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THE LEGISLATIVE ASSEMBLY OF MANITOBA
8:00 o'clock, Monday, March 9th, 1964.

MR. CHAIRMAN: Department VII, Item 5.

MR. GUTTORMSON: Before the dinner hour, the former Attorney-General replied to my remarks and took the usual approach of evading the issue and making a personal attack rather than dealing with the issue as the fact. He pointed out that in a case of capital murder that this was not clearly settled with the courts and I agree with him. It is for this reason that I wonder when the Supreme Court of Canada requested that this very matter be dealt with by a jury so that they could establish a precedent that he took it on himself to decide the matter rather than let it go to a jury. He also denied there was any agreement to accept a plea of guilty to a manslaughter charge. He also attached the blame to his department, said that the department did certain things, and evaded the issue in this way. He also accused me, Mr. Chairman, of not telling the whole truth. I suggest, Mr. Chairman, that the former Attorney-General tell us and the whole committee what I said that was untrue and inaccurate. I say, as he has cast reflections that I didn't speak the truth, I suggest that he tell this House here and now what I said that was untrue.

MR. DESJARDINS: Mr. Chairman, if the former Attorney-General spoke for the government before it seems to me that he should be ready to answer these questions and be in his place tonight. It is rather unusual to have somebody accuse somebody of lying and then sneaking out somewhere. I think that he should be requested to come back in his seat and find out. We'd like to know what is going on and who is lying and what part of it is wrong. Or does he, by keeping away, does he mean that he was wrong in his statement or are we starting all over with the present Attorney-General?

MR. CHAIRMAN: Item 5.

MR. MOLGAT: Mr. Chairman, there is a matter of very serious importance to the justice in the Province of Manitoba that was brought up in this House this afternoon by the Member for St. George. The former Attorney-General got up on his feet and accused him of saying half-accurate things or that half his statements were correct, but did not say and was careful not to say which half. I demand that the former Attorney-General get in his seat and give a reply to this House, because the statements that were made here go right to the very basic structure of justice in the Province of Manitoba, Mr. Chairman. The Attorney-General of this province is charged, his prime responsibility is to see to it that justice is done. Basically and historically, the purpose of government was to see that justice was done. This is one of the prime reasons for having a provincial government here and if the Attorney-General is going to evade that responsibility, get up and make accusations as he did and not be prepared to back them up, then I suggest that this government is in sad shape indeed. Let him stand up and tell the facts to the House.

MR. CHAIRMAN: Item 5 (a).

MR. MOLGAT: No, Mr. Chairman. Mr. Chairman, the former Attorney-General got up and made a statement this afternoon. Either let him stand up and back up that statement or let him take it back, one or the other.

MR. McLEAN: I'm not too certain that anything very much would be served by trying to determine who is right or who is wrong. I'm in the happy position of not knowing very much about the events to which reference was made this afternoon. However, Mr. Chairman, this is a useful point for discussion. Indeed it could lead to a very useful, philosophical discussion about the administ ration of justice and with the very limited experience that I have had perhaps I might make one or two contributions to it. Now let me say at the outset that the point raised by the Honourable the Member for St. George is indeed an interesting and a most important one, and I would defer to his more extensive knowledge because I have not been a Crown Attorney. I have done some defense work such as is entrusted to a lawyer practising in the country, as they say, but I do understand that in his professional life the Honourable Member for St. George has had a considerable amount of experience in reporting on the work of the various courts of this province and in particular of this city, so that -- and I say this quite seriously, that this is an important matter and on which I would certainly be prepared to

(Mr. McLean, cont'd)...defer to his much more extensive knowledge than my own. However, I think that there are perhaps one or two points of view that might be expressed.

First of all I am sure that the Honourable the Member for St. George must know that it is not uncommon for defence counsel to, on occasion, suggest that perhaps some change in the charge ought to be made insofar as it affects his or her client. In fact if I might be permitted to use, or rather twist the words of a famous saying, I might say something to this effect, "Breathes there defense counsel who has never to the Crown Attorney said, 'Will you please reduce the charge?'" And I'm sure that if the Honourable the Member for St. George has many friends among those have done defense work that they would be glad to confirm that to him.

Now, there is a distinction, however -- quite clearly a distinction that's to be made in the case of capital cases, because perhaps they stand on a somewhat different footing from many of the other cases which come before the court. Let me say this also, that we spend a great deal of time and a great deal of money as a society, indeed some say not enough, endeavouring to do things for people who have gotten into trouble in life, in the way of parole and assistance of one sort and another; and it would seem incongruous if, in the administration of justice, the Attorney-General were not able to use his own best judgment in matters pertaining to the administration of justice. Let me point this out as well, that the Honourable the Member for St. George has referred, and I take it that the case of Kozaruk was the one that he had in mind, where a charge of capital murder was reduced to a charge of non-capital murder, and he says to us, "Well, that was wrong. Suppose, for example, that the Attorney-General in the first instance after considering the facts had laid a charge of non-capital murder to begin with, would we be debating that question here in this House?" In otherother words, this goes to the judgment of the Attorney-General, and unless there is some evidence of bad faith, one must surely assume that these decisions are made on the basis of the facts as they are disclosed and on the basis of the best judgment under all of the circumstances. This is not to say that one can't disagree with the decision made, but I wouldn't think that we could really debate every case or that individual decisions would perhaps indicate any particular trend in, or any particular criticism in the matter of the administration of justice.

What the honourable member is in effect saying is, and this is a good point -- let me not understate it -- what he is in effect saying is that there ought never to be any change in the charge, in referring particularly to capital charges -- there ought never to be any change made in the charge. Well, that's a point of view and it's a very useful one, and I for one would be perfectly happy to take into account what he has said. There would be, I think, many who would not be pleased if that rule were adhered to rigidly, but it is certainly a point of view to be kept in mind. In these matters, one must always, as I say, try to deal with them on the basis of one's judgment, and as long as there is no suggestion of improper conduct, then perhaps the public interest is satisfactorily served.

I was trying to think over the supper hour of some of my own experiences, remembering that they have't been too many. I recall once being engaged to act for a chap charged with murder. This was before the days of capital and non-capital murder. As a matter of fact, Mr. Chairman, I think it was the first jury trial I ever had, and I am pleased to report that both the accused and counsel are still living.

After the preliminary hearing it was my opinion that, because of the absence of mens rea and the sort of thing that's necessary to establish murder,as I understood it at that time, that my client was not guilty of murder but I did think there was a pretty fair chance that he might be convicted of manslaughter, which was an alternative; and I suggested to the Crown Attorney that perhaps under all of the circumstances he ought not to pursue the charge of murder but that he ought to agree to reduce the charge to manslaughter and perhaps we would come to a shorter trial. He, following the rule which is quite clear -- and I keep coming back to this -- quite clear, and there are those who say that in every case it must go to the jury. He, following that line of reasoning said, "No, we must proceed." And we did and that trial cost the Province of Manitoba a considerable amount of money. In the end my client was acquitted completely. He didn't even get convicted of manslaughter although I'm inclined to think that under the circumstances perhaps there was something to substantiate a conviction

(Mr. McLean, Cont'd.) . . . for manslaughter. Now, there was a lot of money spent, a lot of time involved. I'm not complaining, I'm merely pointing out that thatwas one instance, one type of experience where, all things considered -- all things considered, the ends of justice might much better have been served by the other course of proceeding.

I had another instance, Mr. Chairman, of a chap where I made the same suggestion with the same reply and where, in fact, he was found guilty of manslaughter rather than murder as he was originally charged. In that particular case, I recall it quite well because it was a rather unsavoury case, and I made a passionate plea to the judge with regard to sentence and to my surprise, indeed to my delight and the delight, I hope, of my client, he only sentenced the accused to two years, less one day which, all things considered, was a rather better result than I had anticipated.

Well, all I'm really trying to say, Mr. Chairman, is that these are matters that are matters of judgment that one must always consider, I hope, with compassion -- I mean the Attorney-General must consider what is in the best interests of the administration of justice. And one could point to individual cases where someone else approachingit, in considering it, might have made a different decision. Let us be quite clear, however, and all I'm saying is there's nothing wrong with the proposition that the honourable member has put before the House and that is, that in these cases the matter ought always to go to the jury. Well, maybe on reflection he wouldn't want to just harden that into a firm rule that would be applied in every case, irrespective of the circumstances or the facts. Maybe he would, and if he would, that's fair enough -- he's stated his position. Certainly if that is his considered opinion in this matter, it's one which I am quite prepared to take into account as I start out on my responsibilities in this department, and to bear in mind as these matters are brought forward from time to time. Certainly the problem is a bit complicated as my learned colleague indicated a little earlier, in view of the change in the law with regard to what is now called 'capital murder' and 'non capital murder', and this is a field in which many lawyers -- previously the precedents and the law and the general procedure was pretty well established and pretty well understood; perhaps that's not quite so clearly the case now, and I suppose there is always the possibility that until we have as many years experience and the same opportunity of developing procedures that there may be some perhaps situations develop which are not easy to explain or in which there may be difference of opinion.

I was interested in one, and I think after all this is the important aspect of this. That the honourable member very fairly said that he was not objecting to the sentences which were meted out in the cases to which he made reference, and it would seem to me that in the overall matter of the administration of justice, that must surely be the important aspect, rather than the technical procedure by which one proceeds, because if in his opinion the sentences given and in two of them -- I believe at least two of them life imprisonment was given -- if in his opinion the sentences given were adequate, satisfactory under the circumstances, perhaps one may say, even though one may not agree with the procedure that was followed, if there is a disagreement -- one may say that the important ends of justice were served, namely, that a person who has broken a law, has offended the accepted standards of codes of conduct has been made to pay the penalty. And I for one must say that I do not approach the administration of justice with any sort of -- I've never been able to accept the concept of being vindictive. I don't think that it would be right that we approach the administration of justice from a vindictive point of view if we're going to, how would you say, we're going to exact the last ounce. Society must be protected. Those who break the law must be punished. Our views are changing very considerably, witness even in these estimates the amount of money provided for sort of the after-care of people who have broken the law. Well, what am I trying to say? I'm merely trying to say that this is a matter of judgment and unless there is then some indication of decisions made from an improper motive, then this is perhaps not a matter where one would have to say, well it is a matter of judgment, I would have done it differently if I were doing it, and on that point I would acknowledge with complete clarity because the point of view that the Honourable, the Member for St. George has presented to us, is one which is well understood, not always followed under all British jurisdictions, but one that certain types of charges, one must always leave to the jury for their decision. It's a point of view which I am glad to have expressed and debated because I'm sure that I will certainly bear it in mind in those matters which are brought

(Mr. McLean, Cont'd.) . . . to my attention so far as my concern in this department is concerned.

MR. GUTTORMSON: Mr. Chairman, the Attorney-General has drawn a red herring over the points that I have raised. I did not say today that the Attorney-General should never take a -- reduce a charge. He said I have spent a great deal of time in the courts over the years and saw different counsel at work. This is quite true. I've sat and covered hundreds of trials from the Magistrate's Court to the Court of Appeal, and I've seen a large number of lawyers work at the different types of cases, and it's quite true that a defence counsel will approach a Crown Counsel in an effort to get him to reduce a charge. This is not uncommon. I noticed whether it's a traffice offence, or a breaking and entering, or whether it's assault, it makes no difference. It's the prime function of the defense counsel to act and to get the best possible deal or to assist his client in the best possible way. This is his duty. But the point I raised this afternoon was the matter of the charges of capital murder. Now I'm not going to suggest for a moment that perhaps the Attorney-General at some time or other may have, for some reasons of his own, felt that he should have accepted a plea to a lesser charge. The point I'm making is that in the last six months in five of such cases the Attorney-General took it upon himself to accept a plea to a lesser charge in four of them. This is the point I'm making.

Now over the years -- I can't go back, I have some statistics here -- the Attorney-General's Department has laid various charges following deaths -- they've laid capital murder, they've laid non-capital murder, they've laid manslaughter, but in these cases in the first instance, the Attorney-General's Department saw fit to lay the charge of capital murder, and practically in all cases that I've ever attended, the defense counsel will invariably attempt to get the magistrate at the preliminary hearing to reduce it to non capital, and sometimes but not all the time, the magistrate if in his wisdom thinks that after hearing the evidence at the preliminary hearing that the man is not guilty of capital murder, he will reduce it to non-capital. But here are cases -- the ones I've referred to, there's four of them. They were committed to stand trial on capital murder charges. One of them was the More case, and the Supreme Court of Canada said, "We will not substitute our opinion for that of the jury." Yet the Attorney-General was quite prepared to do this. This is the point I'm making, and he said quite rightly this afternoon, here was a very important point of law which had not been settled in Canada as a result in the change in the criminal code, and they were quite anxious to get the decision of a jury on this particular point. But what's the result of it? The Attorney-General took it out of the hands of the court by taking a plea of non capital murder, so that the Supreme Court of Canada or the other courts in Canada, are not going to have any opportunity to face the opinion of the jury on this particular case.

Now he also said, by maybe taking a plea to a lesser charge we're going to save a lot of money. Mr. Chairman, when a man's life is at stake, we don't talk in dollars and cents, and to suggest that it might be advisable to accept a plea to a lower charge so we don't have to go to the expense of a trial is absolutely ridiculous. Here's a man who may have to face life imprisonment as a result of the plea to the lesser charge. It's quite conceivable that in these cases where the Attorney-General's department accepted a plea to a lesser charge, that the man may have been acquitted. Who's to say? So, if you want to argue that point, nobody's to know; all I say is when you get four out of five in a period of six months where the Attorney-General's department has seen fit to accept a plea to a lesser charge, he is setting himself up as a jury as a supreme being in the court and not letting the court decide the matter. This afternoon the former Attorney-General said he recalls when he was in the department that the Crown accepted pleas without going to the Attorney-General's department for consultation, but he didn't disclose those were not cases where the man was facing a charge of murder. Sure, it's quite common for a man or a Crown prosecutor to assess a charge, a plea to a lesser charge on minor cases, but I suggest to you that he'll have a great deal of difficulty to find in the days of the previous Attorney-General where they accepted pleas -- after a murder charge had been laid, they accepted pleas to a lesser charge. I'm speaking of capital cases now, not routine cases of theft or burglary. I'm speaking of capital cases; but he tried to draw a red herring over it this afternoon. I said this afternoon that a deal had been made whereby the Crown would accept a plea of guilty to manslaughter, and he said this was not true. He also said that I had not told the truth, but onlytoldhalf-truths. Now Mr. Chairman, I insist here and now that he tell me what I said was

(Mr. Guttormson, Cont'd.) . . . incorrect. . . . . imagine a member of the treasury bench running to the back bench to avoid having to speak on an issue and having to be prompted by this side of the House to get back in his seat -- and he still hasn't spoken on the issue. If I was wrong, if I said anything that was incorrect this afternoon, I suggest, Mr. Chairman, he tell us here and now, and I'd like to know what I said that was incorrect; and I think he should get up here and tell us what I said was wrong.

MR. LYON: . . . happy to remind my honourable friend of what I said this afternoon, because he just finished saying it himself. He said that some arrangement had been made to accept a plea of manslaughter on the charge; I said that nothing of the case took place. There is where he was completely inaccurate.

MR. GUTTORMSON: All right, Mr. Chairman, we'll see who's telling the truth. -- (Interjection) -- I have a letter here I want to read to the committee. -- (Interjection) -- All right. The gentleman has asked that I read it all. -- (Interjection) -- This is a letter addressed to Manly S. Rusen, Secretary of the Indigent Committee, Criminal Section, Law Society of Manitoba, c/o 701 Lindsay Building, Winnipeg, Manitoba. It says: "Re Stephen Kozaruk. Charge -- Capital Murder. Dear Sir: In view of the unusual situation that here exists, I feel the Law Society is entitled to a report from me as to why Mr. Kozaruk refused my services when he was about to be arraigned on October 9, 1963. You will recall that I accepted an appointment by the Law Society to represent Kozaruk earlier this year and did considerable work on his behalf, including appearing on his behalf at the preliminary inquiry which lasted five days. Also, I gathered various material from the Crown, the City Police, the Saskatoon City Police and a lawyer to represent Mr. Kozaruk in Saskatoon when he was charged with capital murder in that city. I have from time to time since then since then visited and conferred with Kozaruk, on most occasions in the presence of Mr. Nathan Nurgitz who kindly agreed to assist me in this defence. Shortly after the preliminary inquiry, I had a discussion with a Mr. A. A. Sarchuk, Crown Attorney, at which time, Mr. Sarchuk intimated that the Crown would be prepared in a general way with Kozaruk to set the plea of non capital murder. This was discussed in a general way with Kozaruk on two or three occasions, and I advised him that I felt on the strength of the evidence that he would be wise to enter a plea to this reduced charge. However, Kozaruk was not prepared to do so. He stated he would be prepared to enter a plea of manslaughter, fully realizing that he would be sentenced to a very long term, possibly life imprisonment. For this he had reasons that were not overly logical to me, but were very valid in his mind. At a later date, I advised Mr. Sarchuk what my client stated and I was told by Mr. Sarchuk most emphatically that the Crown could not consider a plea on charge of manslaughter.

"Early in the month of September, after I had an opportunity of speaking briefly to Doctor McDonald, the psychiatrist who examined Kozaruk at great length and shortly after the commission of the offence with which he is charged, I advised Kozaruk that in my opinion he should enter a plea of non capital murder. However, he flatly refused to do so. As a result of these instructions and in view of the fact that in my opinion a conviction of capital murder was not beyong the realm of possibility, I immediately set about to do all I could to prepare a defence for Kozaruk. To this end, it was my desire to have a more lengthy conversation with Doctor Mc Donald, but inasmuch as I had been appointed by the Law Society and was not assured of any compensation until appointed by the Court, and inasmuch as any compensation I would receive from the Court would not be sufficient to cover my expenses in going to Saskatoon, seeing Doctor McDonald, afterwards bringing Doctor McDonald to Winnipeg to attend during the trial and to testify, I wrote to the Deputy Attorney-General under date of September 12, 1963, a letter, a photostat of which is attached hereto.

"During the week of September 23rd, Mr. Sarchuk telephoned me and advised me he had discussed my letter of September 12th with Mr. Gordon E. Pilkey, Q.C., Assistant Deputy Attorney-General, and as a result he advised me that their department was obliged to pay any necessary disbursements but I would have to undertake the expense in the first instance, and if subsequently they felt that this expense was justified, it would be paid. I advised Mr. Sarchuk that I could not go along with any such proposals for a variety of reasons -- along with my own, or along with any such proposals for a variety of reasons. Firstly, in the only other murder case that I have conducted as the result of having been appointed by the Law Society I hired and called as a witness a psychiatrist to whom a fee of $100 was paid. The Attorney-General's

(Mr. Guttormson, Cont'd.) . . . department refused to compensate me for this, but did at the same time make an allowance of $50.00 in the fee that I received over and above that they would normally allow. To assist in this regard, I may say here that in taking a case like this, it is neither my intention nor desire to make any money. That is impossible. But it is my intention and desire not to lose any money, which is possible.

"Another reason I did not wish to follow along these lines indicated by Mr. Sarchuk was that having interviewed Mr. McDonald on a second occasion, I may well have determined that I did not wish to call him, in which case it would be all the more difficult to justify the expense. Secondly, if Mr. McDonald's evidence was of doubtful value, I would want him present at least as a safety factor, although he may never be called, in which case it would have been again difficult to justify the expense. Having indicated this to Mr. Sarchuk, he advised that he would discuss the matter with the Deputy Attorney-General and let me know the result of his discussion. I heard nothing further from Mr. Sarchuk, and as a result communicated with Dr. J. C. Pincock of the Psychopathic Clinic, Winnipeg General Hospital, and advised him of my difficulites, and he undertook to examine Kozaruk on the understanding that if I received no compensation, he would receive no compensation; if I received any compensation, I would advise him of the amount and see that he got an appropriate share. Dr. Pincock did eventually see Kozaruk.

"On Wednesday October 2nd, I telephoned Mr. Sarchuk and sought an appointment with him for Thursday, October 3rd. The writer and Mr. Nurgitz attended at 10:00 a.m. in Mr. Sarchuk's office, and at which time Mr. Sarchuk was in the opinion that we were there in an effort to induce the Crown to accept a plea of manslaughter. At this time, Mr. Sarchuk was advised that the Crown would accept it, we would then accept the plea, but he told me emphatically they would not accept it. I frankly had not expected that they would do so.

"We then began discussing whether the Crown would or would not pay the expense of bringing Dr. McDonald to the trial. I was told again to the same effect I had been told previously, at which time I told Mr. Sarchuk, that being the case I did not think I could accept the appointment by the Court on behalf of Kozaruk, as I felt that Dr. McDonald could possibly be a necessary witness, even if only for the purpose of reducing the charge of capital murder to non capital murder. As a result of this, Mr. Sarchuk said he would again see the Deputy Attorney-General and communicate with me that afternoon. Between 3:30 and 3:40 p.m. October 3rd, Mr. Sarchuk phoned me and advised that he had just come from the Minister's office and had been instructed to find out whether or not I could guarantee that Kozaruk would plead guilty to manslaughter. My immediate response was that I could. However, I then said I had better not commit myself without seeing my client. Was I to understand the Crown would accept such a plea? Mr. Sarchuk advised me that the acceptance of such a plea could be subject to the approval of the Court. This being understood, I proceeded to the Manitoba penitentiary accompanied by Mr. Nurgitz, and arriving after visiting hours, made a special arrangement to see Kozaruk who authorized me to assure the Crown that he would enter a plea of guilty to manslaughter. Kozaruk was cautioned at this time that he should not be overly elated at the prospect of manslaughter as my arrangements with the Crown were such that the Court must still approve the acceptance of such a plea.

"Mr. Nurgitz and I returned to Winnipeg and shortly after six in the evening telephoned Mr. Sarchuk's home and was advised by his wife he was out and would be out for the rest of the evening, at which time I advised his wife that I would be home all that evening or available any time the next morning from 8 o'clock on, and that it was rather urgent that I get in touch with her husband because it would be necessary for me to see a judge of the Court of Queen's Bench the next day. At 8:30 the next morning, Mr. Sarchuk phoned me at my residence, at which time I advised him that my client was prepared to enter a plea of manslaughter and asked him when we could see the judge to get approval. Mr. Sarchuk advised me that he had seen Mr. Justice Nitikman the day before, and the Court had approved the acceptance of such a plea. The rest of our conversation dealt with when the plea should be entered and representations made with respect to sentence. Mr. Sarchuk advised me that he would see the court in this regard and phone me later in the day. On Friday October 4th I left my office and heard nothing further on this matter until approximately 6:30 that night, when I received a phone call from Mr. Nurgitz to inform me that Mr. Sarchuk, being unable to communicate with him, had

(Mr. Guttormson, Cont'd.) . . . had communicated with him and advised that the Minister had changed his mind concerning a plea of manslaughter. Frankly, this would not have been too disastrous except I had, after having received the advice in the morning that the Court had approved, communicated with my client to the effect that the Court and the Crown would accept a plea of manslaughter in answer to the indictment. Mr. Kozaruk while not legally insane, is certainly a far departure from normal, was elated by this information. Following Mr. Nurgitz' advice I telephoned Mr. Sarchuk and had a lengthy conversation with him. During this conversation, Mr. Sarchuk maintained that he had informed me that the arrangement was all subject to the Minister's approval. This I emphatically dispute. In any event, I made every effort to induce the Attorney-General and the Deputy Attorney-General to accept the plea of manslaughter it being my firm conviction what when I informed my client that the Crown would not take manslaughter that he would become entirely mentally unstable and having regard to that fact, to the fact that he has on two other occasions attempted suicide, I was virtually afraid for the man's life as well as that of his mental health.

"At the invitation of the Attorney-General I arranged with Mr. O.M.M. Kay, Q.C. on Saturday morning when in the presence of Mr. Nurgitz the matter was again thoroughly discussed. At this time Mr. Kay said he would take the matter up again with the Attorney-General and in the meantime I should not communicate with my client. This gave me hope but although Mr. Kay did not make any commitment other than he would discuss the matter with the Attorney -General, while there Mr. Kay arranged to have an arraignment deferred indefinitely but for some time during the assize. On the afternoon of Monday, October 7, Mr. Sarchuk telephoned and advised me that the Attorney-General's instructions were that the Crown would proceed with the indictment as originally preferred. I communicated with Mr. Kozaruk on the morning of October 8th advising him of the Attorney-General's decision and that, what in my opinion was a change of heart, and at this time Kozaruk did not take the matter too hard, as I told him I would still do everything in my power to induce the Attorney-General's department to accept a plea of manslaughter. As the arraignment was further deferred until the morning of October 9th, on October 9th I again saw my client and advised him that I could see no hope of inducing the Attorney-General to reduce the charge to less than capital murder and advised him that in my opinion he would be unwise to enter a plea of this to this charge. At this time Mr. Kozaruk lost his self control and exhibited all those signs that psychiatrists have indicated to me that he would exhibit under stress. He felt that he was being made a guinea pig and that the Court the Crown and the writer were all against him and attempting to railroad him. He started to pace the floor, muttering, swearing, and generally acting in a manner that I would describe as being insane. I told Kozaruk that in view of his obvious mistrust in me, in view of what had happened he may well be advised to ask the court to appoint another lawyer. At this time he accused me of deserting him. However I attempted to assure him I would accept the assignment and do my best for him and the matter was entirely up to him. When Kozaruk did appear for his arraignment the usual procedure took place whereby the court was advised he appeared without counsel, and Chief Justic Tritschler asked if I would act. I advised the court I would accept the appointment but I had doubts as to whether or not Kozaruk would be satisfield with my services. Kozaruk thereupon informed the court he would not be satisfied with my services and thereupon my interest in the case was terminated. Other than that I can assure you I will still co-operate in any way I can with any counsel that may be appointed by the court to assure that everything that can be done for Kozaruk is done. This is a most regrettable situation which I have very strong feelings that I do not care to put forth in this letter other than to say that it should be a good case of pointing out the shortcomings of the present system approved by the Law Society, and held out by the Department of the Attorney-General as being a satisfactory working procedure. Any view I have in this matter which may be of assistance to the Law Society will be gladly given. I might state that the Attorney-General's department never did undertake to produce a psychiatrist but did undertake that if the court ordered him to do so they would do so. For reasons I will not detail, this was not satisfactory and to my mind it is nothing short of attempting to shift the responsibility." The signature was not picked up by the -- but I know it was Frank Allen, the counsel for the accused Kozaruk. The initials here are FDA.

Now the Attorney-General said no agreement was made. I ask, Mr. Chairman, would

(Mr. Guttormson, Cont'd.) . . . Mr. Frank Allen go to the trouble of writing a letter in this detail to the Law Society if he had not an agreement. I suggest this letter bears a lot of consideration as to what is going on. I think it's tragic that a man who's facing a capital charge that his life was played with in such a manner. It's no secret around the Law Courts why the plea of manslaughter was rejected later on, because it's common talk in the halls of the Law Courts that there were two other persons charged with capital murder on the same assize and pleas were being taken from them at the same time and it was felt that it wouldn't look good in the eyes of the public if three of them had charges of capital murder reduced at the same assize or at the same time. Now anybody that is familiar with the Law Courts will know that this is not idle talk. It's common knowledge around the Law Courts.

As I said before, my quarrel is not with the sentence. My quarrel is with the method of handling the case. A large point has been made by the Attorney-General that from time to time they have this right to reduce a charge. I couldn't agree more with him. The Attorney-General can reduce every charge that ever appears if he wishes, but I point this question. Why did the Attorney-General's department lay the charge of capital murder in the first instance? They don't always do it. I can cite cases of -- many cases where in the opinion of the Attorney-General's department that a lesser charge should be laid in the first instance, and they were. I know of cases where men have been charged with capital murder and they were acquitted by the court. But the thing that arouses me, as it does many others, why in the period of six months are four out of five dealt with in this manner?

Now the Attorney-General says he made no deal. I read the letter of Mr. Allan. I'm sure Mr. Allan didn't say this just for the sake of writing. I pointed out another case, in the More case where the Supreme Court of Canada felt that the More case was a very important one and that it should be dealt with by a jury. I can't emphasize the statement of Mr. Justin who said, "We will not substitute our opinion for that of the jury." And here are seven learned men in the highest court in the land who didn't feel they would reduce this charge. They felt it should be dealt with by a jury and they directed that it be done in this way, five of them; two of them thought it shouldn't even go back to a jury because they felt the man was guilty. But the Attorney-General thought that he would take this on his own shoulders and reduce the charge himself. This is my quarrel. I think there may be exceptions in the long run where, for reasons best known to the Attorney-General, he may see fit on a specific case. But I can't, and nobody else will convince me, that in four out of five cases that you will reduce a charge of capital murder to non capital. One of the cases was reduced just the other day, not to non capital, to manslaughter! It was a woman charged with capital murder and they reduced it -- Now perhaps if this woman had gone through a jury trial she may have been convicted of capital murder. She may have also been acquitted entirely like the others. This is my whole point.

I think that we have a system in this country where a jury is called upon to look into these matters and I say, if the Attorney-General feels that this is the wrong way to deal with these cases then I suggest he tell us so, and Mr. Chairman, this is the reason I brought this up. I'm unhappy with the way it's been handled, not with the disposition because, as I said, in many cases the accused person may have been acquitted, and I couldn't care less. There are many times, and I've seen them over the years, where a man, in the opinion of the lawyers, the Crown, the accused person would not be convicted of the charge that was before the court but he felt it was the duty of the jury to decide this matter and that's how they were handled. And I cannot recall, and I'm not going to say it didn't happen, but I cannot recall before this government took office where a man charged with capital or with murder -- because there weren't capital murders in those days -- where the Attorney-General took it on himself to reduce the charge rather than let it go to a jury.

MR. McLEAN: Just one or two comments. I think that Mr. Allan's letter, aside from any other thing that it does, it certainly demonstrates the length of which the department of the Attorney-General went to consider the case and the representations being made on his behalf by counsel for the accused Kozaruk, and so indicating I would think that there was a real concern that justice should be done, which after all is our responsibility. Now I have noted the views expressed by the honourable member and I can assure him that they will be certainly taken into account in all future cases, and I would be glad to have him look after another six months at the number of cases where changes are made and be glad to have him bring that

(Mr. McLean, Cont'd.) . . . matter to the attention of the House on some future occasion.

I think there's one thing I would like to say with regard to the More case, because I think perhaps there's a misunderstanding about the expression of the court. When the Supreme Court of Canada in that case said "We will not substitute our opinion for that of the jury," just on the face of it that would appear to mean what I think the Honourable Member for St. George considers that it means, but really the situation is quite different from that. In every case, and Mr. Chairman, you will excuse me for embarking on just a little law explanation here -- in every case that goes from jury trial to a Court of Appeal whether it be the Court of Appeal in Manitoba or the Supreme Court, the court appealed to has to decide whether or not anything has taken place in the trial court which warrants a new trial. That essentially is the basis of the appeal, and what the appellant is asking for is another opportunity to come back and have his case heard because of some irregularity which he may say has taken place at the original trial. And you'll remember that in the More case the Supreme Court said, "Yes, there ought to be a new trial," for reasons which they outlined in their judgment. When that happens, the court appealed to has one other thing that it always directs its mind to, and that is the question of having decided that something, some error occurred in the original court. The court appealed to can then ask itself this question, "Should we, rather than referring this particular case back to the original court, should we substitute our decision as to the guilt or innocence of the accused," and the law makes it quite clear that if the court appealed to wishes to do so they may substitute their judgment for that of the original trial court. And so you'll find, if the Honourable Member for St. George would read all of the criminal appeals that go to the Supreme Court of Canada, he would find that in every case where the Supreme Court says "There was an error in the original court" they then say to themselves, "Do we refer this court case back to the original court or do we substitute our decision as to the innocence or guilt of the accused person?" And it was in that context that the court said, "We will not substitute our opinion for that of the jury." In other words, they were saying there was a miscarriage or an error in the trial court, and the case ought to go back to the original court and this is not a case where we, the Supreme Court of Canada, ought to substitute our judgment. No. So they did that. In other words, you have to understand that context within which that statement was made. Let me say one other thing. That if you would search, if you would search all of the decisions made by the Supreme Court in cases of this kind, it would be my impression, and it's quite a long time since I looked at them now, but it would be my impression that in the vast majority of cases the Supreme Court says those very words, because as a general rule they have always said, when finding that there was a ground of appeal, they have always said the case ought to go back to the original court for decision, and that is all they were saying.

Now, my apologies Mr. Chairman, to the committee for having embarked on this, but I think it puts the situation in a somewhat different context. I'm not raising this for any dispute with the Honourable Member for St. George. I'm merely wanting the committee to understand that the Supreme Court in this instance was doing what it does in practically in all cases, having found that there was ground for upsetting the decision. I think, if I may say so, and I hope that it won't appear that I'm trying to draw a red herring. The Honourable Member for St. George has very kindly said, very properly so that -- well, his rule doesn't, wouldn't apply, he wouldn't want this applied in every case, he has recognized that there are some cases. He has made a very valid point, however. He has said that it looks odd that four out of five capital cases there were reductions in the sentence, and reductions in the charge, and that's a fair comment. I mean no one can quarrel with that statement. That's fair; and that's a fact I assume. I haven't examined them but I'm quite sure it's correct, and I can only say to him that he's made his point; he's made it very clearly. I have heard him. I understand the point. I've been involved in this type of problem from the other side, and I shall be more than happy to bear in mind the matters which he has brought to our attention, and equally happy on a later time to have him bring us the statistics of the similar types of situation that have occurred since we've been here on this occasion.

MR. HILLHOUSE: I think there's one matter that the Honourable Attorney-General could deal with and should deal with, and to me it's perhaps the most important matter that was raised in the letter read by the Member for St. George, and that is the refusal of the

(Mr. Hillhouse, Cont'd.) . . . government to bear the expense of bringing Dr. McDonald from Saskatoon to Winnipeg to give evidence in this case. If that information is correct, then I submit that that accused person was denied, by the refusal of the government to bear that expense, he was denied the right of a full answer and defence to the charge which was pending against him. Now I have never believed that the office of public defender would take place of the voluntary system existing just now between the law society and the Attorney-General's department, but if a counsel is assigned by the law society to defend a man charged of the criminal case, and that counsel assigned is denied the right of spending money which is necessary in order to give to his client a proper defence, well the system is absolutely useless. You may not as well appoint anyone at all, and I think that the government and the Attorney-General tonight should make a statement on what government policy is, in respect of necessary disbursements incurred by a defence counsel assigned by the law society and subsequently assigned by the court to defend a man charged with a serious criminal offence.

If the information read to this committee tonight by the Honourable Member for St. George is correct, and I have no reason to believe that it is otherwise, then there is a tremendous weakness in our system, because that letter clearly shows that Dr. McDonald was a necessary witness in the defence of Kozaruk to any criminal charge laid against him, and particularly the charge of capital murder, and it was incumbent upon the Crown to bring that man to Winnipeg without making any deal as to whether or no his evidence was going to be used or not, or the outcome of the trial. That was part of that man's defence and if the members of the Manitoba Law Society are going to volunteer their services to defend people charged with criminal offences for lesser fees than they would get if they were defending that man privately, I think the government of Manitoba should at least live up to the sacrifice that these lawyers are making, and at least furnish them with the necessary disbursements to bring forward essential witnesses.

MR. SCHREYER: Like the Honourable Member for Selkirk, I also detected in that letter the fact that this government was acting in a tight-fisted way, as regards providing of monies to allow for the bringing of witnesses to testify in this case, and not only that, but further I also detected in the letter some concern on the part of the assigned lawyer as to whether or not he would be getting any kind of advances from the Crown so that he would be able to carry on his work and so on without feeling too much concern about when he would be able to get paid. I shall read the letter in Hansard when it appears tomorrow, but certainly these two things put together seem to indicate, and in a very specific way, that perhaps it is time that we look here at the idea of providing a service of public defender such as is provided in other jurisdictions, particularly in the U.S., and I'm sure that if the system known as "Public Defender" is so much without merit as the Attorney-General intimated on Friday, why would such states such as New York and others, deem it necessary, necessary to implement such a service for the administration of justice in their jurisdictions?

The Member for St. George set out to condemn this government for the way it administers justice in instances of capital murder, or alleged capital murder. I think it's important enough for him to answer a question or two if he wouldn't mind, since it is important. Is he indicating that the Attorney-General exercised no discretion at all, that the department exercised no discretion at all as to accepting a lesser plea, since it seems to me that the policy he advocates would bring us in a position of going for the maximum, 'maximum or nothing' sort of alternative, and I don't think that that would be any kind of an improvement, Mr. Chairman, so I hope he would answer to that.

Secondly, when he referred -- (Interjection) -- no, I think the Member for St. George should answer since he has set out to convey a message to us, and certainly it's important and I was impressed, but I would appreciate clarification. And the second point Mr. Chairman, is, what is so wrong with the department of the Attorney-General accepting a plea along a lesser offence, if first of all it has to be sanctioned by a court? In other words, if you have judicial intercession, what's so wrong with the stamp of judicial approval -- of a court's approval? What is so wrong with the Attorney-General making such a "deal" if you like.

MR. GUTTORMSON: Mr. Chairman, I'm afraid the Honourable Member for Brokenhead hasn't been paying too much attention to my remarks. I made it quite clear. I was not plumping for any particular sentence or any particular charge. I said there were many times where the Attorney-General's department in their wisdom lays charges of manslaughter in the case of

(Mr. Guttormson, Cont'd.) . . . . . a death, they lay charges of non capital in the case of a death. I don't quarrel with that . But they laid a charge of capital murder in these cases. Why did they lay the charge of capital murder in the first instance? I suggest, they must have thought that there was some merit to the charges. The magistrate in the court presiding over the preliminary hearing saw fit to commit these men -- or these accused persons, on capital murder. He had a right because in all cases that I've ever seen, the defence counsel urges the court to reduce the charge to non capital, but the magistrate -- usually he will in some instances and sometimes he won't. If in his opinion there is enough evidence to go to a jury, then he will commit. Now I don't know how much experience my friend has in the courts, but when a magistrate commits, all he has to determine is there enough evidence for a jury to weigh. If he doesn't feel there is enough evidence to go to a jury, he can throw the case out himself at the lower court.

MR. McLEAN: To just put one item on the record because there may have been a misunderstanding from some comments that were made respecting counsel appointed by the court, provided by the law society, and some suggestion here that they were called on to act without payment of fee. I would like to just tell the members of the committee that the Province of Manitoba pays the fees of the counsel appointed by the court through the Law Society for the kind of cases that we're discussing -- capital cases. Counsel is paid $100 for the first day, and $50 for each additional day until the case is concluded. In addition, counsel is paid from $50 to $100 for preparation; that is, preparing for the case, and in addition, he is paid his disbursements. The same schedule of fees hold true if the case goes to the court of appeal, and while nothing is said here with regard to the Supreme Court, I assume that in a case where counsel was provided under this method, that the same would hold true for Supreme Court. I just wanted to correct any impression that there might be that the province was in some way not dischargibg its obligation to counsel who were appointed in these cases.

MR. HILLHOUSE: . . . . leave that impression with the committee. I certainly never intended to have . . . .

MR. S. PETERS (Elmwood): Mr. Chairman, one thing that isn't clear in my mind, when the Honourable Member from St. George read out, had Kozaruk had money his counsel wanted the services of a psychiatrist, he would have had the services of that psychiatrist. But according to the letter that the Honourable Member read out, the Attorney-General's department wouldn't let him have the services of a psychiatrist. This is where I say where we need a different system than we have.

MR. LYON: I'm quite happy to shed some light on the point about the psychiatrist because that is the subject that I remember the senior Crown attorney and the Deputy Attorney-General first consulting me about in connection with this case. As a matter of fact, after the meeting that we had at that time it was agreed, and the senior Crown attorney was instructed to advise the defence counsel accordingly, that if he made a motion to the court asking the Crown to call the psychiatric witness and the court agreed that this witness should be called and the witness was brought to Winnipeg, that his expenses would be paid by the Crown. Now that may have been lost sight of in all of the talk that has gone on, but that I can testify to my honourable friend, that is the arrangement that was made when I spoke to the senior Crown attorney with respect to this matter and to the Deputy Attorney-General, because I can assure him that it was certainly not the wish of the department to deprive any accused of witnesses that he might require, provided, of course, that you draw the line between what is a frivolous witness and what is a witness actually needed for the purposes of the defence.

With respect to the letter which my honourable friend from St. George read into the record, I'm familiar generally with this attitude on behalf of the defence counsel because I was first apprised of it by a telephone call -- I forget the day of the week, but shortly after these events took place. This was the first I heard of it. At that time I advised the defence counsel in question that there had been no agreement on the question of accepting a plea to the charge of manslaughter, that certainly we had considered it, considered it carefully, but that we had decided against it. There was a misunderstanding between him and the senior Crown attorney on this matter; certainly not between him and me, because I had never spoken to him about it until after the events that are complained of as stated in the letter. I called the senior Crown attorney at the time and advised him that Mr. Allan had said that there had been a commitment made. The senior Crown attorney denied that there had been any such commitment made at all.

(Mr. Lyon, Cont'd.) . . . And the misunderstanding arose between the two of them. It is unfortunate that that misunderstanding did arise, but the end result of the matter is this, that the Crown was not at any time prepared to accept a charge or a plea of manslaughter on this particular charge, and in actual fact at the subsequent assize the accused, of his own volition, did enter a plea of guilty to non capital murder. This is the charge that the Crown said that it would accept. And in the body of the letter which my honourable friend read, there is a sentence wherein Mr. Sarchuk, the senior Crown attorney, stated that no such commitment had been made. I believe Mr. Allan admits this himself, and this was the subject of the misunderstanding between the two of them. As an individual, as the one who finally had to make up his mind, because the buck stopped with the Attorney-General as the one who had to finally make up his mind, I can tell my honourable friend as I told him this afternoon that there was never any final decision made to accept such a plea, that the only plea that was agreed to be accepted was that of non capital murder, and that is the situation totally.

MR. HILLHOUSE: Mr. Chairman, regarding the remarks made by the Minister of Utilities, the Minister of Utilities is a lawyer and he knows -- or Mines and Resources -- and the Minister knows, as a practical lawyer, that it would be very foolish for any defence counsel to make an application to the court to have a psychiatrist called to give evidence without first knowing what evidence that psychiatrist is going to give. All . . . ., the point is this, that that defence counsel should have had that psychiatrist available here to advise him in respect of the sanity of the man, and the Crown should have been willing to pay for that.

MR. LYON: Mr. Chairman, I can clear up that misapprehension on the part of my honourable friend from Selkirk, because my honourable friend will recall this man had been charged with capital murder in Saskatchewan. He had been seen by a psychiatrist in Saskatchewan. He was subsequently tried and I believe found guilty of manslaughter on circumstances somewhat similar to the charge in Winnipeg. The psychiatrist who saw him in connection with the charge in Saskatchewan was the one that the defence wished to call in Manitoba. He had a statement, I believe -- I'm speaking now from memory -- I believe defence counsel had a statement as to the findings of this psychiatrist with respect to the accused. The Crown's position merely was that if we could either call him or if he made application and he were brought out here that those expenses would be paid.

MR. GUTTORMSON: Mr. Chairman, the former Attorney-General says no agreement was made, it was a misunderstanding. It seems hard for me or anyone else to conceive that a man with the experience of Frank Allan, who had several years as Crown attorney, would go to his client and tell him without being absolutely ironclad sure what was taking place before he would go to the penitentiary and tell such important news to his client. I also suggest, why did Mr. Sarchuk go to Mr. Justice Nitikman if there was a misunderstanding? I suggest that these two things together don't jibe with what the Minister is saying, because Mr. Sarchuk certainly wouldn't have gone to Mr. Justice Nitikman with this, as Allan says in his letter, if he didn't have an understanding from the Minister. Now, I don't think it's right for the Minister to attach the blame to his Crown attorney. He's acting on orders, and I think that the onus rests on the Attorney-General of the day.

MR. LYON: Mr. Chairman, there's no question of blame being attached on anyone. I merely am attempting to state the facts to the committee, certainly as they were known to me, because I was the one who had to make up my mind. And I tell the committee that no decision had been made to approve an acceptance of a plea of manslaughter. I know that, because I was the one who had to make the decision, and I can tell the committee that that is the case, and if my honourable friend chooses not to believe my word that is his privilege, but I give that as my word in the House.

MR. PETERS: . . . . . Mr. Chairman, that the accused should have had the right without going and getting a court order to have a psychiatrist, because if he had have had money he would have had that psychiatrist; he would have been available to him. But because he didn't have money he didn't have the privilege of having that psychiatrist or whatever he needed for his defence, and when a man's life is at stake he should have every possible assistance for his defence, and that's why I said last night, and I say it again, that there is something wrong with our system today. Maybe the public defender isn't the answer to it, but certainly as it is today is not the answer. We've had two cases in a very short space of time where this system that

(Mr. Peters, Cont'd.) . . . we're working under is not working the way it should work.

MR. S. CHERNIACK, Q.C. (St. John's): Mr. Chairman, this entire question is one which has been raised from time to time. I raised it last year and I remember that the then Attorney-General referred me to some address he had made the year before in introducing his estimates, all dealing with the question of legal aid for indigents. Last year we were not made aware of the fee paid to counsel appointed to act for the indigent, but the Attorney-General has now given us that information: $100 for the first day, $50 for additional days, and I think he said $50 to $100 for preparation. I think the Honourable Attorney-General would like it to be made absolutely clear that the counsel who appears gets paid this rate of pay for the days in which he appears in the superior court. I think actually that counsel is not paid for any of the preliminary work for the preliminary trial before the magistrate, and is not absolutely certain that he will be appointed to represent the accused in the superior court until the matter is in the superior court. That being the case, counsel gambles, and I don't think that that's so sad, because this is part of the free work that our profession is prepared to give. Nevertheless the point that has been raised about out-of-pocket expenses, payments let us say for psychiatrists, is something which I think does warrant looking into. Certainly it's unfair to counsel to say, "Well, now, you apply to the court to see if the court agrees that you ought to bring this psychiatrist down." I think counsel should have the right to find out whether he wants the psychiatrist and he's entitled to have his out-of-pocket expenses paid before he himself decides whether or not he wishes to produce any expert witness that might be expensive to bring down. So that it seems to me that the least that ought to be done -- and I urge the Honourable the Attorney-General to investigate it -- is putting, let us say, the Law Society Committee in a certain amount of funds annually with which it may decide to finance the expenses of counsel for the accused. It does not seem right to me that the counsel for the accused should have to go to the Attorney-General's department which is prosecuting the case, and ask the Attorney-General's department if it feels that it will advance certain monies to help in the defence. It's an awkward position to put counsel into, and I think that this if it's a matter to be reviewed it could well be reviewed by the same Law Society Committee which has appointed counsel to act, and I think the Law Society Committee could make the decision as to such disbursements. I feel that a good job is being done by the lawyers who do give of their time, and I can say that quite freely because I am not charged with the work in the criminal court to any extent, but we all of us do make our contribution and I think that all layers are prepared to do it, but certainly the fees paid are only a token recognition of time given, and the disbursements to which counsel are sometimes required to be put, or on which they have to gamble as indicated by Mr. Allan's letter, is something which could well be looked into to see whether or not they can be made available through some other source.

MR. McLEAN: Mr. Chairman, I'm sorry, in view of the fact that the Honourable the Member for St. John's has made such a useful contrib ution, to have to appear to be contradicting him, but he still hasn't listened to me when I said that in addition to the fees, the counsel's disbursements are paid by the Province of Manitoba, on accounts rendered. I don't know whether they're paid in advance or not but I presume . . Now, there was the one particular problem of the psychiatrist which was dealt with and you've heard the explanation and the useful suggestion, but please let me be quite clear -- fees and disbursements.

MR. CHERNIACK: I'm sorry, Mr. Chairman, but I would like to get it clear. I think the Honourable the Attorney-General said "disbursements based on an account rendered." Is he suggesting thatthe disbursements are not questioned, or looked into, or justified, but merely paid as they are billed?

MR. McLEAN: I suppose, of course, that they are checked. I've never run into a worthwhile member of the civil service staff yet who would not at least look at an account to see if it was okay. I don't know whether there mayevenbe cases where there are some questions asked, but by and large the Deputy Attorney-General can certainly tell whether the disbursements indicated by counsel are likely to be satis -- you know -- disbursements incurred in the case. That's the point.

MR. CHERNIACK: Well, then, the Honourable Attorney-General suggests that the letter of Mr. Allan's is anunusual one in connection with what he says is to his own gambling on whether or not he'd be paid.

MR. McLEAN: I'm sure, Mr. Chairman, if Mr. Allan meant by his letter that he was

(Mr. McLean, Cont'd.) . . .gambling on what the province was going to pay him, he was quite wrong.

MR. CHAIRMAN: 5 (a) passed. The Honourable Member for Rhineland.

MR. FROESE: Mr. Chairman, I've been listening all afternoon and evening hearing other members speak. I have one matter that I would like to bring to the attention of the Attorney-General, and this has to do with the validity of credit union legislation. Credit unions in Manitoba are provincially chartered and supervised. Credit unions also having statutory reserves are required to make a 20 percent statutory reserve every year, and therefore they have flexibility of liquidity which is appreciated by the people in the province that belong to these credit unions. Now, under the British North America Act 1867, the powers are listed in Section 91 and 92 as to what powers are conferred on the provincial legislative assemblies and those to the parliament of Canada, and banking is one that is referred to the federal parliament. Now, we had the Royal Commission on Banking having its hearings during the last year or two, and they also have their hearings in this province as in the other provinces, and the provincial centrals made their presentations to this Commission. We noted that the Commission was very keen on the matter of creating of credit, and we found this out because of the thorough questioning and examination that they made on this point.

Now, while credit unions concern themselves with the funds of their members, plus any borrowing they might make -- and here also they are limited to 50 percent of the assets of the credit unions -- they do as such not create credit with one exception, and this applies to those credit unions that provide a checking service or order of payment service to their members. A minority of the credit unions in this province are doing this today. Our Credit Union Act does not cover this operation. This practice is carried on mainly by the larger credit unions that have full-time management to accommodate daily clearings, and mostly apply to credit unions that have a quarter million in assets or more, and where the members have a desire or a need for this type of service. The creative part comes into play when cheques are issued and float around before they end up in the credit unions, where the amount is deducted from the members' accounts. During the time the cheque or order of payment has been in circulation, it increases the money or credit supplied. Thus, credit unions have no creative powers such as conferred on the banks by statute, but are limited to the creative part on this one point only; and I suppose in a closer, smaller community where the majority of people patronize a credit union and where orders circulate freely, it will have some effect.

Now however, aside from that, my concern is the question of the constitutional position of credit unions. As I already mentioned, Section 92 of the British North America Act where we have parts 11 and 16 spell out the exclusive powers of the provincial legislation and those of the federal. Part 11 reads, and I quote:"Incorporation of companies with provincial objects." And Section 16, part 16, reads: "Generally all matters of local or private nature in the province." And I suppose credit unions would come under either one of these.

Now, I find an attempt is being made by some parties to bring credit unions under federal legislation, and I find it is being done in a rather underhanded method, and that is by trying to discredit provincial legislation as not being valid. They're claiming that credit unions are a form of banking. I think the parties concerned have a purpose in mind, and that we might hear of another application for a bank charter by the co-operative groups, as some organizations have asked for this in past years; and I would not refer to Manitoba organizations -- these are organizations other than Manitoba. Now, while this might be speculation on my part at the moment, I feel that there are those who will proceed to have credit unions taken from under provincial jurisdiction. I hope that this will not come about, but could the Minister indicate as to whether there is any doubt as to the validity of credit union legislation that are on the statutes of our province. I don't think I am seeking a legal opinion, since the provincial government would not have gone into the matter of setting up legislation in the first place if this was the case. However, because of the further development that has taken place in credit unions, has the government or the Minister any reason to doubt the validity of the legislation that we have on our books, and can we expect that it will remain that way? I think this is a serious matter, because we will see more of this where an attempt will be made to discredit the legislation that we have in connection with credit unions; and I would appreciate from the Minister an answer on this matter if he can do so. I have two other items that I wish to bring up, but I prefer to have this discussed first.

MR. McLEAN: I'm not aware of any question that has arisen as to the validity of

(Mr. McLean, cont'd)... provincial legislation respecting credit union. I'm not aware of any attempt being made to bring credit unions under federal legislation. I cannot say that no attempt to question -- that there will never be any question about the validity of credit unions in legislation, because any legislation passed by a provincial legislature may always be questioned. As far as I'm aware, it's considered that the present legislation is within the powers of the Legislature of Manitoba.

MR. HRYHORCZUK: Mr. Chairman, I would like to talk on this particular item and cover most of the sub-items in it, and in doing so it's necessary for me to go back a little way in order to compare what is being done with what was being done at one time. Administration of justice, like anything else, changes with the times. I don't have to remind you, Mr. Chairman, that it isn't so very long ago when the only penalties meted out to the offenders or lawbreakers or criminals, as they were called, was the lash, mutilation of the body, ordeal by water and by fire; and it wasn't until within the last century and a half that we came to the state where we figured that these offenders should be put in custody in some maximum security building where they would have an opportunity to meditate, repent and do a lot of hard work. I think it was the Quakers that started this particular thought, and in their opinion work, solitary confinement and the Bible would make the offender penitent and reform. In fact, I think our word "penitentiary" comes from that time.

Well, it wasn't so very many years later that it showed up that merely having custodial security for our offenders was not sufficient, because the vast majority of them were repeaters or, as we call them today, recidivists, and that as a deterrent a custodial institution wasn't doing the work it was thought that it would do. It is only within very recent times that our criminologists, psychiatrists came up with the idea that what we should do is try and see if we couldn't give the offender the benefit of guidance; instead of putting him in the prison, to give him guidance by men and women trained for that purpose who are called probation officers; and it has been proven, I think to everybody's satisfaction, that there are certain offenders that could be reclaimed and could be brought back to normal existence with the assistance of a probation officer. It was further suggested that in so far as our prisons are concerned, they should be made in such a way that you not only have maximum security but that you have three standards of security, or three levels of security -- maximum, medium and minimum. The reason for that was, Mr. Chairman, that it was felt very strongly, and I believe justly, that when offenders came to a custodial institution they should be classifiedas to age, type of offence, length of sentence and so forth; that there should be sufficient room in these prisons for segregation and for rehabilitation. Then after the offender was put in a custodial institution, if he behaved himself, and if everything else so warranted, he could be released from the institution before his sentence expired and he would be put on parole, which is known as "after care" of these offenders. And we have parole officers. In the instance where we have probation prior to being placed in an institution those services are looked after by the province. In the case of the after agency such as parole they're a matter for the federal government. We also have other organizations which give after care services, such as the John Howard Society and the Elizabeth Fry Society.

Now this is just a very, very brief outline of what is our attitude toward the administration of justice. Now let us see just where our province stands in that regard. Insofar as our probation system is concerned, it's common knowledge among those who take an interest in it that we are not doing the work that it is intended to do, simply because thecase load is too heavy. We do not have sufficient numbers of probation officers to carry the case loads that are assigned to them, and I have here an article which appeared in the Tribune on March 12th, 1962, and it's headed "Church Concerned -- Probation Setup Here Criticized. The impossible case loads of social workers is creating a great weakness in the probation, suspended sentence, parole and after care services in Manitoba. The result," he said, and the statement is given here by Canon E. W. Scott, the Director of Social Service for the Anglican Church, "The result, he said, is both inadequate service to clients and also inadequate enforcement of regulations that are set as the terms of parole and probation."

Well, Mr. Chairman, if we wish to do the kind of work that we want to do, and in order to do it properly, we must have the tools to do it with. Probation service is a service that we want has proven itself, but it will never accomplish what it sets out to do if the probation officer has a case load that makes it impossible for him to look after the individual cases placed in his

(Mr. Hryhorczuk, cont'd)... care, and it isn't so very long ago when we had the same type of criticism from the John Howard Society, and I think on the basis of these criticisms by men who should know what the circumstances are, I think we can conclude that our probation service is not what it should be. There may have been a reason several years ago for that state of affairs because probation officers were not available in the numbers that they are available today. This type of treatment has been accepted and there are more and more persons going in to this type of work, and I think with proper encouragement we should have enough probation officers to go around.

Now what about our institutions? Well, I can't say, Mr. Chairman, that we've made very much headway with our institutions, because we still have very serious criticism as to what our institutions are like today. Now here is a quoting from a brief by the Howard Society of March 20th, 1962, and here is what it does say in part: "It is a holding centre for those convicted and sentenced to the Manitoba Penitentiary and those awaiting appeal." And he's talking about the Headingly Gaol here. "It is a place of custody for juveniles, repeaters, vagrants, homosexuals, alcoholics, and many others. One seventeen-year old youth said that when he went to Headingly he knew how to start one car without a key, but when he came out he knew how to start most models, the Society claims. Others have said that they learn what kind of safes can be opened most easily, how to do it, how the holes should be drilled and where, and how much explosive to use," and he goes on and on and on. In other words, our institutions are not fitting in to the type of treatment that we are satisfied should be given to the offenders. They are not segregated; they are not classified, and an offender placed in that institution, according to this article, comes out a worse criminal than he was when he entered it.

We see an article here of January 20, 1964, in the Winnipeg Free Press, "Jammed Prison Causes Trouble." This one is about the gaol at Brandon. And the same applies -- overcrowding applies right throughout all of our gaols. We are building more and more gaols. The Attorney-General will no doubt tell us about the accommodations that have been constructed within the last four or five years, but the point, Mr. Chairman, is that in spite of all the buildings we are building, our gaols are still over-crowded to a very dangerous degree, and in the foreseeable future they will continue to be crowded, because your gaol population is going up every year, and the last year it jumped approximately 10 percent. In spite of the fact, Mr. Chairman, that we have what we call three rehab camps in the Province of Manitoba, which accommodate approximately 120 inmates, in spite of the fact that we have additional minimum security space available at Headingly, in spite of the fact that we have this drain-off of offenders into our probation system, and the same in our parole system, the number of offenders -- criminals if you prefer -- is ever on the increase.

To me, Mr. Chairman, that can only mean one thing, and that is that our approach is wrong. And I've said this many times on the floor of this House and I'm going to repeat it today, because I believe that we now have an Attorney-General who will do his utmost to see that improvements are made, and I suggest to him that he can build the finest institutions in the country, that he can get all the probation officers that he wants, that he can do all of the things that have been suggested to him; but by doing so he is not going to reduce the number of offenders in the Province of Manitoba. If anything, if anything, we will see the present trend continued of the numbers ever getting larger, and it appears to me, Mr. Chairman, that we're approaching this thing from the wrong angle. What I mean by that is this, that we're approaching it a bit too late in the criminal's lifetime. If we wish to cut down on the crime we should do exactly what is done by the Department of Health. We are having -- if it isn't this week it's next week, or very shortly -- a National Health Week, and what is the call to arms there? "It is better to prevent than to cure," and suggest to the Honourable Minister that that is exactly the attitude we should take in regards to our offenders, that we should try and prevent a person from becoming a criminal rather than treating him after he has become one; and I say to him that facilities for such a program are much better today than they ever were before. Larger numbers of welfare workers are available. I believe, Mr. Chairman, that there's hardly a broken family in the Province of Manitoba to which a welfare worker does not go, if not regularly, then occasionally. I believe, Mr. Chairman, that if we used every effort and every facility available to us, we could nip crime in the bud. I believe that we could prevent criminals from being formed with the assistance of teachers, our school teachers, our welfare

(Mr. Hryhorczuk, cont'd)... workers. We could go a long way in drastically cutting the number of criminals that we can expect in the Province of Manitoba.

In an article appearing in the Free Press of March 18, 1962, we have an article headed: "Chest Shortage. School Crisis Called Public's Problem." It goes to point out just what those boys need. Then we have another article of March 8, 1962, which points out danger signals for delinquency, and in part this article reads as follows: "Some 120 teachers from St. Boniface, Norwood and St. Vital were told Wednesday night danger signals indicating a potential juvenile delinquency were failure in subjects and inattention by pupils. These are serious indications no teacher should sit back and be indifferent to his student's behaviour. Teachers could be more sensitive to learn these symptioms of delinquency patterns during kindergarten age and up to grade four. Children give the symptioms of deliquency earlier than we used to think, and we would indeed be happier if the teacher saw delinquency as a challenge to his ingenuity, imagination, resourcefulness." And I don't think for a moment that anybody would disagree with the statement that you can, not in all cases, but in the majority of cases, place your finger on a potential delinquent early in life; and I say, Mr. Chairman, that that is where we should start working.

I had some personal experience in this regard. I tried to get something like that done during my term of office, and I am glad that I am able to say, Mr. Chairman, that the response from the citizens of Greater Winnipeg was tremendous. We had about every church organization and every child welfare organization, and anybody that was interested in this matter, say that they are willing to help in every way they can, and I am quite sure that the Minister could get the same co-operation -- probably more co-operation -- if he'd only contact these groups who are so seriously concerned with our delinquency problem.

I would suggest to him that he reinstate the Manitoba Committee on Youth, either in that form or some other form, and place his efforts behind an organization which would be strong enough to really combat crime at an early age. I know that he will have every co-operation from the police and from every voluntary organization right down the line. The former Attorney-General withdrew the grant from this committee with the promise that he had something to replace it. This was quite a number of years ago. To date nothing has been done, and I am making this as a sincere recommendation, not as a matter of criticism or because I happen to be sitting in the opposition. That is one thing you can do.

The other I think is the one suggested by Chief Taft of the City of Winnipeg and that is that you have a Youth Squad. I believe that a police force, or a part of a police force trained for this type of work, is a must. I don't think that the type of training that our police officers get prepare them for this type of work. I have the highest of respect for our police force. I think we have one of the best police forces in the world, in the RCMP. I believe that in Greater Winnipeg we could probably improve the efficiency of our police force here if we had one Metro force instead of having forces in each of the municipalities.

There is also another movement that could be of great assistance to the Minister and that is known as the Big Brother movement. This movement is doing wonderful work in Ontario. It was my pleasure to meet members of this movement and they were ready and prepared to come into Manitoba and give us all the assistance they could. I would suggest, Mr. Chairman, that the Honourable Attorney-General give this matter his very very serious consideration, and that when we meet a year from now, that he'll be in a position to give us a report on what was done and what we could expect would be done in the future.

MR. GRAY: Mr. Chairman, it is very pleasant to listen to the last speaker. I agree with his criticism and more so with his suggestions. I do not remember offhand now the speech the honourable member made while he was Attorney-General, but I could guess — and if I'm not correct I withdraw my statement and apologize to him -- but I think that his speech was entirely a different one. However, I'm not criticizing him. It takes years sometimes, even for an educated man to get educated, so I'm very happy that he particularly among others have realized the seriousness of the situation in connection with crime and punishment. I shall not repeat what he has suggested and others will.

The other day, a week ago, he tabled two or three copies of the report of the superintendents of the jails, and I read very carefully the whole thing. It's interesting reading, although tragic, and I compliment the superintendent -- I think it is Mr. Littlewood, isn't

(Mr. Gray, cont'd)... it -- for a very plain, without romance, without exaggerating, on delivering the facts in detail, and I would appreciate if the Attorney-General would kindly give me a few minutes attention. Perhaps it is not so important. I would ask the Minister of Industry and Commerce -- I want to call your attention Sir, that you are being paid to listen to me and I am being paid to listen to you and I do listen to you.

Now there are a few figures which show the tragedy of the Headingly Gaol only, and the same may apply to the other institutions. Last year they looked after 3,686, a very big increase over a year ago, which in itself shows the tragedy. The average jail population is 506, and I understand there is only room there for 400, and even the 400 room available is not deluxe suites or sufficient room. Now how they could accommodate 506 on the average I really don't know, but I think it should be looked into.

There is another point I noticed in the report, the most increase is from January to May. Now, it was mentioned remedies and preventions which I agree fully 100 percent. Now here is one way you could have prevention if we create employment, because otherwise there wouldn't be the increase between January and May. There is no increase in summer months when a man could find a job.

Then there is another statement made which I cannot understand. No charges laid to 157 teenagers. No charges laid. I cannot read it and I cannot understand it, but there is something that should be looked into here. Maybe my reading is wrong, but that's what it says.

Then there is another tragedy here. Non payment of fines -- 1,514. Now if there is a fine attached to one who commits an offence, apparently it's not a serious offence, it's not a murder case, it's not a manslaughter case, it's not a capital murder case, must be that he is fined $10 for either speeding or perhaps non payment of a parking -- wrong parking, or something else -- then why could not be arranged between the accused and the family to pay out the fine. Why take a young man and put him to jail -- he committed an offence, it's true it's an offence — but not such an offence as does anyone particular harm, and I say that something should be done. We're looking for preventatives, for prevention. Here's a prevention. It's ridiculous to have 1,500 held in jail for non payment of fines. Everyone has relatives. The odd one perhaps could be sent to jail -- I don't know -- but when there is a question of $5 or a $10 fine and send a man to jail even for 15 days, for 20 days or 30 days and have this stigma of being in jail and disgrace to families, and in many cases the family has to move out from the district because everybody points his finger at him that he was in jail. For what? He didn't murder anyone, he didn't steal, otherwise there wouldn't be a fine. For non payment of fine, I think something should be done. Here is a case to prevent the large population in the Headingly Hotel.

Now, no sentence - 953. There's something else which I cannot understand. No sentence -- they're waiting for sentence. There were an average of 953. I'm speaking now of the 1963 report. Now, there is 7 day sentence -- well sometimes you can't help it, maybe driving while intoxicated -- 142.

The biggest tragedy in this report is out of the 3,686 -- yes, at the Headingly Jail -- over 2,100 under the age of 30, right in the prime of life. The Honourable Member from Ethelbert is quite right, that something should be done about it. Over 2,100 out of 3,600, over 60 percent are at an age where they should be employed; they should be trained; they should be looked after and they have no business of being in jail at all. There must be something wrong with society. They are not all, I am sure, criminals -- probably unfortunates.

Now there is another point about 390 that are freed -- no right; and there are several hundred qualified to teach the others. There are quite a few educationalists among the occupations given. Why couldn't they employ some of those to teach, at least to read and write, to the others. That's a useful thing. You shouldn't have in this day and age — they couldn't be all professors, or have an academic certificate, but surely they could read and write, so when they are free, outside of jail, they have night schools for that, but down there with about 250 inmates that can teach the others.

Then there is another item -- 48 TB patients, assigned to the clinic only three. Where are the ...... for these TB patients -- stay down there in jail spreading the disease to others? These are some questions that I think should be cleared up as far as I am concerned, and by clearing this up you could probably ...... members of this Legislature and the public in general, and the organizations which have an interest in the inmates, have an interest in those who are

(Mr. Gray, cont'd)... unfortunately serving a sentence are are interested in rehabilitation. If the population of this province, of this city, as a matter of fact of Canada, would know the tragic situation of those who happen to be committed to these institutions, probably they would think about it more. Why couldn't we appeal to the employers to take him in? When a man goes to jail for three months he doesn't become a criminal. They probably make him a criminal. What he doesn't become -- now when he comes to apply for a job, it says here, "Have you ever been convicted?" What is he going to do? He's got to tell the truth and that settles it, and he may be just as honest after serving a few months in jail for some minor offence, just as honest and the employers could take a chance on him. They should be interested in those people, otherwise they won't find anybody else to serve them.

So all these questions rumble in my head. I cannot find the answers, but I think, Mr. Attorney-General, this is just as important as some of the discussions we have had here today.

MR. CAMPBELL: Mr. Chairman, I'm sure that the Honourable the Attorney-General will feel that the first case that I'm going to mention in connection with the administration of justice is nothing in seriousness compared to the ones that were mentioned by the Honourable Member for St. George. Perhaps he will say it's a trivial case, but I have the feeling that so far as the public is concerned that they become very skeptical of the fairness of the administration of justice when they see cases of, or hear of cases that seem to indicate special treatment for special individuals; and I refer to a case that was the subject of an article in the Tribune of September 23, 1963, that is headed: "Private Hearing Faces Probe." The article goes on to say: "The Attorney-General's department will try to determine how a city magistrate handled the case last month of a Winnipeg surgeon charged with careless driving. Attorney-General Sterling Lyon said Friday his department will investigate the incident; has already asked for a full report from Winnipeg police. The incident involved City Magistrate Ian Dubiensky and Dr. M. S. Hollenberg of 170 Waverley Street. Dr. Hollenberg was charged by police August 25th of careless driving. However, instead of appearing in open court to face the charge, the doctor was dealt with privately four days later by Magistrate Dubiensky. He was then reprimanded. Court officials are puzzled, because before the Magistrate could reprimand the doctor, he would have to know if he was guilty, since a reprimand constitutes punishment. The Magistrate, however, has the right to hear a case in Chambers, but when Magistrate Dubiensky returned to the Clerk of the Court the public record indicating how the doctor had pleaded to the charge, the space for this plea was blank. Since his reprimand, Dr. Hollenberg has paid a fine of $10 in costs for failing to yield the right-of-way to a pedestrian. Attorney-General Lyon said the report of the incident has yet to be received by his department. It was asked for this week."

As I mentioned, Mr. Chairman, this case may appear to be trivial, but I think no case is trivial where the public is led to believe that special consideration is given one person before the court or charged with a breach, as compared with another person. Equality before the law is supposed to be a rule in our society, and I would be interested in knowing what happened to that case. I have seen nothing further about it, and I would be interested in hearing more about it, particularly because this happens to be the magistrate that I was speaking about on Friday evening; and incidentally, I think the Attorney-General has not taken the opportunity to answer my question as to whether this particular magistrate is allowed to practice privately in addition to being a magistrate. If he did answer it, it was while I was out of the committee. I noticed that one of the Winnipeg newspapers -- that is the Tribune -- in commenting on what I had said, said that I had raised the question of the magistrate being allowed to practice privately, suggesting that this would give him an advantage in securing clients, or something of that nature. I made no such suggestion whatever. As a matter of fact, I didn't make any suggestion as to why I was offering the criticism or asking if this was a fact, but if I had made one, and if I do make one now, it would not be the question of whether it would advantage him in getting clients, it would be on the matter of principle, that I think the principle is definitely wrong; that a man who is acting in the position of a magistrate holding court over his fellow human beings should not also be a practising barrister at the same time. I think it's the principle that is wrong.

However, the other case that I have to ask about is, in my opinion, much more serious, although the principle of the other one is serious too. I'm sorry I haven't the date of this press

(Mr. Campbell, cont'd) ...
clipping. It was last summer during the holiday season, and it deals with the case of a man who is named here, Saturno Massi, 23, was sentenced to two years less a day, Wednesday, after he pleaded guilty in provincial police court to indecently assaulting an eleven-year old girl. Now I don't say this one is a trivial case by any means. I say that that kind of a crime ranks as far as I'm concerned right along with the ones that the Honourable Member for St. George was talking about. I have nothing too bad to say about that kind of a crime. Massi assaulted the child at Bison Park near Headingly in July, Lawrence Mitchell, Crown Counsel, told the Court. Then there's another paragraph or two which I have no objection to reading if anybody wishes me to, and then the concluding paragraph is: "Magistrate F. N. Manwaring said the maximum penalty for indecent assault was five years in jail with a whipping. He said that had he the power he would authorize deportation, and in all likelihood Massi would be deported." The question that I -- Oh, by the way, I should mention from one of the paragraphs that I didn't read -- I guess I'd better read the rest of it. The middle paragraphs are as follows: "Charges of illicit sexual intercourse with the girl and contributing to juvenile delinquency were stayed by the Crown." Now I pause to comment on that. Massi, who has no fixed address, came to Canada from Italy about a year ago and spoke through an interpreter. The one question that I ask is, why would a stay be entered in a case of that kind? But that is perhaps a matter of administration. The real question that I think is raised here in addition to heinousness of the crime is this: Is there some liaison between the Attorney-General's department here and the immigration authorities, because this would seem to be a case where I would be inclined to agree with the magistrate. I would not be of a differing opinion here, because it would seem that a chap who had been here fairly recently is perhaps still under probation to a certain extent. I would think the point of this case in addition to the crime itself, which is undoubtedly most serious, is: Is there a communication -- a standard line of communication on cases like this, and does deportation sometimes happen, and what did happen in this particular case?

MR. PAULLEY: Mr. Chairman, I'm somewhat disturbed at hearing what I've heard during the sitting of the committee today. I have a number of points which I wish to raise some time during the deliberation of the Attorney-General's department. I don't rise at this particular moment to discuss those matters, but I say, Mr. Chairman, that I'm deeply disturbed with the accusations that have been made in this Chamber today respecting the administration of justice. The Honourable the Member for St. George raised a number of points, particularly of one case. The Honourable Member for Lakeside has just raised one or two others. One of the remarks that my friend made is of great significance to me, is that we presume, or I've always presumed, that here in the Dominion of Canada, and the Province of Manitoba, we have one of the finest systems of justice anywhere in the world. At school and after school I'd always been taught that this was the case. Now, I appreciate the fact that there are times when, because of the human element in people, magistrates and judges, just exactly the same as anyone else, that mistakes may be made. But to me today there have been so many accusations of the failure of justice here in the Province of Manitoba that I wonder, Mr. Chairman, whether or not a full investigation should be made into the administration of justice here in the Province of Manitoba.

I note that a committee headed by Mr. D. A. Thompson, Q. C. has just completed a report for the Community Welfare Planning Council of Greater Winnipeg area. I will have some comments on that report later. But I donote that in his report of the committee's report, which I find most interesting, he makes reference to the courts in the Province of Manitoba. He states on page 6 of the report that, "Closely related to the duty of the police in the detection of crime is the responsibility of the courts to determine guilt and innocence." He goes on a little further. In the final paragraph dealing with the question of the courts it is stated in this report: A matter which we feel is of vital importance is that justice must not only be done but it must be seen to be done. We consider that in accordance with this principle the facilities of the court should be separate from the policie facilities, and so on. But the point that is made in this particular paragraph that is of significance to me is that justice must not only be done, it must appear to be done. One of the remarks of the Honourable Member for Lakeside says that we must assure the people of our province that it appears that justice is being done. We must retain at all costs if at all possible, the thought that I always had, and I'm sure most of

(Mr. Paulley, cont'd)... the people in Manitoba always had, and I trust and sincerely hope still hold, that our courts are functioning properly and that they are still operating under the concept of being the best system of justice in the world.

So I repeat what I said at the offset, Mr. Chairman, I'm gravely disturbed. Now I appreciate the fact that the Attorney-General may not, because of interjections on this side of the House by members speaking, had a full opportunity to come to the defence of justice in the Province of Manitoba, either him or the former Attorney-General. We did hear from the two gentlemen some partial defence respecting the case referred by by the Member for St. George, but I think that it's of vital importance that the law authorities responsible in this House, the present and past Attorneys-General should stand up before this committee and convince this committee that justice is being done in the usual tradition, in the past traditions, in the Province of Manitoba; and I suggest, Mr. Chairman, if they cannot do this, in order to satisfy and convince this committee, then we of this House or of this committee should give serious consideration to having a complete and full investigation into the administration of justice in the Province of Manitoba because, and I reiterate once again, from the remarks that I've heard this afternoon and this evening, Mr. Chairman, I am gravely disturbed with the administration from the statements that have been made in our fair province.

MR. McLEAN: Mr. Chairman, if the Honourable the Leader of the New Democratic Party is disturbed by the cases to which reference has been made today he's mightily easily disturbed. There's nothing wrong with the administration of justice in Manitoba. It's administerd by human beings, of course, and with the exception of the Honourable the Leader of the New Democratic Party and myself, there aren't really any perfect people in this world. We don't feed the facts in each case into a computer to get the sentence. Every case is judged, as I'm sure one would wish, on the basis of the facts, and these are never the same in every case, so that there is no -- in the multitude, literally thousands of cases that are heard by the courts of the Province of Manitoba, and to suggest that anybody's disturbed because of the references that have been made here today surely must be testing our credulity beyond belief; and indeed what's wrong -- what's wrong with somebody that gets life imprisonment? Is there anything wrong with that? I would think that the matter is being adequately dealt with.

I have the impression, for example, that in the case referred to by the Honourable the Member for Lakeside -- Massi -- and I'm just going to get the report -- that this person was given a quick sentence and deported. Now is that satisfactory? I mean, these things are being looked after.

The Dr. Hollenberg case, is it? I'm a little puzzled to know what the problem is there, because I must confess to the committee, Mr. Chairman, that in the old days before I was the Attorney-General, I used to have a little difficulty about the rate of speed at which I drove my automobile, and it was always my understanding -- in fact that was the rule. They said -- you call at the police office, indicating the room, and you enter your plea and you are duly convicted and fined and you pay your fine. Now I'm just quite at a loss to understand why there would be any problem about the man going to the police office who was only charged with failing to yield the right-of-way, which isn't really a very serious criminal offence. Let's not lose our sense of proportion, Mr. Chairman. The administration of justice in Manitoba is, I think, by and large, pretty good. We have the benefit of policing by the Royal Canadian Mounted Police. We have the benefit of the work of excellent magistrates, although I judge that there are some here who may take -- perhaps have some views with respect to some, but by and large they're an excellent group of magistrates. We are fortunate in having trained and skillful Crown attorneys, and I would be prepared to say to this committee that on the basis of the actual facts that the administration of justice is satisfactorily being carried out; and let us not forget -- and this I think is the difficulty that the committee is struggling with -- everyone naturally has the tendency to put himself and say, "What would I have done if I were the judge or the magistrate in that particular case?" And we would all come up with different answers. Well, that's true, but that doesn't say that we might not have made the same adjudication if we were in full possession of all the facts relating to the offence brought before us. So I say, if the Honourable the Leader of the New Democratic Party is wanting a declaration from me about the administration of justice I hope he understands that I'm making it, and that there is no need for alarm by anyone.

(Mr. McLean, cont'd)...

Now Mr. Chairman, while I'm speaking, the Honourable the Member for Lakeside mentioned a particular matter about a magistrate. He has touched on a very difficult problem. The judgment to which he made reference the other evening in committee immediately that it was made available was circulated to all of the magistrates in Manitoba. There is a problem, Mr. Chairman, that I would be less than frank if I did not share it with this committee. What do you do? What is the position of the Attorney-General? No one ever comes here and says, "Well, we don't like what a certain County Court judge is doing, or what a certain Queen's Bench judge is doing, or what a certain judge in the Court of Appeal is doing," and while I would, of course, have to acknowledge that the position of a magistrate is not in the same postion as these other judicial positions, I can well imagine what would be said from the other side if the Attorney-General had undertaken to dismiss a magistrate. Then he'd be asked the question, "Why was he dismissed? Were you dismissing him because you didn't like his decisions? Was he being too easy, or was he being too tough?" So it's a problem. Let's face it. Let's face it very frankly. It's a problem. What do you do? Ought we to treat our magistrates' courts on much the same basis as we treat other courts, and correct those decisions that are wrong by taking appeals to the Court of Appeal? Or ought the Attorney-General to move in when he doesn't like the kind of decision that's coming from a magistrate and say, "You're finished." Now I'm aware of the problem. I'm sensitive to it. I would be less than honest if I didn't acknowledge with complete frankness that I don't know what to do, because whatever is done I can be certain of this, that it would be raised in this House by the members opposite on the very next occasion that we met.

Now, turning to the very thoughtful address presented by the Honourable the Member for Ethelbert Plains. If I may say so, he speaks well, although I can't forebear the pleasure of reminding him that in 1959 he was castigating us on this side for having too many probation officers and for molly-coddling the people who got into difficulty. However, that's past and done and I assume that his viewpoint has changed. That's to his credit. He'll be glad to know that two years ago we increased the probation staff by five, a year ago we increased it by four more, and this year we're increasing it by another five, so we're headed in the right direction and a direction in which I am certain that he would approve.

He has also said that he doesn't think the institutions are doing a good job, and he read some clippings which were very fair. I must make this comment, that of course if anybody writes any newspaper articles praising a jail, or saying that it's a nice place, then I think it'll be time for us to look at the situation pretty seriously. I don't really expect that we'll ever get any articles praising jails. However, he will be glad to know that we're instituting this coming year a program for staff training in the jails, making provision for those who will do the training and for extra guard officers to make that training program effective.

And then he has moved on to a most important point -- that is, that it is better to prevent crime than to cure it; and of course I agree with him very much. I'm not too certain how one knows a potential criminal when one sees him or her. I recall that I suppose there were some people who detected a potential criminal when I was young and I might have been dealt with if there were facilities to do so. One can't always tell. But this is a valid point. The great problem of course, and over on this side, I would be called an old Tory for bringing it up, but perhaps the Honourable the Member for Ethelbert Plains would join me. Our great problem is of course the change that is taking place in our society, and I'm speaking now about young people and the problems of, I suppose generally known as juvenile delinquency. In the days when I was young we had a fair amount of work to do around home, and we didn't have too much time to think perhaps of doing things that we ought not to be doing, and our energies were taken up in a certain amount of physical exercise, and I'm sure that that was the case with the Honourable Member for Ethelbert Plains, and many others. We've moved of course completely away from that time, perhaps for the better, but it has given us leisure time perhaps not the capacity to adjust, for everyone to adjust to greater freedom and the greater amount of time. And it is a real problem. I'm certain, Mr. Chairman, that if anybody knew, really knew, how to detect for certain the future potential juvenile criminal, that all of us would embrace the program that would deal with that subject, immediately. The great difficulty would be in knowing who these people are because in the most cases one doesn't know, until the person has

(Mr. McLean, cont'd)... done something contrary to the rules of society, that the person is a juvenile delinquent or is perhaps beginning on a career of crime.

So, I can only say that I agree with his point of view, but I'm not certain that I know how to get these people in advance. There is here, of course, a great area for the work of the church and the home and the school, as has been said so many thousands and thousands of times; and we overlook, Mr. Chairman, we know about the problems -- we totally overlook the tremendous number of young people who never get into any trouble at all. We overlook the tremendous number of young people who make a splendid response to the opportunities which come to them in these days and these times. We overlook the number of young people far, far, far outnumbering the juvenile delinquents and those who get into trouble; this great number who are good citizens as young people in their schools, and who make good use of the opportunities that are presented to them. And so while I realize we're not dealing with the good things of life here, we must of necessity concentrate on the unfortunate things that happen. Let us not get our perspective distorted. We have the responsibility of dealing with those who do offend against the rules of society and no one knows; one must never talk or act as though we knew the final answers in this regard. We have that responsibility which we're trying to do as best we can, with all the faults that human kind is fault to, but I think perhaps, by and large, doing as much as can be done with our present knowledge and our present facilities. There's much more to be done. We must continue the work and some time if the Honourable the Member for Ethelbert Plains determines a method of sorting out all of the people who are likely to prove potential juvenile delinquents or criminals as the case might be, we'd be glad to have that knowledge, the method of doing it, in order that we can make the things we do fit that situation.

.......Continued on next page

MR. HRYHORCZUK: Mr. Chairman, I'm very sorry to hear the Minister make that response because after all is said and done, all the answers, if not all the answers, most of the answers are available to him now. He evidently doesn't care to see them, doesn't care to take advantage of the answers that could be given to him by men and women who are well acquainted with this particular problem in this field. I was hoping that he would take a different attitude. Evidently he is quite satisfied to let things be as they are. He thinks this job is being well done and that is the end of it. I think the figures speak for themselves.

I think our overcrowded institutions, our overcrowding of both the juvenile, as well as our adult institutions, is an indication that we're not doing as well as we should be doing and when he takes the attitude of laissez faire and feels that he's actually accomplishing everything he can accomplish I'm certainly sorry to hear that, and he comes out with telling us that they're going to have some staff training for their guards at the institutions. I might remind him that this staff training business started years ago, and that there was both in and out training, so they haven't added anything in that respect, and I would again say, do not look at the matter as lightly as it looks to me that you look at it all, that these are people, that well they're offenders and we have a lot of good people therefore we don't have to worry too much about these offenders. I say to him that we must pay as much attention to these people who, it is becoming apparent and more apparent day by day, are mental patients, not physical patients. There are some of them that are incurable but there are a great many of them that are and I say to him again, that with the proper attitude he could get at the root of the evil but with the kind of attitude he's shown us here tonight I'm afraid we'll never see that, Mr. Chairman.

MR. FROESE: Mr. Chairman, I would like to question the Minister in connection with the appointments of justice of peace and also police magistrates. How are the appointments made and what qualifications or requirements do they have to meet in order to get the appointments? I think this has much to do with the great variance in sentences and fines meted out for similar infractions. I know last fall and early this winter when we had the episode back home, that after one man pleaded, or decided to take jail instead of paying the fine, the sentences were changed immediately from ten days jail to 30 days jail. Now, I think this has something to do with the qualifications of these people that are appointed, and I would like to know from the Minister just what training do these appointees get after they have been appointed? I had the opportunity of meeting one of the local police in the city today from our area. Apparently they are taking in a training course this week which these people appreciate, but he mentioned to me the matter of exemption for police serving for the federal government and also for the city here, that they are able to get exemptions whereas the police that are being engaged by rural municipalities or smaller towns are not able to get these exemptions; and these towns are trying to do their best to get a good police set-up in their communities. They have to meet the increase in traffic that is increasing from day to day and from year to year so that they too have to have qualified men. They have to have the necessary cars and with the necessary equipment on them to do a good job. These smaller communities are trying to give this service as best possible but they feel that they're being penalized because they are not getting these exemptions that the other police are getting. I would like to know from the Minister whether anything can be done in this connection so that at least they will be on equal footing with police under other jurisdictions.

MR. PAULLEY: Mr. Chairman, I sometimes wonder whether the people of Manitoba would be well served if everyone in this House was of the legal fraternity, or whether they would be better served if there were none. And after listening, after listening to the dismissal of my suggestion of an investigation into the administration of justice, after listening to the dismissal and the manner of the dismissal by the Attorney-General, I'm firmly convinced that the electors of Manitoba, at least in some communities, would be well if they didn't have legal representatives in this House. For what did he say? What did he say, Mr. Chairman?

A MEMBER: It's uncalled for.

MR. PAULLEY: It may be uncalled for but it also may be true. Because how did he dismiss my question?

MR. McLEAN: On a point of order, I didn't dismiss the suggestion. He asked me to make a statement. I made it.

MR. PAULLEY: Well, let's take a look at the statement my learned friend made. He.

(Mr. Paulley, Cont'd.) . . .told, Mr. Chairman, to his own satisfaction, that there was nothing apparently too much wrong with the justice by saying to me "Did I not believe," or put it differently, "There's nothing wrong with a life sentence, is there? There's nothing wrong with fining a man $10 because he violates a traffic law." I think that was nonsense from my honourable friend. -- (Interjection) -- I know, but I noted what you said. Maybe you weren't aware of what you said. Maybe you'll do me the courtesy of reading what you said in tomorrow's Hansard, if we get it tomorrow, because we haven't got Friday's as yet. -- (Interjection) -- Yes, it certainly was, but I suggest to my honourable friend it's not quite as easy to dismiss, the point that I raised, as he suggests in his remarks to me. Even, Mr. Chairman, in dealing with the question of dismissal of magistrates -- what did my honourable friend say? He said in effect that we on this side would be levelling charges at the front benches opposite, particularly the Attorney-General if they dismissed a magistrate. Then he went on a little further to say that whether he needed to be dismissed or should have been dismissed for this, that, or the other thing, because of the fact that they would get blamed for dismissing him, he left the inference with me at least that they simply don't dismiss magistrates. So I would say that if there's any group in the Province of Manitoba that has job security according to the words of my honourable friend, the Attorney-General, it's the magistrates of Manitoba. I want to say to my honourable friend, as far as I'm concerned, that if he deems it advisable to dismiss a magistrate and he can establish reasonable reasons for it, he doesn't need to fear. But surely he doesn't need to take the attitude of non-dismissal simply because of any criticism that might come from this side of the House, as he did.

Further, Mr. Chairman, dealing with the question of juvenile delinquency, what was the attitude of my honourable friend the Attorney-General? "Let's pay more attention to the good boys and girls in the province. Don't overlook them." I say to him: "Certainly, we don't overlook the good boys and girls." But our courts, our rehabilitation centres, our parole boards, department of corrections, are not set up for the good boys and girls in the Province of Manitoba. They're set up for those that are not good, and we recognize and we give credit to the good boys and girls. I was pleased this evening, Mr. Chairman, to be able to look up at the gallery opposite me and see representatives of one of the scout troops in my constituency and their leaders here this evening, to see how we conduct our business here; and it's because of their presence here that I was disturbed and wanted, before they left the Chamber, for my honourable friend the Attorney-General to reassure them that justice was good and administered good in the province. They have left now, and I'm glad that they have, because if they had heard the reply of the Honourable the Attorney-General on the question of dealing with justice and administration, they would have been sorely disappointed as I was. A moment ago, my honourable friend the Attorney-General, making comments on the statements of the Honourable Member for Ethelbert-Plains, said, "Give me some idea of what can be done to prevent juvenile delinquents in the Province of Manitoba," and he would be happy to receive them. I presume my honourable friend has seen this report, the D. A. Thompson report of the -- I don't know how many millions of dollars it was. I heard that there was some discussion Friday evening in connection with this report. I haven't had an opportunity of finding out what the discussion was, as I say, because we haven't had Hansard for Friday as yet; but in case my honourable friend the Attorney-General has not had an opportunity of reading the report dealing with the question of what can be done in order to prevent juvenile delinquents, I think maybe it would be a good idea to read to him a little bit of what Mr. Thompson's committee says regarding the question of juvenile delinquents and how they come about. On page 5, the second paragraph: "The strength and effectiveness of these services often has direct bearing on whether a given individual turns to criminal activity or whether, if he does so, he is successfully rehabilitated." They are previously talking about rehabilitation services. "Thus we stress the importance of, for instance, adequate social insurances, training and re-training to meet technological change. Provision of public assistance payments which are adequate in amount and given in a manner which will maintain self respect and morale. Since it is widely recognized that the single most important factor in the development of the individual into a mature socially contributing ethnically responsible adult, or into an unhappy hostile one, antagonistic to society, is the influence and example of his family, we would draw particular attention to what may be called the family-strengthening services. These, in addition to the ones

(Mr. Paulley, Cont'd.) . . . already mentioned, include provision for adequate housing, physical and mental health services, family counselling services and services which strengthen the one-parent family, as mothers' allowances, day nursery, day care services, home-makers' service. In Manitoba, the Children's Aid Societies carry a task of strategic importance, strengthening a weakened family or providing adequate alternative care for children where necessary. As the child grows and comes into more frequent contact with the community outside his home, such activities as church sponsored children's and young peoples' groups, etc. the individuals have opportunities to exert positive influence. The existence of services, such as the child guidance clinic, to recognize and treat early difficulties, can be of great importance. Work to combat harmful community attitudes toward minority groups, such as our Canadian Indians and to make available to them opportunities equal to those others in the population, is not only simple justice but can be expected to decrease the proportion of persons among such groups who now come into conflict with the law. While the above comments may in some way appear self evident, we make them because again and again it was emphasized to us by persons working with juvenile and adult offenders that, in their opinion, the majority of persons with whom they work would not have turned to delinquency or crime had adequate help been available to them earlier through such sources as outlined above.

So I would suggest, Mr. Chairman, to my honourable friend the Attorney-General and to the Government of Manitoba, that if they are going to look for a basis on which to help diminish juvenile delinquency in the Province of Manitoba, that rather than try and compare it as he did with a number of good boys and girls in the Province of Manitoba that he should try and encourage his colleagues, particularly those of the Treasury Branch, to increase the facilities as outlined and suggest it be increased in the report of Mr. Thompson and his committee.

We find, too, in this report Mr. Chairman, on page 16, another very pertinent paragraph dealing with a survey that was made in February of last year, which I think has a direct bearing on the point raised by my friend from Ethelbert Plains, and I read again from the report: "Another problem concerns children whose delinquency is the result of psychiatric illness, and deep-rooted behavior disorders. In a survey made in February 1963, Dr. G. Allison, University of Manitoba Faculty of Medicine -- 24 out of a total population of 80 were found to have psychosis or other severe mental disorders at the Manitoba Home and Marymound Home for Girls. These children are mentally sick and require individual treatment and special help. They do not fit into the ordinary life of a correctional institution. As recommended earlier, proper clinical facilities should be established for the treatment of boys and girls with serious behavior disorders." So I say to my honourable friend there's a world that he hasn't opened his eyes to yet, but he and the government must, and not only this government but other governments as well, before they take more than feeble faltering steps into the great problem that confronts us of the eradication or decreasing of the problem of juvenile delinquency, not only here in Manitoba, but in the rest of the jurisdiction as well.

MR. McLEAN: I must apologize to the committee for having offended the honourable the Leader of the New Democratic Party by referring to the number of well behaved boys and girls in Manitoba. I promise him I shall not refer to that again. But, one comment. The government of Manitoba -- this government of Manitoba is spending many millions of dollars annually on the very things that he has read from the report of that committee, and in almost every instance they are new services provided to the people of Manitoba by this government since it took office.

MR. PAULLEY: Mr. Chairman, this might be well. This might be well, and I have given that government credit for many things that it has done; but on the other side, however, which is not to their credit, there's many things that they have left undone that they should be doing, and while I do agree that in many areas of human endeavour they have taken little teensy weensy steps, there are still many more to be taken.

MR. ROBLIN: Mr. Chairman, I really didn't think I would get into this, but it's the "eensy, teensy deensy steps" that brought me to my feet because that is such complete nonsense and so easily refuted by a reference to readily available and well established fact that I can't resist the opportunity of doing so. In that list of items that my honourable friend mentioned, let me say this, that we are responsible for the first slum clearance program in the history of Manitoba in which the provincial government participated. We are responsible. We are responsible for the first housing program in the history of the Province of Manitoba, with

(Mr. Roblin, Cont'd.) . . . respect to the re-housing of people, apart from those who are in special categories of persons. We are responsible for bringing in the program for Indian and Metis which is so important here and on which we are spending more and more money every year. We are responsible for an increase in the policy with respect to parole, many times over what was done before we came into office. We are responsible for a finalizing -- although I can't be quite sure that my memory is correct on who originated it -- the Home for Girls that was done. It may be that my honourable friend from Ethelbert started that particular project, but we can say at least that we carried through with it and established it. We're the people who are going to be responsible in this session of the Legislature for a new detention home for boys. We are the people who have brought in increases in Mothers' Allowances and in assistance generally to deprived families, that was never seen in this province to the extent that it is now before we brought it in. We are the people who have been increasing our help for disturbed children in the city schools to an extent that was never seen before we came into office, and I think that you can go through every one of those desirable social goals that were read with respect to this question of juvenile delinquency and strengthening the family and personality of the people of the Province of Manitoba, and you can see that if money is any measure -- and I'm not one of those people that thinks that money is the only measure -- but if money is any measure, the investment that has been made in this kind of public service is several times what it ever was before in the general field that I am speaking of. Now we do not say, never have, trust I never will, say that we are satisfied or that all is well, or that there is nothing left to be done. Heaven knows, none of us on this side, including my colleague whom I know very well, and his views in this matter are well-known to me, none of us believe that the job is completed, but to indicate that only teensy-weensy bits of steps have been made in connection with this matter is to fly in the face of facts which are world-known and capably substantiated in this House or any place else.

MR. PAULLEY: . . . ask my honourable friend -- did you have a motion? (Interjection)

MR. CHAIRMAN: Committee rise and report. Call in the Speaker. Madam Speaker, the Committee of Supply is considering a certain resolution, directed me to report the same and ask leave to sit again.

MR. MARTIN: Madam Speaker, I beg to move, seconded by the Honourable Member for Springfield, that the report of the committee be received.

Madam Speaker presented the motion and after a voice vote declared the motion carried.

MR. ROBLIN: Madam Speaker, I beg to move, seconded by the Honourable the Attorney-General, that the House do now adjourn.

Madam Speaker presented the motion and after a voice vote declared the motion carried, and the House adjourned until 2:30 Tuesday afternoon.