of marijuana and then coming back over the border. They are bringing large suitcases across. This must ultimately be distributed through a fairly well organized syndicate of some sort.

The Chairman: Thank you, Doctor.

Mr. Stafford, you came in late. Do you have any questions?

Mr. Stafford: No, I do not think so.

The Chairman: Doctor, what research is being done on the side-effects of these non-addictive drugs.

Dr. Unwin: On most of them, Mr. Chairman, quite a lot of research is going on. It is significant, however, that since the recent public hysteria in the last year it has become more difficult to get research going. LSD can now only be obtained by certain recognized institutions which are usually associated with universities for research. Until recently in the United States there was the ridiculous situation that no doctor in valid research could obtain LSD, but he could go down to the local coffee house or to the local campus and get as much as he wanted from the illegal "pushers".

It is not like that in Canada, but it is quite restrictive. You have to show that you have a pretty good research design, and so on, before it is allowed. And I think this is fair enough.

However, the drug that is, perhaps creating most controversy and the greatest amount of pressure on legislators and on public opinion is marijuana. To my knowledge there is virtually no research being done on the effects of this drug, particularly in the long-term effects.

The Chairman: Who should carry on this type of research? Should it be the teaching hospitals, such as the Royal Victoria, or should it be the provincial ministers of health or the federal minister of health?

Dr. Unwin: Ideally, it should be done within universities where there are trained people with the know-how and the facilities, not just at a clinical level. You have to involve pharmacologists and pathologists, and so on, as well as the clinical specialties. I am very much of the opinion that it should be done in university departments.

The Chairman: My next question is probably not germane to our inquiry, but, as you know, in a certain area of Toronto quite a situation exists in regard to people who are classified as "hippies".

Dr. Unwin: Yes.

The Chairman: What is your reaction to them, as a group? I read an article in *Reader's Digest* and it was quite distressing. Have you any comment to make on them?

Dr. Unwin: They are an enormously heterogeneous group. I have been trying for six months now to define "hippie". I cannot do it because I cannot find one single criterion which distinguishes them as a group. They do not all take drugs. They do not all wear beads. They do not all have long hair, so on and so on.

You can sort of divide them up into roughly three areas. They do not like me to do this because they say I am classifying them as figures rather than as individuals. Still, one has to make an attempt.

First of all, there are what are called the teeny-boppers, the young ones who hang around the fringe. A large number of these young people are home-runaways. I do not know what the figure is for Canada, but in the U.S. last year there were over 90,000 teenage runaways. They run away from home for various complex reasons. They come into the hippie cult because they are looked after by the hippies, protected by them and sometimes encouraged to go back home. They, of course, make contact with the drug scene.

• 1220

Then there is the "hippie" proper, who is the fairly intelligent, often highly articulate, person of college age. He is either a college drop-out or he is actually a college student. You see them on campus at McGill with their full paraphernalia, coming to their lectures and then at night going off to their hippy pads. A lot of these kids, of course, are involved in drugs, particularly marijuana, although in fair play I would stress that the studies that have been done have shown that these people are not delinquent, except for the fact that they are dealing with illegal drugs, but there is no other association with crime or delinquency, at all.

These people are the ones who have formulated, to a large extent, the hippy philosophy—the disgust with middle class values, hypocrisy, the plastic society; some of the philosophy of which I must admit I quite share their sympathy. I do not think their techniques for dealing with this are wise or likely to be successful. I do not think you change any society by dropping out of it, and I do not think you change anything or help yourself by taking intoxicants on a reasonably regular basis.

Now the other group, the third group, are what we call the hard acid heads". These are people often quite disturbed. A lot of them, I think, are urgently in need of psychiatric help. These are the people who withdraw into a very paranoid, suspicious and sensitive little clique, and who will not mix with anybody except members of that clique. They are convinced that anybody over the age of twenty-five who does not have a beard and who comes near them, must be an R.C.M.P. undercover man. This particular group has a high amount of physical illness among them. First of all, chronic upper respiratory tract infections from marijuana, from poor nutrition, from poor living conditions; a high rate of infectious hepatitis because more and more they are using intravenous methedrine and passing dirty needles from one to the other and spreading this infection; a high rate of venereal disease—quite a high rate of venereal disease—and a fairly high rate of malnutrition, in general. These people are often physical and psychiatric messes and are highly unapproachable.

Mr. Pugh: What does the word "acid head" mean?

Dr. Unwin: LSD is called "acid" as a vulgar term. It is d-lysergic acid diethylamide, so they call it "acid". An "acid head" is somebody who takes "acid" very frequently and is part of almost a religious mystique.

Mr. Pugh: It seems to me the officer with a beard would be more likely to be an undercover man.

Dr. Unwin: Some of them are, of course. Some of them do wear the full hippy paraphernalia, but it is rather hard to cover certain things. Some of the kids say they can tell by the size of the feet. I do not believe this.

Mr. Aiken: Mr. Chairman, I just want to clear up this classification. Would you not agree that there is another class that associates with hippies who are not hippies. They are the so-called "greasers". The ones who come in for the sole purpose of causing a disturbance.

Dr. Unwin: Yes, you see this.

Mr. Aiken: The reason I raised this is that earlier you mentioned the true hippies, themselves, are really involved in the philosophy of living which, in a large part, is not necessarily detrimental to society. But, in many of the so-called hippy hangouts, these "greasers" eventually show up and they are rough characters who would rather give the whole area a bad name.

Dr. Unwin: This is true and this has certainly happened in Montreal, for example, to the extent where certain facilities which were set up for hippies by church speakers or someone else had to be closed because the "pushers", or as you call them, the "greasers", started coming around in too great a number and often these places ended up being raided.

It was rather ironic that one of the ways in which the hippies tried to protect themselves against this brand of person was to call in—this may have happened spontaneously—more and more of the motorcycle gang type. I have noticed them hanging around with the hippies and they have become the Hell's Angels type in Montreal, one group is called Satan's Choice. They have become the protectors of the hippies. Some of them take a certain amount of drugs themselves, but they are there, primarily, to stop these other wolves from coming in on this flock of innocent lambs.

Mr. Aiken: I am told that a good many of the hippies have left Yorkville, which is Mr. Cameron's part of the country, and that most of the people who are left are not hippies at all.

• 1225

Dr. Unwin: I have read that certain authorities in Toronto have pledged themselves to rid Yorkville of this hippy menace. I am sometimes a little bit dismayed by the pronunciamientos of public figures about the alleged dirtiness, the alleged criminality or perversity of hippies. I have been in quite a few hippy crowds, you know, and I have never yet smelt unclean flesh, and I am sensitive enough to people who do not use normal bodily hygiene. You do not smell this.

A certain prominent lady Member of Parliament described the hippies as being a plague of grasshoppers, and un-Canadian. Somebody else out in the West said they are a mob of hooligans and bums and he would run them out of the province. How do you expect young people to react to this sort of thing, particularly, if it is not true?

Mr. Howe (Hamilton South): Do the police not go in and find drugs? You have been speaking about marijuana and so on being available in these hippy pads. Do the police not go in and raid them shall we say, and arrest them, or do they seem to stay clear of it? Do they have an idea of helping them in another way? I just do not understand how this goes on.

Dr. Unwin: This is the peculiar thing about it. There are incessant raids on so-called hippy pads, not just to look for drugs, but they are closed down for reasons of poor hygiene, fire hazards and so on. The classic pad is a room in a rundown building, in a rundown slum area of town, where the landlord will take any rent he can get for it. The kids just put a mass of mattresses over the whole of the floor. Anybody can come there and get a free bed. And there may be some food and that. No matter where they come from—they arrive in town from San Francisco, Los Angeles, Toronto and so on—they will come to a certain café where the the hippies hang out and they will say: "Look I need a pad—a bed—for the night". Their reply will be: "Right, come to such and such an address". This is the self-help concept of it.

The police do raid these places, particularly, if they have any reasons to suspect that there might be a large cache of drugs, or there might be a pusher involved. They will swoop down, but, as far as I know, it has not had any real affect on the availability of the drugs.

It is said now by some people that marijuana is somewhat difficult to get in Montreal at this time, not because of the activities of the law enforcement agencies, but because it is the wrong season in Mexico. It is not grown during this particular time of the year down there. It just continues to goes on because, you see, the young people themselves distribute this and give it to one another. The young people, as I said, can be any variety of Canadian youths so they do not come to attention, they do not wear dark glasses, double-breasted suits nor look like the stereotype criminal.

Mr. Howe (Hamilton South): Whatever that is.

Dr. Unwin: Yes.

The Chairman: I take it there are no more questions?

Before we adjourn I would like to have the following motions passed, if possible. You do not need to listen to this one, Dr. Unwin. That reasonable living and travelling expenses be paid to Dr. J. Robertson Unwin who was called to appear before this Committee on January 25, 1968 in the matter of Bill C-96. Could I have a motion by someone?

Mr. Forest: I so move.

Mr. McCleave: I will vouch for the motion because this is one kind of a trip of which I approve.

The Chairman: Is there any discussion on the motion? All those in favour?

Some hon. Members: Agreed.

The Chairman: A similar motion is needed with regard to the payment of the living and travelling expenses of Professor A. M. Linden who will be here as a witness on Tuesday next, dealing with the subject matter of compensation to persons who are disabled as a result of crime.

Mr. Aiken: I so move.

Mr. MacEwan: I second the motion.

The Chairman: Is there any discussion? All those in favour?

Some hon. Members: Agreed.

The Chairman: Mr. Choquette, you came in late and you have not had the advantage of hearing Dr. Unwin, but it may be that you may want to ask a question.

Mr. Choquette: No, Sir. I am going home during the weekend if you want to pay my expenses.

• 1230

The Chairman: Before we adjourn I wish to thank Dr. Unwin, on behalf of the Committee, for his attendance here this morning. I think you will all agree with me that we have heard a man who has a 100 per cent understanding and knowledge of the matters he has been discussing. I think we can assure him that we have enjoyed his presentation, the

very full and complete answers that he has given, and, I think, we all will agree that what he has told us will be of great future benefit. It makes all of us think; it makes all of us make up our minds that we probably are going to do something about it, somewhat along the lines of what you have suggested, Doctor. On behalf of the Committee I want to thank you most sincerely.

The meeting is now adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

TUESDAY, JANUARY 30, 1968

RESPECTING

The subject-matter of
Private Member's Notice of Motion No. 20
(Criminal Injuries Compensation Board)

WITNESS:

Dr. Allen M. Linden, Professor, Osgoode Hall Law School,
Osgoode Hall, Toronto

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

27729—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (*Hamilton South*),	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. McCleave,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
Mr. Guay,	Mr. Otto,	Mr. Woolliams—(24).
Mr. Honey,		

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, January 30, 1968.
(18)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day.

Members present: Messrs. Aiken, Choquette, Forest, Honey, Howe (*Hamilton South*), MacEwan, McCleave, McQuaid, Pugh, Ryan, Tolmie and Wahn —(12).

In attendance: Dr. Allen M. Linden, Professor, Osgoode Hall Law School, Osgoode Hall, Toronto.

In view of the unavoidable absences of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman for the meeting of this day. It was moved by Mr. Aiken, seconded by Mr. Honey, that Mr. Wahn take the Chair of this Committee as Acting Chairman.

There being no other nominations, the Clerk declared Mr. Wahn duly elected Acting Chairman for the meeting of this day, and invited him to take the Chair.

Mr. Wahn thanked the Committee for the honour bestowed upon him. The Committee continued its hearings in connection with the provisions of *Notice of Motion No. 20.* The Acting Chairman introduced the witness, Dr. Allen M. Linden, Professor at the Osgoode Hall Law School in Toronto.

Professor Linden read a prepared statement entitled *Compensation for Victims of Crime in Canada?* Following his statement, the witness was questioned by the Members for the remainder of the meeting.

The Acting Chairman mentioned Professor J. LL. J. Edwards, Director, Centre of Criminology, University of Toronto, who is on leave of absence at the University of Cambridge in England. Professor Edwards sent a copy of his article entitled *Compensation to Victims of Crimes of Personal Violence,* reprinted from *Federal Probation,* Washington, D.C., June 1966. Copies were distributed to the Members and the Committee agreed to file the article as an Exhibit. (*Exhibit M-20-1*)

The Acting Chairman thanked Professor Linden for the useful information which he had conveyed. At 12.45 p.m., the Committee was adjourned, to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

27729—1½

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, January 30, 1968.

• 1120

The Clerk of the Committee: Mr. Wahn is elected as Acting Chairman.

Mr. Ian Wahn (St. Paul's): Thank you very much, gentlemen, for this completely unexpected honour. I assure you I did not do too much lobbying. I asked our guest out for lunch but I did not realize that it would bring about this happy result.

I believe you all have copies of Dr. Linden's brief. Dr. Linden was invited to appear on this motion. Probably most of you have met Dr. Linden. He is eminently well qualified to discuss the problem of compensation for victims of crime. He is associated with the Osgoode Hall Law School, which is currently engaged in a statistical survey of victims in the metropolitan Toronto area. I think unless members of the Committee have any other suggestions that we will call upon Dr. Linden to make his opening remarks, following which we will have our usual question period. Dr. Linden?

Dr. Allan M. Linden, B.A., LL.M., J.S.D., (Osgoode Hall Law School, Toronto): Thank you very much for inviting me. It is the first time I have ever appeared before a Committee of the House of Commons. This particular Committee has earned a lot of my interest and a lot of the interest of people around the law school and the profession. What I propose to do today, if it is all right with you, is read through these few pages that I have placed before you, which are primarily a statistical result of the study that we did. I will then certainly welcome any questions that you may have in this regard.

Mr. Morris, while tending his shop, is robbed and killed by an unknown assailant. Mrs. Corry, while crossing a field on her way home from a shopping trip one afternoon, is attacked and raped by an unemployed man. John Howard, while taking a stroll on a main street on a Saturday night, is savagely beaten up by three youths in black leather jackets. Our criminal law of course, prohibits this conduct; the unknown killer, if caught, would be sentenced to life imprisonment; the man who raped Mrs. Corry would be sent to the penitentiary for 10 years and the three youths might be put away for 6 months. But what about Mrs. Corry, what about John Howard and the widow of Mr. Morris? What, if anything, does society do for them?

There is a common misapprehension abroad that our law provides no remedy at all for these victims of crime. This is false. There is provision in the law of torts for a civil action to be brought against people who assault and batter other people or take another's life wrongfully. Thus, in these three instances, the victims are entitled to sue their attackers for damages which can be substantial. Unfortunately, however, this right to sue is usually only an empty shell.

Mr. Howe (Hamilton South): Do you want us to ask questions as you go along or would you rather we wait until you have finished?

The Acting Chairman: Do you have any preference at all?

Dr. Linden: It does not matter to me.

The Acting Chairman: What would the Committee prefer?

Mr. Aiken: I think it would be better, Mr. Chairman, if Dr. Linden read through the brief, because often we ask questions which require lengthy answers.

Dr. Linden: It is only eight pages and it should not take long.

The Acting Chairman: It might help our procedure if you could make a note of the particular questions so you will not forget it, and then we will call upon you first.

Mr. Aiken: Fine, Mr. Chairman.

Dr. Linden: Unfortunately this right to sue is usually only an empty shell.

Any court judgment obtained would be worthless for the murderer of Mr. Morris was

never apprehended, the man who raped Mrs. Corry was unemployed and impecunious, and the black leather jacket boys of course, were men of straw. Consequently, our law of torts, though in theory available to assist, is in practice powerless to do so.

The sorry plight of victims of crime has received much attention throughout the world of late and certain advanced legislatures have begun to respond. Several jurisdictions including the United Kingdom, New Zealand, California, New York and our own Province of Saskatchewan have established new compensation schemes to assist financially the victims of crime and several other jurisdictions, including some in Australia, the United States and our own Provinces of British Columbia, Manitoba, Ontario and Nova Scotia, are reputed to be studying the problem. It is therefore, fitting that the Justice and Legal Affairs Committee of the House of Commons, which has already had such a significant impact on reforming some of our outdated laws, undertake a consideration of this question.

Although there has been substantial public debate however concerning this problem, there has been very little effort made to assemble the facts upon which to base a legislative judgment. Is there a social need for compensation or has our elaborate system of social welfare legislation eliminated such need? Just how is the present tort system functioning in providing reparation for these victims? Will the cost of such a plan be prohibitive? What are the opinions of our people on this issue? Because the answers to these questions would be relevant to legislators concerned with this matter, we at the Osgoode Hall Law School designed a survey to assemble, as best we could, some of the factual data we now lack.

With the co-operation of the Toronto Police Chief James E. Mackey and the Metropolitan Board of Police Commissioners, the records of concluded crimes of violence committed in Metro in 1966 were made available to us. We then sent letters to 431 individuals who were involved as victims in the crimes of murder, manslaughter, attempted murder, rape, attempted rape, wounding and robbery. I have attached a copy of the letter and the questionnaire to the material so that you could see just what process we used.

After we sent these out, if there was no response, we sent another letter and if there was no response after that, we telephoned the people. In this way, we were able to collect 172 completed questionnaires upon which our findings will ultimately be based. I must warn you that much more analysis remains to be done on this data, but for your assistance I am disclosing to you today some of our tentative or preliminary findings. These will be limited because we are not quite through with our study of the responses with regard to just three of the crimes investigated—rape, wounding and robbery.

These are some of the preliminary findings. With regard to financial losses the survey indicated that some economic loss was suffered by 79 per cent of all the victims of crime studied. Surprisingly, not all of the victims of crimes of violence incurred financial losses. For example, a rape victim might not require or seek any medical attention and a robbed merchant might have the articles taken and returned immediately to him. Consequently, 21 per cent of the victims had no loss.

An examination of the type of loss discloses that medical costs, for instance, were incurred by 42 per cent of the victims; hospitalization by 29 per cent; income losses, one of the most important types of loss, occurred in 23 per cent of the cases studied. In the wounding cases, income loss was suffered in 33 per cent of the cases, while it was less frequent in the robbery cases, happening 14 per cent of the time. Property loss was the most prevalent, transpiring in 51 per cent of the studied cases, but this can be explained by the fact that our sample included a large proportion of robbery cases where this frequency was high.

• 1130

With respect to the non-tort recovery, the analysis of the sources of recovery have so far proved rather disappointing. What I mean by "non-tort" sources are public and private insurance, medicare, hospital care, and things like that.

One might have thought that public and private insurance, with the large amount of attention lavished upon it these days, would have fully covered most of these expenses, but this does not appear to be the case. Of those incurring medical costs, only 36 per cent were recorded as fully recompensed by the present medical coverage schemes. In the case of hospital cost, the recovery pattern was also dismal. Of the respondents suffering these losses, only 46 per cent were shown as fully reimbursed. Income expenses recovery was, still worse, with only 2 per cent of those suffering such loss stating that they were

completely recompensed. In the property loss cases, finally, 7 per cent responded that they were totally reimbursed.

Now the tort recovery, this is the availability of the cause of action in civil law. Just how does it work? This tort suit for damages is always available to supplement their recovery from private and government insurance. Our survey has demonstrated conclusively how illusory a right this is, because only 4 per cent of the victims of crime studied actually recovered any money from the person who attacked them! Nor only did a mere handful of people recover, but hardly any of the victims even considered suing; still fewer consulted lawyers with regard to their legal rights, and fewer than that ever attempted to secure any reparation Only 15 per cent of all the victims studied considered suing; only 5 per cent consulted counsel and slightly less than 5 per cent attempted to recover.

The reasons given for this are obvious. In many cases, of course, the criminal was never apprehended at all, which would make a civil suit impossible. Many stated that they just did not think of suing, others believed (wrongly) that their private rights lapsed if the state punished the criminal and still others felt that it was just not worth the cost and trouble to press their civil rights.

There are some interesting variations with regard to the type of crime. The rape victims studied unanimously wanted nothing more to do with the matter and none saw a lawyer or tried to sue. The victims of wounding, on the contrary, were more likely to pursue their assailants, 42 p. 100 of them considering suit and 20 p. 100 consulting a lawyer. In the robbery cases 9 p. 100 considered suing and 2 p. 100 consulted a lawyer.

In conclusion, one can state categorically that the tort suit plays an insignificant role in supplying financial aid to the victims of crime.

Out-of-pocket Losses

After taking into account all the receipts from non-tort *and* from tort sources, 55 p. 100 of the victims of crime studied still were out-of-pocket as a result of their experience. This means, of course, that 45 p. 100 of these people eventually did recover all of their expenses and thus incurred no out-of-pocket loss. (This calculation considered only economic losses of course, and did not take into account the pain and suffering element that the tort law would take into account if it applied).

Looking more closely at the 55 per cent who ended up with out-of-pocket expenses, most of them incurred only small amounts of loss; 35 per cent lost between $1-$49, and 17 per cent lost between $50-$99. The balance lost somewhat more; 16 per cent between $100-$199, 8 per cent between $200-$299, 7 per cent between $300-$399, 2 per cent between $400-$499, 9 per cent between $500-$999, 3 per cent between $1,000-$2,000, and 2 per cent lost over $2,000. At least 47 per cent then of those who suffered losses, were out-of-pocket over $100 and about 14 per cent of those who suffered losses were out-of-pocket over $500.

• 1135

Looking at the total lost by the people studied in our study it was $23,329 and the average loss of those who incurred some out-of-pocket expense was around $251 on the average. These of course, excluded homicide cases where the cost would be much higher. Looking at the specific crimes, the average loss in the rape cases—the cost of a rape in Toronto was $77—it was $264 in the wounding cases, and $272 in the robbery cases.

Of the total money lost, only 4 per cent of it was lost by those with insignificant losses of $1-$49, that is 35 per cent of the people suffering out-of-pocket losses. On the other hand, those with the large losses of over $1,000, who numerically make up only 5 per cent of the people, had total out-of-pocket losses of 46 per cent. Thus, the great bulk of those victimized by crime could be serviced rather inexpensively, but the relatively small number, who incur large losses, would require more substantial funds for distribution.

In conclusion, let me summarize that these preliminary findings have disclosed that a large number of the victims of crime suffer some economic loss initially, that is, 79 per cent of them. Although a substantial portion of these expenditures are recovered by the victims from the various non-tort sources now in operation, the bulk of these expenses are not so reimbursed. Theoretically available to assist in all these cases, the tort law remedy has failed to supply compensation for the victims of crimes. For in only 4 per cent of the cases did anyone succeed in collecting any money from his attacker via tort law. But, after all these sources of recovery were added together, only a few of the victims of rape, robbery and wounding that were studied ended up with large out-of-pocket losses. Nevertheless, it is these large losers that most need societal attention focussed upon them.

Would the cost of a compensation plan for Canadian crime victims be prohibitive? Most of the British payouts, for example, have been quite small, frequently less than 200 pounds. Only rarely have the awards been substantial: for example one student who suffered brain damage recovered 15,000 pounds; I think that was the highest award so far; a blinded boy got 13,500 pounds; a widow and the two children of a man who died while chasing a housebreaker received some 5,500 pounds. And a similar pattern to this could be expected to emerge, I think in Canada.

Let us make some rough comparisons with the British scheme. In the first two years of its operation, it paid 1,979 awards, averaging approximately 368 pounds each, for a total pay-out of 727,953 pounds. In Canadian dollars this scheme would cost in the neighbourhood of $2,000,000 in its initial two years. But the operating cost of the British plan has increased since its infancy as more people learned of its existence and as the inevitable time lag in paying claims evened out. In a study done in July, 1966, for example, the scheme paid out 78,000 pounds or about $200,000. At this more realistic rate the British scheme is probably now distributing about $2,500,000 annually. Since Britain's population is 50 million to our 20 million, the cost of a Canadian scheme similar to the British (of course, this excludes administrative costs and this also assumes that all other factors remain the same) could be estimated at approximately $1,000,000 annually, or to be put another way, a contribution of five cents for each Canadian. (It should not be forgotten that the British plan pays for pain and suffering and it has a deductible feature of 50 pounds or 3 weeks salary).

Should a plan to compensate victims of crime be established? You legislators must consider the arguments both ways, assess the facts presented here, discover the estimated cost of such a program and make a value choice for Canada in accordance with your own consciences. However, one thing is sure—the individuals who have been victimized by crime are overwhelmingly in favour of such a scheme because of those interviewed, 92 per cent felt that compensation should be provided for victims of crime. Thank you.

The Chairman: Thank you very much Dr. Linden. Mr. Howe, Mr. McCleave and Mr. Aiken have indicated they want to ask questions.

• 1140

Mr. Howe (Hamilton South): My question will be short, Mr. Chairman. At the beginning you spoke of being able to recover losses from the assailant, if the assailant were available and had sufficient liquid assets to be able to compensate. If the victim is not apprehended is there any other course at the present time, or is this blank?

Dr. Linden: No, except for motor vehicle accident cases, of course. If a man is guilty of a criminal offence under the highway laws or under the Criminal Code because he has run over someone, then, of course, the unsatisfied judgment claims that exist across the country are available, but there is no other recourse except through private insurance plans. There are, of course, welfare measures and medicare schemes in those provinces where they exist, but not a tort law remedy. There is no one to sue, there is nothing to bring action against, and I think this is really the problem that exists today.

Mr. Howe (Hamilton South): At the outset let me state that I am quite in favour of what you suggest. My questions are not intended to suggest otherwise.

Dr. Linden: I have really been very careful not to suggest...

Mr. Howe (Hamilton South): I will suggest it, them. I am in favour of it. Do you suggest —perhaps you would like to choose some other word—that there be recovery of more than out-of-pocket losses, financial losses, and that there should be, shall we say, certain set amounts or should each crime be considered on its "merits"?

Dr. Linden: Again, it depends on how much it is going to cost. The most important thing to me, is to ensure that people who suffer economic losses, are out of work, or widows whose husbands have been killed are looked after economically. I personally would like to see something in addition to that. I would like to see an award made for pain and suffering under the law of tort but, again, this costs more and it is just a question of how much we are prepared to pay for this. I personally would not see anything wrong with having the ordinary tort law applied. In fact, my own personal recommendation would be to create an unsatisfied judgment fund for victims of crimes rather than having separate schemes. I think the present tort laws could handle it in the same way as uninsured driv-

er cases are handled. However, to date this really has not been aired too much across the country because of everyone thinking in terms of a board, which seems to be the way it is being done in most areas.

Mr. Howe (Hamilton-South): This is a matter of going to court and having it decide how much the amount should be?

Dr. Linden: Yes. Of course, as you know, sir, most of these are settled just as most automobile accident cases are settled, and very rarely do the claims actually have to be decided by a court. Quite often you will find that people do not even have to go to lawyers.

Mr. Howe (Hamilton-South): Of course I asked because of my position. I do not even know what a tort case means.

Dr. Linden: I am sorry. I assumed that most of you knew what it meant.

Mr. Howe (Hamilton-South): Most of the Committee members are lawyers but I am only a doctor. That is why I asked if this was decided by the individual making application to a court for a decision. You stated that quite often these cases are settled by some individual action. Is there a set amount set aside and, if so, how would that be decided.

Dr. Linden: Well the British statute states that tort law standards be used. However, they have set a maximum because if, for example, a millionaire was injured in a car accident he would be entitled, otherwise, to receive from his assailant $1 million or what ever he earns per week. The British system, refusing to go that high, sets the maximum out-of-pocket income expenses at twice the average industrial wage. They have also removed the right to punitive or exemplary damages, where a large sum is awarded to penalize the defendant. The state felt that they should not pay those awards because it was not really responsible. As I said, they were using the normal tort standards except for certain maximums. Other states have set maximums of $5,000 and $2,000 and within that the normal court standards. It is all a question of costing and just how much you are prepared to provide for these people.

Mr. More (Hamilton South): So they have levelled some of the economic class standards?

Dr. Linden: Yes.

Mr. McCleave: Dr. Howe asked one question that I intended to put. However, I have one other question. As you know, we have frequently been faced with a constitutional problem when discussing this subject in the past. The question arises whether the Federal Parliament should have jurisdiction to legislate this compensation, a principle that I might say I accept, or whether there should be a joint undertaking to set upon unsatisfied judgment fund for these victims, with one half being contributed federally and the other half provincially. Do you have any thoughts on that subject, Doctor?

• 1145

Dr. Linden: I am not a constitutional expert but I have talked to several people about this. Probably the easiest way of doing it would be to handle it on sort of a cost sharing co-operative basis, with the federal government providing the stimulant and perhaps providing part of the fund, sort of like the Medicare type of arrangement. I would have thought that would probably be the most acceptable. However, I am assured by some of my constitutional colleagues that the federal government, under Section 91(27) of the Criminal Code, could enact legislation as an adjunct to the criminal law. As you may know, Section 6(38) of the Criminal Code now permits an order for restitution, but as it is limited only to cases of suspended sentences it is hardly used, if at all. These constitutional colleagues of mine seem to think that the federal government, if it wished to do so, could move in this way.

The other alternative is to do as the British did. They have not even passed legislation. All they have is an allotment of a certain amount of money for this purpose. It is a voluntary *ex gratia* sort of thing and the unitary government gives money out to deserving applicants. I do not think there is any prohibition against the federal government giving out money.

Mr. McCleave: Is that administered through the Home Secretary's department?

Dr. Linden: Yes, the Home Secretary's department. Apparently there is just an allocation in the budget and they have certain guidelines. It is completely gratuitous. It is a private grant by the government to a particular claimant.

So there are at least three methods of procedure. I am sure there will be some disa-

greement over the criminal law power but I doubt if there could be any disagreement in operating in the same way as the Medicare program.

Mr. McCleave: Perhaps we will try it on your colleagues for size through the Canada Assistance Plan Act since we seem to be in a field largely involving social problems arising out of need because of the criminal behavior of certain elements of society.

Dr. Linden: Well obviously the Canada Assistance Plan would apply to victims of crime just like victims of any other sort of accident or any other sort of adversity, but it applies in only rare circumstances. A person has to be impecunious, out of work and unable to look after himself, and it limits the protection you are giving to your people. There are many people who feel that even those who are not rendered totally disabled as a result of this should still be compensated in some way.

Mr. McCleave: I was thinking of it more from a point of view of mechanics or machinery, not necessarily using the same criteria that are in the plan now.

Dr. Linden: Yes. There are some other plans. For example, because the California plan is carded to need and to total disability it is restricted in what it provides, and only in those horrible cases where a person is incapacitated or is in desperate financial straits as a result of this do they provide compensation. That is a very limited scheme, perhaps the most limited that has been created anywhere.

Mr. McCleave: So I take it that you are inclined more toward straightforward compensation?

Dr. Linden: Yes, if it can be financially handled. As I indicated, and this is only a rough estimate, it would cost this nation only a million dollars a year. I have some evidence that this is not too far out because the Saskatchewan system, which was legislated in the spring and came into effect in September, allocated $40,000 from their budget for this year, and if you compare the population of Saskatchewan with the population of the whole country you will see that it does not come out too far from a million dollars. I have their estimate and I assume that they have done some pretty close checking on it.

Mr. McCleave: I have one other question which arose subsequent to the start of our conversation, Professor Linden. I am thinking of a case, say, where an arsonist destroys an industry thereby throwing many people out of work. It is not a matter of physical injury being caused but it is certainly a matter of economic dislocation. As a result of your studies have you any suggestions on what should be done in such cases?

Dr. Linden: Although we have not really gone into that it is one other thing one must think about. There are plenty of problems in the world but one devotes himself to the ones that are most pressing. It seemed to us that the most pressing problem had to do with people who were actually injured, had excessive medical costs and were out of work as a result of personal violence. Of course, many times a loss like that could be more serious.

Mr. Howe (Hamilton South): What about families of murder victims? I am thinking of a case in Saskatchewan. This is going to be larger than the $40,000.

• 1150

Dr. Linden: They include the victims of murder, but fortunately not too many people are murdered. The question also arises, who is there to compensate? If somebody wipes out a family, a father and a mother and five little children—I am not too sure of the case—who is left to be compensated? They would not give the money to a friend because someone was murdered. Of course, if the husband were murdered then the wife and children would need a substantial payment. If a child is murdered our present law provides almost nothing. The same is true of a child being run over by a car. The law is quite cruel and heartless in that connection. It may seem as though these expenses would be much larger than in reality they would be when you come to assessing them and paying them out.

The Acting Chairman (Mr. Wahn): If you are finished, Mr. McCleave, we will have questions from Mr. Aiken followed by questions from Mr. Tolmie and Mr. Honey.

Mr. Aiken: Dr. Linden, what really lies behind this Bill, I believe, is the provision for compensation to the widow and children of innocent victims of murder. I think this is the first example that people think of when the compensation question is discussed. I was rather sorry that your investigation did not go into the field of murder. Was there any particular reason for this?

Dr. Linden: I am sorry. We did try and we had eight or nine names of people who had been killed in the city of Toronto this year and we wrote to their families but they did not fill out the forms. We wrote them again and they did not fill out the forms; then we telephoned them but they did not want to have anything to do with us. I think we had one questionnaire filled out. It is an unhappy sort of thing. We also have difficulty with the rape cases. People just do not want to have anything to do with it. It is going to be very difficult to ascertain those figures.

The other thing you have to realize is that some of these murder cases seem to be within the family, and the husband has killed his wife or the mother has killed one of her children, or something like that. Of course, there is the odd dramatic one where the wage earner is struck down; this is the kind of case that we most worry about. When you add them all up most of them are the kind where there really is no great financial loss suffered by any person dependent upon the person killed. Although we are shocked and horrified when the state moves to try to protect these people, there really is not very much that can be done in a financial way.

Mr. Aiken: Statistically have you made any effort to find out about these murder cases in Canada, that is, where there would be the need for some recompense for innocent victims?

Dr. Linden: To my knowledge we have not. It should be done. I think somebody should do it. Perhaps this Committee could delegate somebody to do that. In fact, you might have a scheme which would protect only the victims of murder and it may very well be that Mr. Cowan, whom I presume is the author of this order, is probably most concerned about that prospect. Perhaps everybody is most concerned about that. If the scheme is going to cost too much, it might be that the Parliament of Canada would say that they will compensate the relatives of the victims of murder but no one else. Let the provinces do that. Murder is obviously the most dramatic; but there are only 350 of these a year and that includes manslaughter, criminal negligence causing death, second degree murder, and all these other things. When you compare that figure with the number of crimes—rapes, robberies, woundings and assaults—it is an infinitesimal portion of all the kinds that go on.

• 1155

Mr. Aiken: Just one more question. Do you know of any study that has been made along these lines or would this Committee have to start from the beginning on it?

Dr. Linden: To my knowledge this is the only study of this type that has been done in this field anywhere. Most of the places that have enacted legislation seem to have done so without publishing the results of their cost. If you look at the British White Papers leading up to this, there does not seem to have been any statistical costing; they indicate the number of crimes but they are taking a very rough guess. I think this is one of the reasons why the British went into that scheme as a voluntary, gratuitous payment; if it got too expensive they could pull back. So they went into it very tentatively and cautiously and probably wisely, too, at least, until someone got some experience. New Zealand, for example, have had very few claims. I think the first year of their plan, and this is the first year, they had some seven claims. It was hardly expensive at all. In fact, they had so few claims that they expanded the coverage that was initially provided because they thought it would cost more money. It did not cost that much.

Mr. Aiken: If you assume that life insurance is a fairly general fact of life in this country, it might be very difficult for people to prove a case of financial loss.

Dr. Linden: Again it depends on who we are talking about. The sad thing we have discovered is that the victims of crime are poor and the murderers are poor. Both those who inflict the injury and those who have the injury inflicted upon them tend to be people who have not had the fortunate upbringing that most of us have had. I think that this is reflected in some of my other figures. Why is it that the hospital medical costs were paid for so few of these people. In any province we have virtually 100 per cent cost coverage in hosptial and 90 or 92 per cent or so in medical coverage, but it is the balance who are the people who are getting beaten up, murdered, raped, and robbed, it seems. It is those people who need it the most that really do not get it from any other source. I think that would be the case with life insurance. I think you will find that of the people murdered a far larger proportion will be without life insurance than the rest of the public. It is a rather strange fact but I think you will find that is is so.

Mr. Aiken: Thank you. I might add just one comment. In our Estimates, in many departments, there are sort of *ex gratia* pensions paid to widows of long service people, and so on, for which there is no general public enactment. Would you suggest that this might be a proper way of establishing it, as a vote with certain criteria, without enacting legislation?

Dr. Linden: It is worth considering. I think the city of Hamilton has something like this. Is that not so, Dr. Howe? The municipality may, if it wishes, grant money to victims of crime in that municipality. I know in Toronto we had a case where this chap, Mr. Blank, went after a bank robber and was shot down and the city of Toronto gave his widow $5,000, or something like that. It is always within the power of any government to give money to somebody whom they feel deserves it. But for myself, I am not too fond of *ex gratia* types of things. I am a lawyer and if you are going to have law, lay down the law and then everybody knows it. People have rights or they do not have rights and if they do not like the way they are treated they can appeal to a court or to some place else and get justice. However, as experimental thing it might be worth considering, as they did in Britain, but again, speaking of the British experience, it is not as necessary for us to experiment in this way.

• 1200

The Acting Chairman (Mr. Wahn): We will have questions from Mr. Tolmie, followed by Mr. Honey and Mr. Choquette.

Mr. Tolmie: Professor Linden, the British scheme, as I understand it, and as you mentioned, is non-statutory and does not list any specified offences; it is very flexible. The others such as the schemes of New Zealand, Saskatchewan, and New York, list offences. I was wondering what your opinion of the relative merits of these two schemes would be?

Dr. Linden: I do not think it matters a great deal. I think what I would like to have is a sort of a mixed thing where you list them. Certain offences are included but not to exclude any other types of offences. I think some of the plans have done that. They have listed some but included anything else that the board thinks is worthy of compensation. At least you have as much guidance as possible without withdrawing the flexibility that the agency that is administering the scheme should rightly have. I do not think there is a great deal in it. The British although have a flexible scheme, really compensate for the whole range of crimes pretty well. There are long, long lists of crimes but when you look at them closely there is really only four or five major classes of crime; the rest of them are the very odd case which comes up.

Mr. Tolmie: Also, as I understand it, from the four jurisdictions, New York, New Zealand, Saskatchewan and Britain, the award of compensation does not depend upon any adjudication of guilt. In other words, a man can be charged and found not guilty and still the relatives of victims could be compensated. What is your opinion on that?

Dr. Linden: I think it is vital to have that because, for example, in about half or perhaps more of the crimes that are committed the assailant is never found. If he is never found and you had to depend upon the determination of guilt you would automatically exclude half the victims of crime. There does not seem to be much point in preparing a scheme for half the victims of crime.

Mr. Tolmie: Let us assume that the person is found and charged and still found not guilty.

Dr. Linden: That is one of the reasons my own personal preference is to use ordinary tort law, because the tort law standards of truth are much less than the criminal law standards. You do not have to go beyond a reasonable doubt; you have to go on the balance of probabilities. The accused does not have all the procedural protections that an accused person has if the charge is set out wrong or a little slip is made in spelling his name, and these ancient criminal law protections have been given to the accused because every accused used to be hung. All these protections were developed in the law to protect people from being hung. Would it not be applied in tort law so that you would have a wider range of availability, of responsibility, and this is one of the reasons why I prefer that. But there are some difficulties. Take, for example, the insane person or a little child who commits a crime. He is not really guilty of that "crime" because he is too young or he is insane and does not know what he is doing. He probably would not be guilty of negligence, tort, or potential wrongdoing either. But the British plan says pay these people if their offence is the result of insanity or drunkenness or something like that, as though they were responsible. That is another way of

doing it, but there is a problem. It depends on what your defence is. If the girl was raped but the accused was not the man who did it—she was raped by her previous visitor—and she should be compensated whether we convict a man or not. It cannot be determined solely on whether guilt is found. That does raise some difficulties.

The bigger problem is if the offence never occurred. Take the rape case which is most common. The lady says she was raped. The fellow says she consented. In such a case I would think the criminal trial would be terribly interesting and important because if, in fact, she consented she was a guilty party to what happened to her and she probably should not be compensated or, at least, her compensation should be reduced. I think most of the plans specify that if the injured person is partially responsible, the board or whoever is responsible for the decision can withhold compensation, reduce it, or deny it altogether.

• 1205

Mr. Tolmie: I believe this is the case in brief. If he is a very respectable person and if there is some possibility that there was consent or partial responsibility then the claim would be reduced accordingly. That is all.

Mr. Honey: Mr. Chairman, I have only a couple of questions. Dr. Linden, going back to the questions raised by Mr. Aiken, I wonder if you fully explored all the facts. I find it a little difficult to reconcile your findings that only 36 per cent of those who reported were fully recompensed by present medical coverage schemes with your statement that in Ontario something like 95 per cent of the people are covered. Did you explore this? Is there not some inconsistency there?

Dr. Linden: I will have to go back over these figures. There were some who were partially compensated and I have not included them here. There was a fair number of them.

Mr. Honey: You said that 36 per cent were fully compensated?

Dr. Linden: That is right. There were a few who were partially compensated and the balance was not. One explanation is that more poor people—people who are not covered —are the victims of crime because they are available where the criminals are, more or less. That would account for some kind of reduction.

Mr. Honey: Yes.

Dr. Linden: The other thing that may account for it that these questions are not being answered completely accurately all the time. Sometimes people do not know whether their expenses are covered or not. They may see a doctor and say they have incurred some expense, but they never see a bill; they never actually pay the money; the doctor may never send a bill or he may send the bill to the P.S.I. who in turn, pays it, but there could be a few people who did not know what happened.

Mr. Howe (Hamilton South): May I interject here and answer as a doctor? There are some companies that will not assume third party liabilities. For example, the A.M.S. will not pay a third party. I can recall having a patient who had been seriously injured in a car accident and A.M.S. would not pay the expenses because there were already two parties involved and they would not act in connection with the third party—am I using the right expression—liability?

Dr. Linden: Yes. That is another possibility. There are others but that covers it. I did a study in automobile accidents as well and found that although it seemed a lot of people were covered, when we looked at the figures somehow the people involved in these accidents were not covered or were not aware of their rights and they did not make claims. I think there is a certain amount of error in the information from the people who respond.

Mr. Honey: You have not had an opportunity to analyze this?

Dr. Linden: Not fully.

Mr. Honey: Just one other thing, Professor. Would you feel that a scheme or plan that might be set up federally-provincially or provincially, as the case may be, should have particular reference to victims of rape? Assuming the assailant was financially responsible and the victim took her rights to a civil court, or submitted herself to civil court, in some cases she might well have substantial recovery for health, psychiatric treatment and the intangibles that might arise from that. Would you feel that this would be a proper area for government compensation in addition to the...

Dr. Linden: Certainly not in addition to...

Mr. Honey: Not in addition to her rights; I only used that as an example. I mean for the girl whose assailant was impecunious. Would

you feel that she should take her claim to the government board and would this be a proper area of compensation?

• 1210

Dr. Linden: I think it should be done in the same manner as in an automobile accident. If you have a defendant who is insured, you have a right of action against him and you bring it and you recover your money. No one worries about it. Every province in this country and many of the United States have created unsatisfied judgment funds as a sort of a backstop for the impecunious or uninsured defendant. The same sort of thing could be done in this area. If somebody does have money—not a man of straw—then the person who is attacked by him should be able to sue him and recover as the law provides. If he recovers there is no need for assistance or, at least, it should be taken into consideration or deducted from any recovery that the state would give him.

The other problem is the time lapse between the time of injury and the time of the court case—if it comes to court—or even the time of the settlement, which may be six months, nine months or a year later. There is a lot to be said for a scheme which would compensate immediately the person who suffered the crime and then the state could bring action on behalf of that person by subrogation rights—many of the statutes have included this subrogation right—against the assailant and recover for themselves the money they paid out. If, of course, they recover more then they paid out—as the plaintiff would probably be involved in this—the plaintiff gets the balance. If the state takes back its share, it would then only be paid on account. But this is going to be very rare. There are not that many people who commit crimes who are able to pay. The 4 per cent figure is high because these construed offences that we studied are those where the accused was caught. We did not study those cases where the accused was not caught because there could be absolutely no recovery if he were not caught. This is the experience. There are obviously 4 per cent of the criminals who have the money to pay and it is a pretty small group.

Mr. Honey: I agree with what you said. I want to make sure that we are in agreement because it would be a realistic approach to have the victim submit her claim to the state forthwith and have it adjudicated. Then, the state certainly would be in a much better position to determine whether or not it should take subrogation rights against the assailant.

Dr. Linden: Yes. Of course, it could be done in a manner similar to the settlement of claims under the Ontario Hospital Insurance Plan.

Mr. Honey: Yes.

Dr. Linden: It could be done that way or, again, you might give the plaintiff the option to do it in whatever way he wants. If a person prefers to exercise private rights, he should be permitted to do so. If he prefers to have his money immediately, pay his expenses and then join with the state in bringing an action against the defendant, he should be free to do it that way.

Mr. Honey: Thank you.

[*Translation*]

Mr. Choquette: Mr. Chairman, I would like to ask a supplementary question.

Mr. Linden: I will try to understand you.

Mr. Choquette: In the case of rape—which is of particular interest to me as I am a bachelor and always exposed to adventures—I would like to know if the victim of such a crime, who does not require treatment from a doctor or a psychiatrist, is necessarily subject to a moral injury. In that case would the moral injury alone provide the basis for indemnity? In fact, I notice on page three of your brief:

[*English*]

> Suprisingly not all the victims of crimes, of violence incurred financial losses. For example, a rape victim might not require or seek any medical attention . . .

[*Translation*]

So, if no care is given by psychiatrists or doctors, the fact remains that there is a serious moral injury. To your way of thinking, could this injury not serve as a basis for compensation?

Mr. Linden: I will not be able to answer you in French.

[*English*]

I think that there should be compensation for the woman who goes through this horrible experience. A married woman could be raped by three men; they could walk away and she

could walk home, terribly unhappy and terribly miserable, and yet not be sick, not get pregnant, but have mental suffering. Nevertheless, this is a dreadful experience, and it is an area where the state could rightly feel some obligation to compensate this woman for the shock. It would not involve a large sum of money—that is the important thing—but the state would, in effect, be saying: "We feel badly, we feel sorry, here are a few dollars. We hope it will make you feel a little bit better. Go away to Florida for a week and try to forget".

• 1215

[*Translation*]

Mr. Choquette: I would like to ask one last question. If it is not possible to trace the author of the crime, what kind of evidence would you ask of the plaintiffs?

[*English*]

Dr. Linden: The same as we now have. I think the province of Quebec has an Unsatisfied Judgment Fund. The plaintiff says he was injured when he was run over by a car—a blue car—which escaped. He must prove to the satisfaction of the court that this did happen. Some people lie, but usually the truth will come out. He will have a witness —there might have been somebody with him—he will show the bruise or the scar and he must have been at that spot. His story will be, "yes, it was a blue car with licence number 342". The same sort of thing that would occur with a crime when a plaintiff could say, "A man with a mask came up, grabbed my purse and hit me over the head and ran away". You look at that person and think, why would she make up a story like this? You can see her scars, you can see the people to whom she ran afterwards to complain about it, you can see the policeman who investigated and you make an assessment. Most of the time you can tell if somebody is lying, I think.

[*Translation*]

Mr. Choquette: And the only abuses that could be committed would be related, for instance, to wallet thefts. Someone could say, "I had $500 in my wallet. It has disappeared." He could make a declaration under oath, "I swear I had a wallet containing the sum of $500 or $1,000. It has been stolen. I do not know who stole it, but it has disappeared."

This would then offer an opportunity for a considerable number of abuses. I am only submitting this case to your attention to find out what your reaction is, because I know that any kind of legislation can lead to enormous difficulties.

[*English*]

Dr. Linden: If you have an Unsatisfied Judgment Fund, for example, the state or the province defends the unidentified person—he is gone—and says, "We defend him. We deny your story—we do not believe it". The plaintiff rises and he tells his story. The defendant's lawyer stands up and says, "All right, where did you get the money? You only make $50 a week. What were you doing with $500 in your pocket?" He says, "Somebody gave it to me", or "I found it". He will not be believed. If he is a professor or a lawyer, who normally has $500 in his pockets, he may be believed. He has no reason to "con"—to lie—to the court for $500.

I admit there is the possibility that someone may be able to cheat on a few dollars, but most people are not going to go to this much trouble. If you want to steal, there are easier ways to steal than to go before a board and say you are a victim of crime in order to get $500. The risk is much greater than just going out and hitting somebody on the head taking the money and running away. There is this danger, of course, but I think we have to trust our judicial process to be able to discover those liars and crooks, at least, in most cases. Because we get cheated out of a few dollars is no reason to deprive all the rest of the honest claimants their right to recovery.

[*Translation*]

Mr. Choquette: Thank you very much.

[*English*]

Mr. Pugh: Dr. Linden, I just have a couple of points here. Do you see these claims being said out of general revenue or do you see revenue from some other source making up the fund?

• 1220

Dr. Linden: It is terribly hard it is not the sort of thing you can insure against. It is not the same as in the Unsatisfied Judgment Fund, for example, where the money comes from licence fees. There really is no group of people upon whom we can fasten an insurance premium. Some of the plans stipulate that the accused person should be made to pay the money back, if he can, of course, and that money be used as part of the fund. It has

been recommended by some scholars that they should have these people actually work to earn money while in jail, if that is where they are, in order to pay it back to the individual who has suffered. There are sociologists who argue that this would be a better kind of treatment for the criminal. They feel that rather than have the criminal pay his debt "to society" and feel he is no longer obligated, he really should pay his debt to the person whom he injured or the wife of the person whom he killed.

Mr. Pugh: Just on that point. If there is an injury, through a criminal act, it is quite possible that the person doing the injury might go to jail, pay his job to the state and still be subject to a civil action in the court and have to pay the full shot for any damages that might be incurred. I would follow the reasoning on that.

It would seem to me that one of the things against the implementation of such a plan would be the same as the one that probably faced most of the provinces when starting their Unsatisfied Judgment Fund. They started out compensating for personal injuries, only to a limited extent of course, not damage to the car. Do you think that would be a good way to get started on this?

Dr. Linden: Yes, I think that might be a good way. It would be a way of regulating and controlling. It does not hurt to start out relatively small.

Mr. Pugh: Many of the funds started out with a very small amount. They increased it to $10,000 per life. I think the province of British Columbia now pays $30 thousand or $50 thousand.

Dr. Linden: $50 thousand in British Columbia.

Mr. Pugh: $50 thousand under the TVIF, the Traffic Victims Indemnity Fund.

Dr. Linden: Yes, and they have expanded now into profit, losses and this sort of thing. I think it is wise to start relatively small and provide limited compensation. Then, if you see the plan is working well and the funds are available, it can be expanded.

Mr. Pugh: I wonder if it is the duty of the state to actually provide this compensation? I am only going back to the arguments put forward in the hanging legislation, or the taking away of the noose. There was a good deal of talk about the duty of a citizen to come to the aid of the police in a time of danger. Also, the fact that under the law, if he was requested by a police officer or a peace officer, that he had to come or else face the consequences. Would you say that this would put a duty on the state to compensate for any damage or loss of life that might have been incurred there?

Dr. Linden: I have written an article about that particular example in which I said that it seems awfully strange that you require somebody to come to the aid of a police officer, and then do not provide compensation for him.

Mr. Pugh: Are you in favour of it on that basis?

Dr. Linden: Yes, that is true, but in the province of Ontario, for example for a long time—people somehow were making statements while not being aware of this—we have had legislation in our Workmen's Compensation Act, Section 122, that says if a man is requested to help a police officer under section 110 of the Criminal Code, and he proceeds to do so, he is then a servant of the Crown, an employee of the Crown, during the time that he assists the State. And if he is injured then he is injured on the job and he is entitled to Workmen's Compensation benefits just like an industrial worker or a factory worker. And he comes in; he gets his full medical and hospital cost and income loss, just like a workman and that, I think, is excellent legislation.

Mr. Pugh: To my knowledge this was not one of the arguments used during the hanging legislation. The debates took place in the House on that point; it is a very valid one.

Dr. Linden: But, again it is a very limited situation, of course. The number of victims of crime injured while helping a police officer to apprehend someone is insignificant. Whenever such things happen they get into the newspaper because they are so rare, because this is really something different.

You do not get raped helping a police officer, normally you do not get robbed helping a police officer; there are a host of crimes that can never happen to you when you are helping a police officer. But at least those should get compensation. In Ontario we have it and actually they have passed a new law that has changed it a little and expanded this particular aspect because at least in those areas, where somebody is helping the state, I think it is impossible to deny them coverage.

• 1225

Mr. Pugh: Just changing the point, I noticed in your brief you have set out the British system and the total cost and the growth factor on it. Would you say that the damages awarded or the quantum in Britain might be a good deal less than the normal awards handed out in this country, particularly with regard to the occasions on which it takes place in Ottawa?

Dr. Linden: I think, generally, probably they would be less. It is awfully hard to judge these things but I think people in Canada generally earn more so that if they are injured and out of work they lose more. I think probably our hospital and medical costs would be slightly more.

Mr. Pugh: The head of a family who is making quite a packet might knock the fund out of shape for quite a number of years.

Dr. Linden: Again it depends on the size of your fund. I think we were talking earlier about a limit; we can always make a limit of $25,000.

Mr. Pugh: Then in your opinion it would be a good idea to start this fund and set the whole thing out with limits for a start and then be prepared to amend those limits as required.

Dr. Linden: I think so; I think you should allocate a certain amount of money. This is what they did in California, for example; with their plan they said, we think it is a good idea but we do not have too much money, we will lay out $100,000 for this purpose, and it created a very limited plan, and to my knowledge that fund has not expanded.

There was the same situation in Saskatchewan. They said: "Well, $40,000. We will do that and see what happens. If we do not use it up we can expand it a bit. If we use it up rapidly, we had better have another look at it and tighten down a bit". I think this is perfectly reasonable in an experiment like this.

The other way of handling it is you might at first not give pain and suffering, for example. Or, you might limit it in cases of death to $5,000 or $10,000. In cases of disability you might pay up to $50 a week, or something like that, but no more.

There are ways of restricting it. The best way, of course, is by means of a deductible feature and that is why I gave you all those figures about so many people who just lost $1 to $49. They went to a doctor or they went to a hospital overnight and that was it; they went to work the next day or they lost a couple of days work.

If you look at these people, you will see that a great many are properly looked after under the present scheme. A large number of others lose only $30, $40, $50 or even $70 or $80 and not really much for us to be concerned about; it is those that start getting up over $100, $200 or $300. A good way of starting is to have a deductible of $100, say, or $50, or you could start at a higher figure—$200—and then reduce the deductible I think you should try to weed out all the little claims because you do not want to bother paying a fellow back $10 for a doctor's bill.

Mr. Pugh: Under a universal medical scheme your prime contributor would be the insurance funds in the provinces. I mean, it would get rid of all that. With the exception of death do you see most of the claims being of a medical nature; I mean the bulk of the money?

Dr. Linden: Oh, the money? No. The serious losses are when a fellow is incapacitated and cannot work. The money starts to build up when the breadwinner is out of work for six months or a year, or perhaps for the rest of his life; a fellow is blinded, or something like that, as the result of somebody throwing acid on him.

The big losses are where you start getting into income losses. Usually, hospital bills or doctor's bills are not going to go up, even in the most serious crime to me, medical expenses are relatively cheap in these days. It was like that in the automobile accident cases, too. These are not the largest numbers; these are not the serious cases.

There are other things you find; doctors often waive their fees. It is the same with hospitals; welfare people do not really have to pay up. So the key, then, really is the people who are incapacitated and lose their means of livelihood.

Mr. Pugh: Thank you.

The Acting Chairman: Mr. Ryan and then Mr. Choquette.

Mr. Ryan: Professor Linden, welcome to Ottawa from the riding of Spadina.

Mr. Choquette: One more vote for you.

• 1230

Mr. Ryan: I was going to ask the Professor whether there is any great criticism that he is aware of in Britain of their system. Are there any hard feelings about it that have been expressed?

Dr. Linden: All I can see coming out of Britain is fantastic praise with everybody writing articles and shouting to the world to look what they have, what a marvelous thing, and people all around the world going there to visit and study this plan. In fact, I plan to go there myself, this spring or summer and watch the board in operation just to see how they do these things. I have heard no bad reports but again it may just be that the authors I read are in favour of it. I am sure there will be some grumbling in specific instances by people who feel they have not been fairly treated.

Mr. Ryan: What about fake claims? Have they had bad experience in that way in Britain?

Dr. Linden: Well, there has not been anything reported that I know of but, there are always going to be a few people that are going to get away with something. But there has not been any great rush; as I indicated, they only had 4,000 claims in two years. Actually they paid out only about $2,000. So there were a number of people they did not believe, or they really did not have the crime committed against them or they just did not suffer enough loss, or something like that. Not everyone who claims gets it; the board is weeding out some, but whether it is as the result of fraud—I would think that would be a big factor.

Mr. Ryan: I think you are to be greatly complimented for the interest you are taking in this area. You have returned fairly recently from California, too, and have had some experience inside of what they are doing down there. How is their system working so far as limiting it to permanent damage is concerned?

Dr. Linden: Well, it is almost insignificant from what I can gather. They have hardly any claims at all and it is not really a proper plan. They give hardly any money to anybody and, as you know, $100,000 for a population as large as Canada is not very much and I do not think they even expanded it because their limits are so tight. If you look at their legislation it is just the same kind of bill as this; it does not really lay out very much.

Mr. Ryan: You are just getting about two inches of print here.

Dr. Linden: I have their bill before me. They pay money to a family of any person killed and to the victim and family, if any, of any person incapacitated as a result of a crime of violence if there is need for such aid. So, you shrink right down to a very small number of victims of murder and those who are incapacitated—I assume that means permanently—and then they have to establish some need.

Mr. Ryan: Yes; they would take into consideration any personal insurance coverage.

Dr. Linden: Of course.

Mr. Ryan: What about Britain; is that in effect there too? Do they take into consideration personal insurance coverage?

Dr. Linden: No, their standard is the tort standard, primarily, except that it is applied by a board. A millionaire who gets hit over the head can come in and say, "I have been hit over the head" and receive an award. I think it is a factor they consider but it is not a significant thing.

Mr. Ryan: In a Canadian plan you would recommend a normal scale of civil damages, I take it?

Dr. Linden: Well, I think so with a maximum perhaps.

Mr. Ryan: With a maximum. What about personal insurance coverage? Would you take that into consideration?

Dr. Linden: I think you would have to deduct that. I would not want to be paying a lawyer $1000 or $2000 a month out of general revenue. We should establish a basic minimum and that should be all that the state should provide. It should not allow these people to continue living in the lap of luxury, as does tort law—perhaps rightly—and you have to restrict it to some degree, because, after all, everyone else is paying for this.

Mr. Ryan: I suppose there would have to be some agreement between the Federal Government and the provinces to standardize a plan for the country?

Dr. Linden: That would probably be the best way to do it. If the federal government wished to it could move by itself under the

criminal law power, and of course, the province could move by itself. Several of them have, and have continued to do so.

Mr. Ryan: And even a municipality can move.

Dr. Linden: Yes; and even individuals; if you want to give a victim of crime one thousand dollars you can do so. I am sure Church organizations and charitable organizations do this.

Mr. Ryan: What of the citizen volunteering to assist a police officer? You have covered the situation where he is commandeered. When a citizen volunteers should he likewise receive...

• 1235

Dr. Linden: Definitely; and I have also argued that should happen not only when assisting a police officer. What happens if it is someone other than a police officer who is trying to prevent crime and/or to apprehend someone? You see somebody being beaten up, you run over and try to help, and you are whacked over the head. I think the individual should be compensated, too. This is a good samaritan type of thing.

Mr. Ryan: Is he not willingly accepting the risk in this case?

Dr. Linden: I do not think so, in that case. If you are rescuing somebody, you are a hero; you are not a fool for trying to assist. It is not like jumping in front of a train. In a case like that, of course, you are voluntarily accepting the risk.

The law over the years, as you know, Mr. Ryan, has been that one should not be a good samaritan—"Who told you to be a good samaritan? If you are you are a fool."

Mr. Ryan: Yes.

Dr. Linden: But in recent years the courts have said that this is not really volition. The sensible person, seeing this happen has to help. We are all practising our religious upbringing and this leads us to do it. It is not a case of volunteering to the risk. You just feel that you have to help, and you do it. If you are injured in so doing I think the state should help.

Mr. Ryan: Thank you, Dr. Linden.

The Acting Chairman: We are nearing the end of our allotted time. I believe Mr. Choquette has one further question.

[*Translation*]

Mr. Choquette: Professor, do you agree that the judge who exercises criminal jurisdiction should also pass judgment so that he himself fixes the amount of indemnity to be given, or would you prefer that the strict division between the two jurisdictions be maintained?

There are cases, I believe, where it would be quite easy for the judge exercising criminal jurisdiction to say, "The case is perfectly clear; you have stolen a certain amount of money." And again, "Certain damages have been caused and as a result you are a convicted criminal. Furthermore, I condemn you to pay such and such compensation. If it is beyond your means, the government itself will pay the indemnity."

[*English*]

Dr. Linden: That is the problem we have in this country. I know, for example, that judges in criminal matters are empowered to award civil damages as well as to send a man to jail and fine him. The common law used to do this years and years ago, but somehow we have got away from that. We have separated the functions of the criminal law and the civil law and certain principles are applied. You might try this sort of thing. I, too, decry, as you do, the waste of resources in having an automobile accident case tried in the criminal courts, with all the lawyers, witnesses and policemen present, where the man is fined fifty dollars, and the next month having to go through the whole thing again, with all the witnesses and lawyers and the jury.

Mr. Ryan: They have a hard time telling the same story twice.

Dr. Linden: That is right. There is a great deal of waste of resources.

I would like to see some experimentation with this, but the difficulty is that we have this provision and the separate standards, and the accepted methods of proof. To attack it in this situation and not to touch in in all the other areas may be unwise. You could do it on an experimental basis. You could easily pass this to the magistrates. You could try it, anyway.

I am very intrigued by the idea, but again, the problem is much broader than this.

Dr. Howe (Hamilton South): I have one further question. You suggest that a man injured helping a policeman be compensated by the Workmen's Compensation Board?

Dr. Linden: He is now.

Dr. Howe (Hamilton South): As a policeman?

Dr. Linden: Yes.

Dr. Howe (Hamilton South): On what are they going to base his salary? He has received no salary as a policeman. Will it be based on his regular job, at which he was not working for the time he was injured, or on what his salary would have been had he been a paid policeman?

Dr. Linden: No. They establish a minimum amount and they say that in any case he gets so much. They have a maximum, under workmen's compensation, of 75 per cent of $6,000. Within that they take a certain salary, as I understand it. If the man who has helped the policeman is a bricklayer who makes one hundred dollars a week he collects as though he were a policeman, but on the basis of his earnings as a bricklayer.

• 1240

Dr. Howe (Hamilton South): You mean the Workmen's Compensation Board of Ontario will acknowledge this and actually pay it?

Dr. Linden: It is in the legislation. If they do not pay, appeal to the courts will force them to do so.

I have never heard of a case where it has happened. I do not think anybody knows about it. People go around saying: "Is it not a horrible thing? People can help police officers, and are required to under the law, and nobody pays them". I have seen that said in quite a few law reviews, and by people who should know better. This legislation is there, and it has been there for a long time.

I have tried to find out how it got there. It does not really seem to fit. But someone somewhere—some civil service department, or some attorney general must have thought this was a good idea and slipped it in. And he slipped it in so quietly, apparently that no one knows about it.

Dr. Howe (Hamilton South): And it has never been tried out?

Dr. Linden: No one knows. I do not know if it has ever been tried. I wish more people knew about it and took advantage of it.

Mr. Ryan: There are no reported cases, in any event?

Dr. Linden: Not that I know of; and I have looked and looked. I could not find any.

The Acting Chairman: Gentlemen, if that concludes the questioning I wish, on your behalf, to thank Dr. Linden for his research and the knowledge that he has made available to the Committee. It has been an extremely interesting session and I know the Committee will profit greatly from the information which has been given to it.

I have one very small item of business before we adjourn. Professor Edwards of Churchill College, Cambridge, had been invited to give evidence on this subject. We have a letter from him saying that unfortunately he cannot appear because of other commitments. He has, however, prepared an article on the subject, and this has been distributed to the members of the Committee. The article is entitled "Compensation to Victims of Crimes of Personal Violence". If the Committee agrees we will file it as an exhibit to our record.

Some hon. Members: Agreed.

The Acting Chairman: Has anyone any other item of business before we adjourn?

The Chairman of the Steering Committee will set the time of the next meeting. I am not sure when it will be.

There is a question whether or not we have any further witnesses to hear on this particular subject. You will be advised as soon as that decision has been made.

The meeting is adjourned.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

TUESDAY, FEBRUARY 27, 1968

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. Peter Roper, President, The John Howard Society of Quebec, Incorporated.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

27731—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (*Hamilton South*),	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Stafford,
Mr. Gilbert,	Mr. McCleave,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
Mr. Guay,	Mr. Otto,	Mr. Woolliams—(24).
Mr. Honey,		

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, February 27, 1968.
(19)

The Standing Committee on Justice and Legal Affairs met this day at 11.10 o'clock a.m. The Chairman, Mr. Cameron (*High Park*) presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Guay, Honey, Latulippe, Otto, Tolmie, Wahn and Whelan—(13).

In attendance: Dr. Peter Roper, President, The John Howard Society of Quebec Incorporated.

Also present: Mr. Milton Klein, M.P., sponsor of Bill C-96.

The Committee resumed its study of the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts.

The Chairman asked Mr. Klein to introduce the witness. Dr. Roper read his brief.

At the suggestion of Mr. Honey it was *agreed*, that the graphs and statistics attached to Dr. Roper's brief, be appended to this day's evidence so that it will be readily available to members. (*See Appendix "D"*)

The Committee proceeded to the questioning of the witness.

The questioning of the witness being concluded, the Chairman thanked Dr. Roper for his brief and for the manner in which he answered questions.

It was moved by Mr. Whelan, seconded by Mr. Wahn,

Resolved,—That reasonable living and travelling expenses be paid to Dr. Peter Roper, who has been called to appear before this Committee on February 27, 1968, in the matter of Bill C-96.

The Chairman read correspondence from the Attorneys General of Newfoundland and British Columbia respectively, and the Committee *agreed* that same be filed as Exhibit, (*Exhibit C-96-13*); and that the article by Professor Alan W. Mewett of Osgoode Hall be filed as *Exhibit M-20-2*.

At 12.45 o'clock p.m., the Committee adjourned to the call of the Chair.

D. E. Levesque,
Acting Clerk of the Committee.

27731—1½

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, February 27, 1968.

• 1110

The Chairman: Gentlemen, we have a quorum, and we will continue the Committee's hearings on the subject-matter of Bill No. C-96, An Act respecting observation and treatment of drug addicts.

Mr. Milton Klein, who sponsored the bill in the House, is here. Our witness is Dr. Peter Roper, President of the John Howard Society of Quebec, Inc. I am going to ask Mr. Klein to introduce Dr. Roper.

Mr. Klein: Thank you, Mr. Chairman. The introduction will be very informal, gentlemen.

All one needs to say about Dr. Roper is that his association with the John Howard Society makes him eminently qualified to appear before this Committee. I do not know how many members have had the opportunity of reading the brief but I think the brief presented by Dr. Roper is a very excellent one indeed.

Dr. Roper was with the Air Force for some 19 years and during that time had some vast experience in the Far East with respect to the effects of drugs and drug addiction. He is now a practising psychiatrist in Montreal, and I am sure we will all benefit greatly from the evidence which he will submit to this Committee this morning. I am very pleased to present to you Dr. Roper.

The Chairman: Thank you very much, Mr. Klein.

You have all received a copy of Dr. Roper's statement which has been circulated among all the members. In addition, Dr. Roper has sent us other documents which have been filed as exhibits; C-96, 6-7-8 and 9. Before calling on Dr. Roper, I would like to have the usual motion, namely, that reasonable living and travelling expenses be paid to Dr. Peter Roper, who has been called to appear before this Committee on February 27, 1968, in the matter of Bill C-96.

Mr. Whalen: I so move.

Mr. Wahn: I second the motion.

Motion agreed to.

The Chairman: Dr. Roper, the meeting is now open for you, sir.

Dr. Peter Roper (President, The John Howard Society of Quebec, Inc.): Thank you, Mr. Chairman.

I repeat my statement in the first paragraph of my brief that I am pleased to have the honour of your invitation to appear before you and I am very grateful for the opportunity to make comments on this bill.

The Chairman: May I suggest, Dr. Roper, that you read your report dated in January so that members, if they have not already read it, will be able to go over it as you are reading it and be in a better position to ask their questions.

• 1115

Dr. Roper: Thank you, Mr. Chairman. I will do that.

1. The intent and subject-matter of the bill is considered to be a step forward in our efforts for penal reform and towards more effective control over the problem of illicit use of drugs. As the law stands at present, persons found guilty of offences under the Narcotic Control Act can only be provided with needed treatment after they have been sentenced and then only in a Penitentiary.

2. Bill C-96 would allow treatment as needed to be given in any suitable hospital or other treatment center without the person having to be previously convicted and thus acquiring a criminal record.

3. This change in the law would be of particular significance in the young or first offender without criminal intent. The possibilities of obtaining a pardon or expunging a record after conviction remain somewhat remote alternatives.

4. The observation and treatment of drug offenders envisaged by this bill appears to range from custodial care in hospitals to voluntary attendance at other treatment centers including out-patient clinics and physicians' offices.

For certain cases treatment within penitentiaries would presumably still have to be provided. Unfortunately at present in this country such treatment facilities do not adequately exist. Until they are so provided the practical results of this bill will be nullified. Mention has already been made to the Committee by Miss Macneill (minutes page 203) that many hospitals will not admit drug addicts. The same problem arises in out-patient clinics and doctors' office practices. Drug addicts are looked upon as the "Untouchables" in comparison to other patients.

5. The difficulty of providing adequate and effective treatment to drug offenders is well known throughout the world, but the subject-matter of Bill C-96 may well provide the impetus and direction needed for this country to be in the forefront of legal reform and treatment advance in this connection.

6. Before making any specific suggestions regarding improvements in management and treatment of the drug offender an attempt will be made to summarize the main problems which have to be taken into account.

7. *Summary of problems with drug offenders.*

(a) *Definition of terms.* The term "drug addiction" is often difficult to define and even more difficult to determine. Some illicit and harmful drugs are supposedly non-addictive. The term "drug abuse" might be used instead. This could be defined as the use of drugs without the legally required prescription and proper supervision of a duly qualified physician.

(b) *The mental state of the drug abuser.* The addict is the most deceitful, conniving and plausible person. As a "con artist" he is supreme. Even the worst alcoholic is in a different league. His drive for the drug is paramount; it is greater even than hunger. He will stop at nothing to satisfy his need. Persons vary in their vulnerability to the addictive process. In some it can be seen as a symptom of a previously present mental abnormality which in itself needs treatment. The effect of drug abuse may be to cause further mental impairment of a more or less permanent nature. The complicated clinical picture of the antecedent or resulting mental effects together with the overriding strength of the habit pattern make accurate diagnosis and planning of treatment extremely difficult.

(c) *The poor results of treatment.* This has been well described to the Committee by others. It seems in part at least due to—

(i) Difficulty in recognition of underlying cause or illness, with failure to provide adequate treatment for it.

(ii) Inadequate staff and/or facilities at places where treatment is provided.

(iii) Refusal to admit to hospital or denial of treatment facilities to drug offenders.

(iv) The drug abuser trying to stop the habit is usually penniless.

(d) *Involvement with crime.* This includes:—

(i) *"Organized crime".* The suppliers and pushers are in business. They will stop at nothing to achieve their ends. Heroin has been mixed with marijuana or injected into intoxicated persons in order to 'get them started'.

(ii) The criminal propensity of drug abusers. Many have a history of crime beforehand.

(iii) Crime usually has to be committed to obtain illicit drug supplies either by financial proceeds or as a payment for 'services rendered', e.g. pushers, traffickers.

(iv) The influence of a strong "sub-culture" with ties and pressure to continue the drug abuse and criminal activity.

(e) *The attitude of society.* The attitude of the rest of society to the drug offender is usually one of avoidance or rejection. This is not only because the behaviour (like that of sexual perverts and the insane) is abnormal and not understood, but also because a basic instinct to preserve the species may be aroused in others. The strength of this reaction may best be seen in isolated and more

primitive groups. The killing of an insane woman by her family in an Eskimo community in 1967 was thus looked upon as 'normal'. In the sophisticated urban communities this basic reaction is more disguised but may still have its effects. This is a particular problem for the younger age group particularly where the parents or others in authority have been misled into avoiding their responsibilities and do nothing to prevent the commencement of drug taking.

8. *Suggestions regarding Treatment Facilities for the Drug Offender.*

Account must be taken of the competitive demands of other community needs, the high cost of setting up any large drug research and treatment centres and the so far disappointing results of treatment. It would seem more reasonable at this time to try to make our present facilities more effective and at the same time gather as much pertinent information as possible in a scientific manner. The following suggestions are made up with this in view

(a) No hospital or treatment centre, particularly if receiving public monies, should deny admission or treatment to a person solely because of drug abuse.

(b) In penitentiaries treatment programs should be as good as those available in the community.

(c) All psychiatrists (and later perhaps other physicians) in Canada should be asked through the Canadian Psychiatric Association to help where possible in a program for the treatment of drug abusers and research into the problem. This would be organized according to the plan in appendix "A". Every doctor cooperating in this project would be provided with forms A-1 and A-2. Form A-1 would be the record of attendance of a particular patient; this would be filled up and returned by the doctor to obtain research money (e.g. $10.00 per visit at office and $3.00 a day at hospital). Form A-2 would also be filled up by the doctor for each patient to give the statistical information so necessary for proper evalution of the extent of the drug problem and relevant factors in management and treatment programs. Both these forms would be sent to a federal drug research centre which would provide the funds for the doctors and collect and correlate the data. Other sources of information which could be tapped in a similar manner might be the social agencies, the police and the legal and penal services. The relevant information would be available at municipal and provincial levels as necessary.

(d) Lists of available treating physicians to be kept by social agencies (e.g. John Howard Socs.)

(e) Persons found to be in need of treatment by the Courts should be referred to the relevant social agency so that treatment recommendations could subsequently be used in decisions regarding disposal.

(f) The treatment facilities and arrangements should be known by all legal and prison authorities and used when appropriate.

9. *Prevention*

In addition to the improvements in treatment facilities the strongest possible measures should be taken to reduce the drug problem in this country. These should include:—

(a) Community efforts should continue in an effort to broadcast the dangers of drug abuse and combat the lax attitude towards it shown by some persons in authority.

(b) The work of the police in combatting organized crime should be reinforced and efforts should be made to break up the sub-culture groups where drug abuse and other criminal activities are prevalent and so prevent as much as possible the spread amongst, particularly, the younger and more vulnerable members of society.

10. In a final comment on Bill C-96 it can be observed that penal reform can only be achieved if a fair attitude is maintained. To provide treatment where indicated instead of punishment is an advance, but to avoid punishing where appropriate may be dangerous. There is a growing body of scientific evidence that some forms of punishment can be very effective in bringing about a change in abnormal behaviour as well as protecting others in the community.

• 1125

The Chairman: Thank you very much indeed, Dr. Roper. I was wondering if at this time it would not be appropriate to agree as to whether the addendum to Dr. Roper's statement should be filed as an exhibit or as an addendum following his presentation. I think it probably would be better as an exhibit so that it would be available in the records of the Committee. I would be very glad to have an expression of opinion. You will see at the back of the statement what I mean. What is your opinion, gentlemen? Do you think it should be an exhibit or an addendum? Mr. Honey?

Mr. Honey: I think an addendum is most readily available to members of the Committee because it is part of the report.

The Chairman: Thank, you, Mr. Honey. Are there any other expressions of opinion? Is it agreed? Then this will be filed as an addendum to your statement, Dr. Roper.

The meeting is now open for questions by members of the Committee addressed to Dr. Roper. Mr. Whelan?

Mr. Whelan: I have just one question on what you said about having them go to psychiatrists. Are there enough psychiatrists available for this now? Most people complain that they have to wait two, three or six weeks for appointments with psychiatrists.

Dr. Roper: I think, Mr. Chairman, that there are enough psychiatrists but I think there is the great problem of the fact that the drug addict is not a very popular patient to have. It is very difficult, of course, to treat a drug addict. As I have read so far in the evidence of this Committee, the results are poor even with all the facilities available and I think it is fair to say that under those circumstances a psychiatrist will be more likely to say to the patient who comes with a drug problem that he is sorry but he cannot help him; that he does not have either the facilities or the experience and will refer him to a hospital.

Mr. Whelan: Doctor, you say on page 3, paragraph 8(c):

> All psychiatrists (and later perhaps other physicians) in Canada should be asked through the Canadian Psychiatric Association to help where possible in a program for the treatment of drug abusers and research into the problem.

On what do you base your answer that there are psychiatrists available when it is nearly impossible to get appointments with them?

Mr. Honey: Have you tried, Mr. Whelan?

Mr. Whelan: How do you know I am not going steadily after being around here for a while? I agree with the statement a certain man made that you have to be an idiot to be here in the first place.

I have had people in my own constituency complain that it is nearly impossible for them to get appointments, because these people are working long hours. I know some of the doctors in my own area and they put in nearly as long hours as we politicians do.

• 1130

Dr. Roper: I think the answer to that, Mr. Chairman, is that this attempt to circulate psychiatrists is an effort to find out who would be willing to take part in the program and also to set up a program which would be effective in a number of different ways. It would, I hope, be effective in finding out what sort of treatments were available throughout the country and eventually, perhaps after not too long a time, what the results of the different treatments were. Then, I think, after the passage of more time, these could be assessed and information could then go back out to the psychiatrists practising in the field that this treatment seems to be more effective than that, and so on.

Mr. Whelan: I gather from what you say that the average psychiatrist does not want to deal with drug addiction.

Dr. Roper: Well, I would not say that. If a psychiatrist were asked to co-operate in this problem and it was explained to him that facilities were being set up to bring information to him and to correlate information that he sent back to a central agency, I think a great number of psychiatrists would be only too willing to join in this co-operative attempt. I think at the moment some of them are feeling very lost in the drug abuse problem. They have no real backing of effective treatment information and I think we could provide this if we set up a properly organized program.

The Chairman: Mr. Honey and then Mr. Wahn.

Mr. Honey: Thank you, Mr. Chairman. Doctor, would it be accurate to say that psychiatrists dealing with the problem of drug addiction essentially are those who are on the staff of or accredited to hospitals, penitentiaries or other institutions where they are more or less specializing in the treatment of drug addicts?

Dr. Roper: I think it would be fair to say, Mr. Chairman, that the vast majority of recognized addicts are treated either in penitentiary or in hospitals, particularly special hospitals for this type of case, but I think there are also a great number of drug abusers who are being treated by family doctors, by psychiatrists and by other doctors. These persons may not be serious drug addicts yet but may well be on the road to becoming serious addicts and the front-line doctor, the family doctor and the psychiatrist to whom he refers these problems frequently, comprise the front-line area to which we could possibly offer greater assistance with some program we could set up.

Mr. Honey: Generally speaking, what would be the degree of addiction of the drug abuser, as you call him, who is consulting his family doctor or a psychiatrist in private practice? What drugs would he be using and to what extent would he be on the road to becoming a drug addict?

• 1135

Dr. Roper: The most common situation would be that of somebody who started on barbiturates, sleeping pills, perhaps a woman who was placed on some medicine to control her diet, and I think both these types of drugs would be the most common for a person to become addicted to in the initial stages.

Mr. Whelan: In this type of situation where a housewife or other person uses barbiturates or diet pills to the point where there is an addiction problem, is it normal for this person then to move into heroin or some other sort of drug? Do these people require other drugs or is there usually just an increasing use of the barbiturate or the diet drug?

Dr. Roper: There is an increasing risk of greater and greater addiction to greater quantities of the same drug that they started off with, or a move to more powerful drugs. These people are becoming a greater and greater risk of serious addiction.

Mr. Honey: You really are talking about that category of people. We also have the addicted person who, by and large, I suppose is treated in an institution because at that point he does not have the desire to obtain medical or psychiatric assistance or the financial means to do so. Is that the situation?

Dr. Roper: Yes, I think it is a spectrum of addiction which we see starting off in a very innocent way and proceeding right through to the most serious heroin mainliner—the intravenous injection of heroin—and anywhere in this spectrum the person might stop. Of course, they might not; they might continue.

Mr. Honey: When a person gets to the stage where he is mainlining, is it correct that he is usually a case for institutional treatment?

Dr. Roper: Yes.

Mr. Honey: Because of financial limitations, if nothing else?

Dr. Roper: I think it is initially impossible to treat the serious drug addict—and I am thinking of the heroin addict particularly—as an out-patient. I know there has been evidence submitted to this Committee, Mr. Chairman, on this point, and I would say that any serious case of drug addiction—I am not limiting it to the heroin addiction—including barbiturates or any other drug, requires hospital care for at least an initial period, and then this is followed by an out-patient follow-up program.

Mr. Honey: I have one other point, Dr. Roper, and then I will be finished. In your evidence you said that you thought—if I recall correctly—it was important for all hospitals, and particularly those that are publicly maintained, to have facilities for the treatment of drug addicts or for people who are under the influence of drugs. Are you thinking of both types of patients, or essentially the person who is on the way to becoming an addict? Would the mainliner receive better treatment in a specialized institution than in a public hospital which had set up facilities to treat the serious addict?

• 1140

Dr. Roper: I do not think it really matters. I think the treatment facilities could be made available anywhere in any hospital, regardless of the extent of the addiction. The main problem is to have the treatment available. The kind of treatment will depend upon the

doctors on staff and the rules and regulations of the hospital. I feel it is wrong for the rules and regulations of any hospital to restrict the treatment programs unless there is a very good reason, but unfortunately, this does happen in drug addiction. Some hospitals have made the rule that no drug addict can be treated in their institution, although there may be members of the staff who would be willing and capable of doing so. I have known of doctors who have had to discharge patients against their better judgment because the hospital authorities made them do so.

I think this sort of thing is quite wrong. I think if we have treatment programs for drug addicts—and I think there are effective treatment programs of different types—then these should be made available anywhere in the country.

Mr. Honey: As a layman I could not express any professional opinion, but I agree it is regrettable that any public hospital would not provide facilities for the treatment of the drug abuser. I would like your opinion on whether or not it is fair to ask all public hospitals to provide the facilities for treating the serious addict. Would it not be more reasonable, when a person deteriorates to that point, to have that person treated in a hospital or an institution designed specifically for the treatment of those very serious cases?

Dr. Roper: I do not think you need to limit the serious addict—the heroin mainliner—to any particular type of institution. I have treated these people in open hospitals and the only factor which is really relevant is whether the doctor can give effective treatment. Effective treatment can be given in an open setting just as easily as in a custodial setting, if you have a program which is effective and the criterion really is on the treating physician. He must know the limits of his treatment program. If he says, "I am sorry, the treatment program that I envisage for this patient is not possible in an out-patient setting or in a general hospital setting", then his opinion should be accepted. If the patient is still to be treated by that doctor he will have to be treated in another setting.

On the other hand, you may find another physician who will be quite happy to treat this person. Perhaps he has a different technique, a different program altogether. He may say, "Oh yes, I can treat this patient in this particular hospital without any trouble". Fortunately there are these variations, of opinions by doctors and variations in treatment programs, because it is only in this way that we will find out which is the most effective.

Mr. Honey: Thank you very much.

Mr. Wahn: Dr. Roper, I believe you mentioned that there were effective treatment programs. Would those programs involve the gradual withdrawal and in the meantime the supply of drugs that are required by the patient?

• 1145

Dr. Roper: Yes, this could be the case. You can withdraw some drugs abruptly. If you withdraw them abruptly you can replace them with other medication. Treatment programs nowadays are designed not only to be effective but also to reduce the agony of withdrawal.

Mr. Wahn: There is nothing illegal then in administering drugs in the course of a treatment program?

Dr. Roper: No. The replacement drugs that I use are non-addictive.

Mr. Wahn: I believe evidence given previously before the Committee indicated—if my recollection is correct—that many addicts seem to recover, or at least get over the habit, almost without benefit of treatment when they reach a certain age. I recall this evidence being given on one occasion before this Committee. Is that in accordance with your experience? I have forgotten the age which was mentioned, but I think it was around 42 or 43, or thereabouts.

Dr. Roper: If I remember, Mr. Chairman, I think that referred to those who were not caught. Unfortunately the only figures we have on drug addiction are those that come to our attention from the police as a result of people being caught, the so-called street addict. There must be a tremendous number who are not caught. Whether as they get older they get wiser and they are less likely to get caught, or whether they are in fact no

longer addicted, I do not know. I certainly am sceptical of the figures when they relate only to people who are actually arrested.

Mr. Wahn: There is no reason to believe then that this is something that you can get over as you get older.

Dr. Roper: I have no evidence to support that addiction becomes less of a problem with time. All the evidence is that it becomes more of a problem. This is an unknown area in which we would very much like more information, and if we could set up some sort of program which would bring out this one item of information it would be very useful.

Mr. Wahn: Is it your experience that the percentage of drug addicts in the total population is increasing, or is there any evidence one way or the other?

Dr. Roper: I think there is considerable evidence that it is increasing.

Mr. Wahn: I believe evidence also has been given to the Committee that in many cases drug addicts are not inclined to crimes of violence, that any crimes in which they are involved would be usually for the purpose of getting money to provide drugs required by them. Is this in accordance with your experience?

• 1150

Dr. Roper: That is one type of crime but I think there is also the crime which is perpetrated under the influence of drugs for the sake of the pursuit of the crime. I think that the taking of goof balls before a bank robbery is well-known. I think that advantage is taken of drugs by criminal elements to try to make sure that people involved in the crime are in fact going to be able to go through with it. I have not any figures on this, of course, but I think generally speaking the effects of any of the drugs, at least those we are talking about, will make a person more liable to be involved in crime. It will reduce his ability to act upon his conscience. Whether he knows the difference between right and wrong in the first place, of course, in some circumstances is not always clear but certainly it decreases the responsibility of people. I think this goes back to an interesting story of marijuana. The hashish which was used in the Middle Ages gave rise to the term "assassin", of course, and "hashish eater". These people were organized to assassinate people with the promise, of course, of adequate supplies of the drug. This clear-cut pattern is not obvious in our present society but when you have drug-taking going on I think you are going to get crime in a number of different ways.

Mr. Wahn: If an addict has a supply of drugs available to him is it possible for him to carry on and live a reasonably normal and productive life?

Dr. Roper: An addict can be maintained in a fairly reasonable state, depending on the individual's personality, the particular drugs he is taking, and the quantity of them. This will vary tremendously. Some people of course become quite insane with a small amount of drugs, others can take very large quantities and appear to behave normally. I think, whatever drug is being taken, there are effects on the individual, however strong their personality may be, which show that he is different from what he was before the drug-taking started. There is some sort of personality change, whether it is a blunting of the finer aspects of his personality or whether it is something which is more obvious which will vary from person to person. I think there must be, and there always is, some effect from drug-taking.

Mr. Wahn: You mentioned, Dr. Roper, that so far lasting results of treatment seem to be rather poor, in other words the curing of addiction does not seem to be too successful at the present time. Do any countries instead of perhaps trying to cure addiction, license the continued use of drugs by addicts so that they can get them at a reasonable price and carry on in a normal way?

Dr. Roper: I believe this was the situation in British Isles. A person could get supplies of drugs from his physician at a minimal charge. I am not quite sure of the situation now but this is certainly under review, if it has not been changed in the British Isles already, because there has been a great increase recently of drug addiction there. Of course there are some countries in the world

where there are few, if any, restrictions on drug-taking, and I think one can see the effects of this in opium dens of various countries of the Far East.

Mr. Wahn: Thank you very much, Mr. Chairman.

Mr. Gilbert: Mr. Chairman, I would like to ask Dr. Roper to go into more detail on the definition of drug addiction. You have pointed out the difficulty, Dr. Roper, of its definition and have sort of confined it to drug abuse. Most laymen understand drug addiction in its general sense, as you say, in the mainliner drugs such as heroin and opium, but the difficult areas are marijuana, LSD and some barbiturates. Is marijuana addictive?

• 1155

Dr. Roper: I think it is.

Mr. Gilbert: It is a very important question for young people today.

Dr. Roper: Mr. Chairman, I brought up the question of the term "drug addiction" because if one holds to it strictly it means a dependence on the drug both physiological and psychologically. It means that if you stop taking the drug suddenly, not only do you feel mentally sick but you have physical signs and symptoms: you perspire; you have the shakes; all sorts of things happen physically. Also, in order to keep your status quo you have to take more and more of the drug. However, we are finding that some of these drugs are not obviously showing these effects. When I say, "not obviously", they are perhaps showing the psychological effects. There is some change in the person's personality when he stops taking marijuana, and there is some change in these people when they stop taking LSD. The person who uses marijuana and LSD may want to take the drug more frequently, or may have a need to take it in larger doses. These are drugs which are difficult to fit into the classical definition of drug addiction, but they can be fitted into the term "drug abuse", and this is why I think it is easier to define drug abuse and easier to determine it. I think it might also cut down on the confusion which is caused in the community, because I have had a lot of patients who said to me, "Marijuana is not addictive, it is harmless; it is as harmless as tobacco and alcohol". Well, it is not.

Mr. Gilbert: What about this problem of LSD? So many people say, "Well, we just cannot control it". It is so easily made. What measure of control can we exercise over something like LSD?

Dr. Roper: I think there has been a recent change in the LSD situation. I think there has been a lot of publicity about it in the last year or so, and at last people are beginning to realize how dangerous it is. I think this has made the youngster at risk particularly aware that he should not tinker around with this. There is also, of course, the fact that organized crime is avoiding LSD; it is not touching it. They will not let their pushers touch it. They want to push heroin which is the drug that they can get people on. They will not try to fly off the rooftop and get killed. They will stay alive, and they will keep up the demand.

Mr. Gilbert: Perhaps we should get to the pushers, Dr. Roper. What is your attitude towards these pushers? Should the law be strengthened on the "get tough" policy or should we pay heed to some of the studies that indicate the "get tough" policy just is not effective, because it drives them underground and makes it more difficult to detect them?

What is your attitude; what should we do to clear them out? You mentioned strengthening the hands of the police to break up the subculture of these addicts. I wonder what we should do about these pushers. Have you any ideas?

Dr. Roper: Yes, I think when a pusher is in business and is not addicted himself, the question of treatment does not necessarily arise unless something else is wrong with him. So I think these people, the suppliers and the organizers who are in the business, are the persons that the law should be aiming its sight at.

I have had patients who have become addicts, have been pushers and then have dropped their addictive habits and stayed as pushers. There is great flexibility in some people, as I said. There is a spectrum of addictive potential. Some people become addicted and then they can drop it; they get

in the sub-culture and, of course, there is an awful lot of money to be made, and they are aware of the risks.

• 1200

They know that pushing marijuana is more dangerous than pushing amphetamine because the law is stricter, so they will not touch marijuana. They can make more money with less risk pushing something else. If we are tough perhaps we can persuade some of these people that the thing is not worthwhile. I think this is certainly worthy of consideration.

Mr. Gilbert: I notice that our Justice Department has directed their counsel to ask for jail terms for first offenders involved with LSD. What do you think of that approach? Here are young people charged for the first time faced with the recommendation by the Justice Department that they be given jail terms. Do you think that is wise in these circumstances?

An hon. Member: Is this a user?

Mr. Gilbert: Yes, the young user.

The Chairman: The solicitor who is in charge of the Department of Justice office in Toronto made that suggestion. I do not know whether it is a suggestion from the Department of Justice itself, but it comes through him at any rate.

Mr. Gilbert: You are probably correct.

The Chairman: He may only have been expressing a private opinion, that is what I mean.

Dr. Roper: If you would like me to comment on that I will say that the person who should be punished is the person who had criminal intent. I do not think it is fair, perhaps, to punish with a jail sentence a youngster who has been persuaded to take LSD because it is going to do him good.

The person who has done the persuading or the pushing should be the one who gets a jail term, or the parent who is responsible for the youngster and who knows about it and does nothing perhaps should have a night in jail to show him and the rest of the family, and the rest of the community, that this is not just playing around; there is something serious here and we should not allow this to go on.

An hon. Member: How about the swinging professor?

Dr. Roper: Two nights in jail for him, perhaps.

Mr. Gilbert: I am very sorry to be asking more questions, Mr. Chairman. If somebody else wants to ask questions I can continue on the second round.

The Chairman: I have a number of others, Mr. Gilbert.

Mr. Gilbert: I will conclude with just one more question. The evidence that we have heard, Dr. Roper, indicates that drug addiction is easily detected by a simple test and that most drug addicts are able to dry out within a very short period; I think some said 8 days to 2 weeks, probably through the use of methadone.

We have also had evidence, and you stated it this morning quite correctly, that in many cases drug addiction is the symptom of an underlying mental illness. You have talked about treatment, and if it only takes 2 weeks to dry a person out, then the next question is, just how do you treat him after that? Is it through group therapy, or supervision—you know, social health and climate? All these factors must play their part in Canada. All I am saying is that it is just not sufficient to dry a person out and say he is finished.

Dr. Roper: Yes, I agree that this is quite insufficient and I think this is shown by the figures; treatment of this nature seldom is successful. I think treatment of addiction is two-pronged. First of all you have to see whether there is an underlying illness; if there is you have to treat it and, at the same time, you have to treat the habit pattern.

We do this and have been doing it for many years with alcoholics. It is the same basic principle, I think, with any addiction. Now, just by drying a person out you have not done anything to the habit. The habit there is as ingrained as it was and for all his protestations of good faith that he is never going to succumb again, we know that, generally speaking, he will succumb. Perhaps he needs very little temptation to relapse, so we have to do something to treat the habit.

• 1205

Now this is being done, and there has been more and more evidence over the last 5 or 10 years that there are effective proven methods of changing habit patterns, including addiction.

Mr. Gilbert: Many thanks, Dr. Roper.

Mr. Klein: Dr. Roper, you stated that if the hospitals would co-operate to the extent of accepting drug addicts there would be sufficient centres for treatment.

Dr. Roper: Yes, but this is based on the availability of a treatment program in the hospital. There is no point in making a hospital accept a drug addict if they are not going to do anything with him, if they are just going to withdraw him and then discharge him. What we will have to do is to try to ensure that there are treatment facilities available now. Hospitals that have not had treatment facilities for drug addicts will be asked to set them up and they will be given advice and help as necessary to do this.

Mr. Klein: But in the event that they accepted this program, do you feel that there are sufficient institutional quarters to deal with the problem?

Dr. Roper: Yes.

Mr. Klein: I think psychologically there is now a *cliché* of the person who says: "Why cannot I do this? There is no law against it." This seems to be ingrained in the children. "I can do this; there is no law against it." In the program of allowing the drug user to purchase drugs, as in Great Britain, would that not encourage other people to feel that there is a sort of legalization of the use of drugs or "why can I not try it? There is no law against it." Would it encourage the non-user to use it?

Dr. Roper: Yes, I think so. I think this has been the result of a great deal of this publicity regarding LSD and marijuana that there is no harm in these things and that they may even do you good. This is the sort of information which we get fed back to us by youngsters who have been told this by people who they feel are responsible persons with some authority in the community, and this is a problem I think with which we are having an uphill struggle.

Mr. Klein: One of the witnesses who came before this Committee said that for the first time juvenile delinquency is no longer within the province of the underprivileged but is now appearing in the upper and middleclass strata of society, and this they attribute to the use of various drugs.

I shall preface my question with the statement that there seems to be a pattern in North America of the statement that marijuana is less dangerous than alcohol. It expands the mind. It is not addictive. It is less harmful than cigarettes. Even Robert Kennedy, on a program from New York, indicated that in his opinion—I do not know the exact words but he seemed to indicate that we are perhaps too tough on marijuana. It is a pattern that seems to exist uniformly across the country. I mentioned the swinging professors before. Do you feel that there is an uncontrolled . . . almost a conspiracy by the swinging professors who indicate to young students that they can take marijuana and have no fears about it? It seems to be widely spread. Have you had, in your experience, in your practice, indications that the young student was being influenced by the swinging professor?

• 1210

Dr. Roper: I do not think so much by the swinging professor as by the swinging fellow student. I think that a lot of youngsters are pushing marijuana. They are making money out of it. They do not feel it is harmful, although I did see a patient recently, a 17-year-old boy who had been sold marijuana by an 18-year-old girl who was pushing the stuff and who said to him: "Look, just have it once but do not take it again. I like you and I do not want you to get hooked." So she knew that the stuff was not as harmless as people are saying. I think there has been a great deal of harmful publicity, as I say, to the effect that there is no harm in it. I think this is changing. I think we see now, as more information is coming out from responsible people, that the warnings are being sounded just as they were with LSD a few months ago; now we are seeing more and more information about marijuana's being dangerous.

Mr. Klein: Doctor, is benzedrine a dangerous drug?

Dr. Roper: Yes.

Mr. Klein: It is.

Dr. Roper: Yes.

Mr. Klein: But was not benzedrine being given to our armed forces during the war?

Dr. Roper: Yes. It is an amphetamine derivative. It is a stimulant which was used in escape kits during the war. All escape kits had benzedrine in them so that you could stay awake for let us say two or three nights and try to escape from the enemy. We know that it is still used. It is still prescribed by doctors. It is also in some of these dietary pills that are given to people who want to lose weight. It can be dangerous because it can become addictive. Some people who are particularly sensitive to this drug can become insane from very small doses of it. I have seen a number of people who had to be committed to mental hospitals because of the effects of this drug. As I mentioned earlier, it is a drug which is being pushed a lot now because the legal offence of pushing it is not as great as with other drugs and it is very easy to produce and it commands a good price.

Mr. Klein: Is it still being used by the armed forces?

Dr. Roper: I do not know. It may still be in the escape kit. I do not know.

Mr. Klein: Doctor, I would like to ask just one more question. It seems to me that one statement that you make in your brief is that it would be very important if we could stop the person from taking the first puff. Is the user of marijuana a more apt recruit on his own initiative for other kinds of drugs?

Dr. Roper: Yes.

Mr. Klein: He is?

Dr. Roper: Yes.

Mr. Klein: You have stated in paragraph 9 (a):

> Community efforts should continue in an effort to broadcast the dangers of drug abuse and combat the lax attitude towards it shown by some persons in authority

Is not one of the greatest dangers today at least in my observation it is—the lax attitude towards marijuana and other kindred drugs shown by persons in authority? When doctors say it is not addictive and it is not harmful, I think this is what we have to combat perhaps even more, or at least with as great an intensity, as the pusher because although he is not a pusher, he is a psychological pusher.

Dr. Roper: Yes, I agree with that. We are, as I said, finding that the climate is apparently changing a bit now. There are a lot of people who are saying how dangerous it is to take marijuana and to take LSD and other drugs, and in my experience with the John Howard Society in Quebec we do as much as we can. We speak at various functions and we are, at the moment, organizing a program to go out to the parents and the school children to try to bring the dangers of this problem to the source of addiction, to the point where the people are most at risk and where we feel that knowledge would prevent a great deal of further trouble.

Mr. Klein: One last question, Mr. Chairman. In speaking to youngsters who take marijuana, and not only youngsters but even university professors, some doctors, but particularly youngsters, they seem to indicate that they who use marijuana think of the persons who are opposed to their using it as being, to use the vernacular, squares or misfits. Would you not say that the reverse is true and that the user of marijuana is really the misfit?

Dr. Roper: Yes, I would agree with that. He is not just a misfit because of his attitude but he may be a misfit because already the marijuana has brought about some change in his personality and possibly even some brain damage which might be permanent.

Mr. Klein: Thank you, Dr. Roper.

The Chairman: Mr. Forest, then Mr. Tolmie and Mr. Choquette.

Mr. Forest: Mr. Chairman, most of my questions already have been asked. You state in your brief that this bill or a change of legislation would not be very useful if we do not provide adequate medical facilities for the treatment of drug addicts and you say that the proper place for them is in a hospital rather than a penitentiary. How do you attack the problem? I believe you stated in answer

to Mr. Klein that there are adequate facilities now. Are there or are there not adequate facilities available?

Dr. Roper: There are enough hospitals available, but I think we would have to ensure that the hospital has a program for the treatment of addicts. This would depend on the doctors on the staff of the hospital having sufficient knowledge about treatment techniques. I think this could be organized.

Mr. Forest: What is the practice in Montreal now concerning treatment of drug addicts?

Dr. Roper: I think the treatment of drug addicts is impossible in some hospitals. They will not admit them and, as I said before, at one time I was ordered to discharge a patient from hospital because they did not want drug addicts in the hospital. They can be committed to a mental institution, but once again if the doctors on the staff have not got the information they are not encouraged, as it were, to become involved in a proper treatment program for drug addicts.

• 1220

I think the treatment, as we have heard from previous witnesses, often is a matter of withdrawal of the drug and then discharge and subsequent re-admission, a process which seems to continue indefinitely with some of these addicts. I think there is a possibility now if we could spread the information about effective treatment to all available hospitals where we could have effective programs available.

Mr. Forest: What about penitentiaries? You say that some still will revert to drugs after being incarcerated. Are there any provisions in penitentiaries in Montreal for the treatment of drug addicts?

Dr. Roper: I think the facilities there are even less than those available outside in other hospitals.

The Chairman: Mr. Tolmie?

Mr. Tolmie: Doctor, I understand there is a federal detention centre at Matsqui, British Columbia, for drug addicts. Do you know anything about the nature of the treatment at this centre, what success they have had and do you think this type of institution should be the forerunner of other similar types?

We are talking about lack of facilities but here is a case in point where the government has established a particular detention centre for drug addicts. Is it working? I hear nothing about it.

Dr. Roper: The information I have about this centre is that they have not yet published any results of ther treatment program. I have seen some published information about the American centre in Kennedy and I think the figures indicated that the treatment programs available were not very effective The best results were when the patient was, in fact, in custodial care for quite a period of time. This may be because they had a firmer grip on the situation and they could keep him there as long as they considered necessary. Presumably the longer you can keep up a treatment program the better the results are likely to be.

I think setting up a unit like this is fine and I think it has its advantages, but certainly we want to know what the results are. We cannot set up enough of these centres in the country to deal with the present problem. It would take time and a great deal of money, in my opinion, I think we have the facilities now to do something. We could assess the comparative merits of a federal institution like the one you mentioned and these other means of treatment, and we could find out which is the best treatment program for certain types of patients in an on-going manner.

Mr. Tolmie: You are saying in effect that this institution has started, but to date there has been no evidence of whether it is successful and whether it should be continued.

Dr. Roper: That is all the information I have; I do not know the results of their treatment.

Mr. Tolmie: That is all.

The Chairman: Mr. Choquette?

[*Translation*]

• 1225

Mr. Choquette: Henri Bergson, a contemporary philosopher who died in 1941, wrote that we are living in an aphrodisiac civilization.

Later on I was reading the declaration of a British psychiatrist who maintained that it was becoming more and more difficult today to live without the help of stimulants, whether they be cigarettes, liquor or even drugs.

Do you believe these remarks to be extravagant? We must admit that modern life is much more agitated than it was in the past, and that this necessarily affects the nervous system. We are more and more obliged to have recourse to forms of escapism and to find in drug mania, liquor, cigarettes or other means a way of forgetting the normal obligations or our existence.

[*English*]

Dr. Roper: It is very difficult, of course, to compare what we have in our present civilization with times gone by. Man is the only animal that seems to try to harm himself. I do not think he does this intentionally; I think perhaps he is more beset by worries and problems and seeks relief in different ways and some of these ways can be very sophisticated and very dangerous.

I think this is an increasing problem in the complexity of modern society and the availability of more and more ways of avoiding our responsibilities, if you like, or avoiding unpleasant situations. I think this is a problem of which we should be aware and, if possible, take steps to try to get in front of it and, as it were, make some plans so that the situation does not get out of hand, and I think the problem of drug addiction is a typical one.

[*Translation*]

Mr. Choquette: Do you have any information as to what substances, such as the stimulants dexedrene and benzedrine, are used by young people who do not have the means to get a supply of drugs or pills? Have you investigated whether cheaper methods used have been brought to the attention of some delinquency courts? I think this happened in Quebec City. A net of young people were discovered enacting the following procedure: They were burning glue and sniffing the fumes of this product.

• 1230

[*English*]

Dr. Roper: Yes, I think there are a lot of ways of obtaining some sort of drug effect. Actually if you need drugs you can usually get them somehow or other, and it is surprising how easy it is to get them. A patient who had just come out of a mental hospital, told me just the other week it was easier to get her illicit drugs in the ward there than it was outside. I think it is fairly common knowledge that all sorts of items can be used to give some sort of drug effect. There is glue sniffing, and various toxic chemicals are available in hardware stores and other places which are not actually drugs in the technical sense. I think some hobos even eat boot polish because it is supposed to give them some sort of a kick. They can prepare it in different ways to give them more of a kick. It is extraordinary the length to which the human being will go to get something.

Now, what can we do about this sort of thing? Well, I suppose all we can do is to try to inform the people as much as possible of the dangers of it, and to take what action we can to prevent its being available, and to try to help those who have got involved in it.

[*Translation*]

Mr. Choquette: Do you think that young people between 16 and 25 years of age, for instance, are really impressed with this phenomenon? They do not believe in anything anymore, and they consider life as an absurd phenomenon from which they want to get away. Would it be going too far to say that a very high percentage of the younger generation are behaving in accordance with such a philosophy?

[*English*]

Dr. Roper: I think they certainly make more noise now than perhaps they used to. I think the responsible young person—teenager or young adult, is not heard because he says something sensible and it is not news. I think you hear a lot from the weirdos and the oddballs, and they can influence the borderline person—the youngster who is, shall we say, liable to accept some erroneous ideas about life, about drugs, about anything. He will accept some of these irresponsible ideas from other sources. I think this borderline person is the person we really should be aiming at, because if we can get information to him at the right time we can point out the error of other persons' statements. It is not applicable only to drug addiction, it is applicable to the whole philosophy of life, I think.

Mr. Klein: May I ask you a supplementary question on that point? How can you do it when the generation you speak about worships The Beatles, and The Beatles are paid millions of dollars to appear? They went from that angle to LSD by their own admission, and then they wind up with the Maharishi. How can you do that, when we seem to be living in a society that is worshipping The Beatles?

I have said before that when I was on the campus the college hero was clean shaven, masculine and muscular. Today he is unkempt, feminine, and frail. How are you going to combat this thing when we seem to be living in a society where we are worshipping false idols; where they themselves who set themselves forth as the idols have to wind up, as I said, with the Maharishi?

• 1235

Mr. Whelan: Mr. Chairman, before the doctor answers, I do not think it is right to discuss whom the young people admire on the campuses today. I do not think they admire the unshaven and frail and feminine type of person there at all. I have seen in my own university that this is not true.

Mr. Klein: I hope you are right.

The Chairman: There may be some...

An hon. Member: Minority...

The Chairman: Yes.

An hon. Member: Vocal.

Mr. Klein: Well, I do not see the college hero as being the football star anymore.

An hon. Member: Oh, yes.

Mr. Klein: Well, I do not.

Dr. Roper: I think there are many aspects to this question.

The Chairman: Still with the older ones at any rate.

Dr. Roper: I think there are many aspects to that question. Without forecasting what is going to happen to The Beatles, certainly with some people we have seen who have been idols of the youth, and who have perhaps taken LSD or something, we see that they become fallen idols; that these people are becoming sick and obviously mentally sick, even to their followers. I think this is making some of the youngsters sit up and realize that they have backed the wrong horse, that these people are, in fact, oddballs, and they do not want to follow in their tracks.

The other aspect of it I suppose concerns the family. I think there has been a lot of concern expressed, quite rightly, about the role of the family in juvenile delinquency. We often find, of course, that the delinquent child, whether he is a drug taker or something else, comes from a home where there is not adequate authority and not the proper authority. Whether this is cause or effect, we do not know; it can be a mixture of both. Certainly I think that lack of guidance from somebody in authority, whether it is a father or a professor or an elder brother or somebody else that the person respects, is something very important. We have come across this time and time again in the drug addiction problem, that the person who can influence the youngster has not the knowledge or the information available so that he can say: "Well, this is dangerous" or "You must not do that." He does not know. Therefore if he does not know he cannot give the guidance.

The Chairman: Mr. Choquette.

[*Translation*]

Mr. Choquette: According to you, doctor, what is the psychological force which entices young people to consume narcotics? Would it be a need for self-assertion, a strong desire, the expression of a feeling of power?

[*English*]

Dr. Roper: It could be a number of different things. It could be anxiety; a person becomes anxious in a certain situation and seeks relief. They are like the person who cannot get to sleep because they are anxiously seeking relief and they get some sleeping pills. This may be the start of addiction. It may be that they do have a need for escape or they do have a need for feeling more confident or more powerful in certain situations, so they start this way. They may be influenced by others saying they will like it. And quite innocently they may start, although they may not need to. However, these people may be mentally sick even

before they start drugs; they may have some disorder which may make them think irrationally and this is how they start. There are many reasons. Each individual has to be investigated and treated differently.

• 1240

[*Translation*]

Mr. Choquette: Another question, Mr. Chairman. I only wanted to have you clarify your answer to my question. According to your information, do you believe that a good part of our youth is struck with a fear of responsibility to such an extent that it is looking for any kind of escape? According to your own information, is it characteristic of our epoch and does it apply to a great part of the young generation?

[*English*]

Dr. Roper: I think that the present young generation is different in many ways than those that have gone by, not different perhaps in makeup and personality but different in the situation they find themselves in. There is a much longer period now of education, there is a much longer period before they find gainful employment, and this means there is a much longer period of anxiety about what they are going to do in life, and a much longer period where they are vulnerable to all sorts of things. I suppose a student is the most suggestible person that we can find in the world apart from a child. I should think the young adult student is the most vulnerable to all sorts of suggestions and he is in a position where he just cannot help them.

[*Translation*]

Mr. Choquette: My last question, Mr. Chairman. The existence of H-bombs or atomic bombs—in other words, ways of instant destruction of the world—creates an atmosphere which did not exist in 1890. The young generation was born in this atmosphere, knowing well that we can blow up the world immediately. Do you think that this can have a psychological effect on the young?

[*English*]

Dr. Roper: It is said to have but I do not think it is really very different from the various stresses and strains experienced in previous times. I think the anxieties that the young people had in previous generations were just as great and perhaps a little bit nearer. There were threats of invasion from across the border or some attack by troops that were antagonistic to them, and I think man has always had situations which created anxiety. The atomic bomb is almost in itself an anti-anxiety thing, because you say: "Well there is nothing I can do about it; if a bomb drops I have had it anyway, so I need not worry." But admittedly I think there is an aspect of it which is apparent in the youngster and somehow they blame the older generation for this situation. Perhaps this is very unfair because they do not suggest what else we could have done.

Mr. Choquette: May I conclude with a story, doctor. Two psychiatrists met on the street and one said to the other: "How are you?" The other said: "I really wonder what he meant by that."

The Chairman: That completes our questioning period, unless others have questions they would like to ask of Dr. Roper?

Dr. Roper: Could I make a little comment?

The Chairman: Yes certainly, I am sorry.

Dr. Roper: Mr. Chairman, there is just one comment I would like to make on this brief. I was speaking to Mr. Klein just before we met. It seems that if the Committee does decide to do something in this connection—and I have been thinking about trying to get something actually into action—it would be possible to organize a system along the lines I have mentioned here very easily. Perhaps one could have a secretary with an office, in the Department of National Health and Welfare, and someone who could act as an adviser. In the first year I would not mind trying to set something up so that we could get something organized in this way. I think it could be done very cheaply and very easily.

The Chairman: Thank you, Dr. Roper, and may I express the thanks of all members of the Committee for your appearance here today, for the information you have given to us, and for your complete answers to questions put by members of the Committee.

• 1245

Gentlemen, we have a communication from the Minister of Justice of the Province of Newfoundland and a further communication

from the Deputy Attorney General of British Columbia. The Minister of Justice of Newfoundland encloses for our information copies of the 1965 and 1966 health acts of Newfoundland which deal with the problem in sort of a minimal way. Similarly, the communication from British Columbia deals with the treatment of drug addicts by the British Columbia Provincial Institution. With your permission I would like to have these letters and the accompanying statements filed as exhibits. Is that agreeable?

Some hon. Members: Agreed.

The Chairman: We have also received—and I think all members have a copy—an article from Professor Mewett of Osgoode Hall dealing with the subject matter of compensation to persons who have suffered personal injuries from criminal acts. I would also like to have that filed as an exhibit in connection with the proceedings under Motion 20. Is that agreeable?

Some hon. Members: Agreed.

The Chairman: In conclusion I would like to say that we are expecting a report from Mr. Stafford on the subject of bail. We have no other reference to this Committee and I do not anticipate we will have any further reference before the House recesses or prorogues. We will have to prepare our reports and that I think will probably complete the work of the Committee for this particular session.

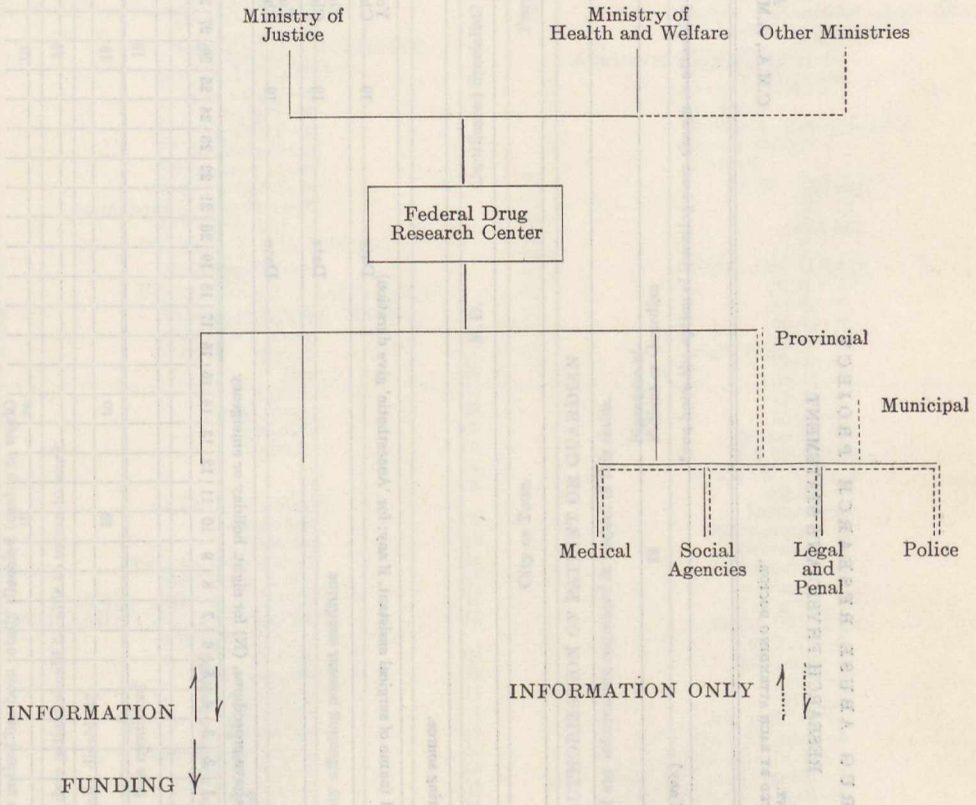
Mr. Gilbert: Would it be possible for the Committee to visit the narcotic clinic in Kentucky and the one in Matsqui, British Columbia during the recess?

The Chairman: The Steering Committee have not considered that suggestion. If anyone wants to express an opinion I would be glad to listen. Probably the Steering Committee can deal with your suggestion, if they think something should be done. Does anyone want to comment on Mr. Gilbert's suggestion?

An hon. Member: Yes, how do I get on the Committee?

The Chairman: If there are no other matters to come before the Committee we will stand adjourned to the call of the Chair.

APPENDIX "D"


Ministry of Justice
Ministry of Health and Welfare
Other Ministries
Federal Drug Research Center
Provincial
Municipal
Medical
Social Agencies
Legal and Penal
Police
INFORMATION
FUNDING
INFORMATION ONLY

DRUG ABUSE RESEARCH PROJECT

RESEARCH PHYSICIAN'S STATEMENT

Form A1
CMHIA—1
(COMBINED FORM)

PLEASE COMPLETE THIS CLAIM FORM AND RETURN IT TO YOUR PATIENT.
SEPARATE CLAIM FORMS OR ITEMIZED ACCOUNTS SHOULD BE SUBMITTED BY EACH ATTENDING DOCTOR.

APPROVED BY
C.M.A., A.M.L.F.C., C.H.I.A

GENERAL

1. Patient's code number — Age

2. Diagnosis (describe complications, if any)

5. If hospitalized give name of hospital

6. If referred to you, give name of referring source.

7. Describe procedure(s) you performed (name of surgical assistant, if any; for 'Anaesthetic' give duration)
Date 19 Your Charge* $

Date 19 Your Charge* $

Date 19 Your Charge* $

RESEARCH TIME

8. (*a*) Dates of visits (√), exclusive of above procedures, (N) for night, holiday or emergency

PLACE	MONTH	YEAR	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
AT OFFICE																																	
AT HOSPITAL																																	
AT HOME																																	

(*b*) Your total charge* for these visits—at office $ hospital $ home $

LOSS OF TIME BENEFIT	9. (a) To the best of my knowledge, the patient has been totally disabled (unable to work) From 19 to 19 inclusive (b) If still disabled give approximate date patient should be able to return to work 19
	10. How long was or will patient be partially disabled? From 19 to 19 inclusive
INDIVIDUAL POLICIES and GROUP COMPREHENSIVE MAJOR MEDICAL POLICIES	11. When did patient first consult you for this condition? 19 12. To the best of your knowledge (a) when did symptoms first appear or accident happen? 19 (b) has patient ever had same or similar condition? If "YES" state when and describe 13. Describe any other disease or infirmity affecting present condition
REMARKS	

DATE 19 Signature M.D. Certificated Specialist?

Street Address City or Town Province

AUTHORIZATION OF PATIENT OR GUARDIAN

I hereby authorize the release to my insurer and my employer of any information requested in respect of this claim.

DATE 19 Signature of Patient or Guardian

CMHIA-1 Aug./63 *you have the option of inserting your charge or attaching itemized account

DRUG ABUSE RESEARCH PROJECT

STATISTICAL UNIT — Statistical Information

ROP—1—65 — PAGE 1

Form A2

Card	Col.	Code	Information
01			NAME
02			(first four letters, converted to
03			numbers)
04			
05			
06			
07			
08			
09			1st Init.
10			
11			2nd Init.
12			
13	I		CARD NO. AGE—
14			1— 0–18
			2—19–20
			3—21–30
			4—31–35
			5—36–40
			6—41–45
			7—46–50
			8—51–55
			9—56 and up
15			SEX 1–M 2–F
16			MARIT. STAT.—
			1—single
			2—married
			3—common law
			4—widowed
			5—divorced
			6—separated
			7—relig. ord.
17			ETHNIC BKG.—
			0—Fr. Can.
			1—Eng. Can.
			2—USA
			3—UK
			4—Fr. Ben. Sw.
			5—Scan. G. Aust.
			6—It. Gr. Sp. Port.
			7—Hung. Czec. Yug. Rum. Alb.
			8—Russ. Ukr. Balt. Bulg.
			9—Other
18			RELIGION—
			1—Prot.
			2—R.C.
			3—Hebrew
			4—Christian orthodox Ch.
			5—Agnost. Atheist
			6—Other
19			EDUC—
			1—below Gr. 8
			2—Gr. 8–11
			3—University
			4—Post-grad.
20			EMPL.—
			1—self-empl.
			2—Sr. Exec.
			3—Jr. Exec.
			4—office
			5—manual
			6—Sr. Professional
			7—Jr. Professional
			8—unempl.
21			DRUG—
			1—Heroin
			2—Opiates
			3—Barbiturates
			4—Amphetamines
21 (conc.)			5—Marihuana
			6—Hallucinogens (incl. L.S.D.)
			7—Toxic
			8—Other
22			ABUSE DURATION—
			1—0–3 months
			2—3–12 months
			3—1–5 yrs.
			4—Over 5 yrs.
23			INVOLVEMENT—
			1—Abuse only
			2—Pusher
			3—Trafficker
			4—Peripheral
			5—In possession
			6—Import/Export
			7—Cultivation/Production
			8—Other
			1—YES
			2—NO
			REFERRAL—
24			work
25			family
26			self
27			doctor
28			emergency
29			criminal
30			marital
31			
32			
			FAMILY HIST.—
33			psychosis
34			neurosis
35			personality disorder
36			other deviations
37			PATIENT PREV. HIST.
38			PATIENT PREV. TREATMENT
			SYMPTOMS—
39			anxiety
40			depression
41			obsession
42			confusion
43			delusion
44			physical complaint
45			excitement
46			sexual deviation
47			personality change
48			
			DURATION SYMPTOMS—
49			1—0–3 mos.
			2—3–6 "
			3—6–9 "
			4—9–12 "
			5—2 yrs.
			6—3 "
			7—4 "
			8—5 "
			9—longer
50			PRIMARY TREATMENT
			(codes as follows)
			SECONDARY TREATMENT—
51			psychotherapy (code 1)
52			ECT " 2
53			intensive treatment " 3
54			hypnosis " 4
55			Behaviour therapy " 5
56			tranquil. and drugs " 6
57			antidepressants " 7
58			family " 8
59			work change " 9

DRUG ABUSE RESEARCH PROJECT

STATISTICAL UNIT

ROP—1—65 Statistical Information

PAGE 2

Card	Col.	Code	Information
			DURATION TREATMENT—
60			1—0–3 mos.
			2—3–6 "
			3—6–9 "
			4—9–12 "
			5—2 yrs.
			6—3 "
			7—4 "
			8—5 "
			9—longer
			PRIMARY DIAGNOSIS—
61			(codes as follows)
			SECONDARY DIAGNOSIS—
62			organic (code 1)
63			psychotic " 2
64			neurotic " 3
65			alcoholic (code 4)
66			drugs " 5
67			personality dev'n " 6
68			sexual deviation " 7
69			mental defect " 8
70			other " 9
			FOLLOW-UP (codes)—
			1—recovered
			2—improved
			3—unimproved
			4—worst
			5—disch. against advice
			6—transferred
			7—died
71			up to 3 months
72			6 "
73			9 "
74			12 "
75			18 "
76			2 years
77			3 "
78			4 "
79			5 "
80			more than 5 "

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

PROCEEDINGS

No. 18

THURSDAY, MARCH 14, 1968

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

INCLUDING FOURTH REPORT TO THE HOUSE
(respecting the subject-matter of Bill C-96)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

27733—1

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe	Mr. Pugh,
Mr. Cantin,	(*Hamilton South*),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,
MONDAY, June 26, 1967.

Ordered,—That the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs.

Attest:

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

27733—1½

REPORT TO THE HOUSE

FRIDAY, March 15, 1968.

The Standing Committee on Justice and Legal Affairs has the honour to present its

FOURTH REPORT

Your Committee had referred to it the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts.

In considering the subject-matter of this Bill, your Committee held nine formal meetings from October 31, 1967 to March 14, 1968.

The following witnesses were heard during the formal proceedings:

Mr. Milton L. Klein, M.P., Sponsor of Bill C-96.

Dr. J. Gregory Fraser, Director, Narcotic Addiction Unit, Alcoholism and Drug Addiction Research Foundation, Toronto.

Dr. James Naiman, Assistant Professor of Psychiatry, McGill University, Montreal.

Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto.

Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Montreal.

Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, Montreal.

Dr. Peter Roper, President, The John Howard Society of Quebec Incorporated, Montreal.

The following documents were printed as an appendix to the Minutes of Proceedings and Evidence:

Sample forms and statistics attached to Dr. Peter Roper's briefing on February 27, 1968.

The following documents were filed as exhibits:

Article entitled Methadone—Fighting Fire With Fire, by Gertrude Samuels, The New York Times Magazine, October 15, 1967.

Extracts from Dr. Donald Louria's book entitled Nightmare Drugs, pages 78 to 94.

Article by Dr. Vincent P. Dole and Dr. Marie Nyswander, entitled Heroin Addiction—A Metabolic Disease, which appeared in the Archives of Internal Medicine, July 1967, Volume 120.

The Pilot Treatment Unit: The First Seven Month Developmental Program In The Treatment of The Narcotic Addict.

The Pilot Treatment Unit: A Preliminary Report Of Treatment Research—Program II: An Experimental Treatment Program For The

Narcotic Addict. (by D. Craigen; D. R. McGregor; B. C. Murphy, Canadian Penitentiary Service, Department of the Solicitor General).

Submission To The Prevost Commission On The Administration Of Justice In Matters Related To Crime And Penology In The Province Of Quebec By The John Howard Society of Quebec, Incorporated—September 1967.

A Case for Cannabis? (An Article in the British Medical Journal, 29 July 1967, p. 258; and 5 Letters to the Editor on the same subject; 1 on 5 August, 1967, p. 367, 2 on 12 August 1967, p. 435, 2 on 26 August 1967, p. 504).

Afternoon of an Addict (An Article in the Waiting Room Digest, September-October 1967, p. 2).

Drug Addiction, Psychotic Illness and Brain Stimulation: Effective Treatment and Explanatory Hypothesis (An Article by Peter Roper, M.B., Ch.B., D.P.M., and reprinted from The Canadian Medical Association Journal 95: 1080-1086, November 19, 1966).

Brief dated November 5, 1967, submitted by Inmate No. 3941, F. Walch, of the Kingston Penitentiary.

Letters from the Province of Ontario dated January 5, January 18 and March 8, 1968, from the Province of Saskatchewan dated January 15 and January 19, 1968, from the Province of Nova Scotia dated January 15, 1968, and from the Province of Prince Edward Island dated January 12, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts.

Illicit Drugs Currently In Use Among Canadian Youth (A Review Article by J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht., C.R.C.P. (C) presented for publication in the Canadian Medical Association Journal, 1968).

Letters from the Province of Newfoundland dated January 24, 1968 and from the Province of British Columbia dated February 6, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts.

Your Committee recognized the extent of the problem envisaged by the Sponsor of the Bill and its own inability to give the subject-matter the extended and thorough study demanded.

From the evidence adduced before the Committee, there is no doubt a narcotic addict is not per se a criminal, but is a sick man and should be treated as such. The criminal law makes no provision for this fact, and the only remedy open to the courts is to sentence to jail anyone found illegally in possession of a drug.

Instead of a jail sentence, a narcotic addict should receive medical treatment. The fact is that there are only limited facilities available and the alternative is a prison sentence. This is wrong and your Committee recommends:

1. That treatment be substituted for punishment;
2. That drug addiction be recognized primarily as an illness;
3. That the stigma of criminal conviction be avoided wherever possible, in the case of the drug addict or drug addiction; particularly, in the case of the first offender and the young offender;

4. That the judge or magistrate before whom the accused appears on a narcotic charge should be given the discretion after he has determined that the accused is a user of narcotics, to refer the matter to an appropriate agency for treatment and rehabilitation of the accused and depending upon the progress and recommendations made in each case, to adjourn the hearing from time to time or sine die, as the case may be. (A suspended hearing is a greater deterrent than a suspended sentence). Consideration should be given to extending this principle to other charges involving a narcotics user where narcotics is part of the reason for the commission of the alleged offence. In the interest of rehabilitation, no publication of the name of any such person accused under the legislation be made without the consent of the judge.

IT IS FURTHER RECOMMENDED:

That a Federal-Provincial Conference of the Minister of Justice of Canada and all Provincial Attorneys General be convened to study the aforesaid proposals at an early date and, more particularly, to provide for the establishment of adequate facilities for the treatment and rehabilitation of drug addicts as well as the enlistment of practising psychiatrists and other qualified personnel for a crash program against this great evil.

IT IS FURTHERMORE RECOMMENDED:

That in view of the anxiety of the parents of high school and college students and public confusion as to the use of marijuana, LSD and other hallucinatory drugs of which so little is known and which seems to have reached alarming proportions in high schools and colleges of the country, the Federal-Provincial Conference above-mentioned should set up an appropriate agency with specific powers to look into the problem of the use of marijuana, LSD and other hallucinogenic drugs and make appropriate recommendations.

A copy of the Minutes of Proceedings and Evidence relating to the subject-matter of Bill C-96 (*Issues Nos. 4, 10, 11, 12, 13, 15, 17, 18*) is tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, March 14, 1968.
(20)

The Standing Committee on Justice and Legal Affairs met *in camera* at 10.15 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Gilbert, Guay, Honey, McCleave, McQuaid, Tolmie, Wahn and Mr. Whelan—(10).

The members considered a draft Report to the House, respecting the subject-matter of *Bill C-96, An Act respecting observation and treatment of drug addicts.* Certain amendments were agreed to and the report, as amended, was adopted.

Members noted that the Committee had received a letter dated March 8, 1968 from the Deputy Attorney-General of Ontario. It describes facilities available in Ontario for the treatment of drug addicts. The Committee agreed to file the letter as an Exhibit (*Exhibit C-96-14*).

It was ordered that the Chairman should present the draft report adopted at this meeting as the Fourth Report of the Standing Committee on Justice and Legal Affairs.

The Committee adjourned at 11.00 a.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

OFFICIAL REPORT OF MINUTES

OF

PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,

The Clerk of the House.