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SESSION 1942
HOUSE OF COMMONS

SPECIAL COMMITTEE
ON
DEFENCE OF CANADA REGULATIONS

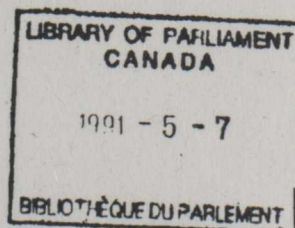
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THURSDAY, JUNE 4, 1942.

GUEST SPEAKER:
SIR NORMAN BIRKETT, K.C.

HON. J.E. MICHAUD,
CHAIRMAN.

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MINUTES OF EVIDENCE

HOUSE OF COMMONS,
Room 368,
June 4, 1942.

The Special Committee on Defence of Canada Regulations met this day at 11 o'clock a.m. The Chairman, Hon. J.E. Michaud, presided.

THE CHAIRMAN: Gentlemen, we have only hour to devote to the matter before us this morning. As members of the committee know this is a special meeting called hurriedly because I was told late yesterday afternoon that we would have the distinctive honour and the privilege today of listening to Sir Norman Birkett. This privilege has come to us through the good offices of Mr. Claxton and Mr. Brockington. When final arrangements for this meeting had been made I instructed that notices be sent out to members of the committee and members of parliament generally and others interested in the administration of the Defence of Canada Regulations. I shall ask Mr. Claxton to introduce Sir Norman.

MR. CLAXTON: Mr. Chairman, I am very glad indeed of the opportunity you have extended to me. I think it is fair to say that Sir Norman Birkett needs no introduction to any audience in Canada or the United States, or anywhere else in the civilized world for that matter. He is here as the honoured guest of our country and of the United States where he has been attending the American Law Institute. This is his third visit to this side of the ocean on such a mission; he was here last year as the guest of the Canadian Bar Association and the American Bar Association representing the British Bar and Bench, and that was his second visit, his first having been in 1938 when he came out as

the guest of the Canadian Bar Association. I think everyone knows Sir Norman as one of the great leaders of the British Bar, and we also know that at the outbreak of war he put his services at the disposal of the government of Great Britain and was almost immediately appointed chairman of the Advisory Committees which advise the Secretary of State on the release or detention of persons under regulation 18b. He has carried on that work even after his appointment as a judge of the High Court of Justice, and it is particularly in that regard and because of his special experience and knowledge that we welcome him here today.

He has seen the workings of the British regulations, and I think everyone will appreciate that we could not look to any better source for information and guidance on the work of this committee. Incidentally, it is of special interest to us to know that he was a member of the British House of Commons for some years for the constituency of Nottingham. I now have very much pleasure in calling on Sir Norman Birkett.

SIR NORMAL BIRKETT: Mr. Chairman and members of the committee, I should like to begin by saying how very much I appreciate being invited to appear before this committee and how delighted I am to give, if possible, any assistance I can on our experience in England with regard to the working of the regulations. It is scarcely necessary for me to say, but I think, perhaps, I ought to say it, that I would not for one moment presume to come here this morning in the guise of tendering any advice; my parliamentary experience teaches me the unwisdom, at least, of that. All I am concerned about doing this morning at your very kind

invitation is to say a word or two about our experience in England, and if you think it proper, to answer any questions which I can answer relative to your work.

I think I should say that we in England have regarded this particular phase of war work as one of very great importance. You probably know that in England when war breaks out we always find two hostile camps; we find the camp which says "intern everybody, aliens, Germans, Italians, Austrians - anybody, and do not trouble about giving them any right of trial; just keep them safely behind lock and key". That is a very vocal body of opinion upon occasion; but the great body of English opinion is very much averse to that attitude; and our experience throughout all the years of the war, now in our third year, is that the prevailing view in Britain is that the safety of the state must, of course, be the supreme consideration, but subject to that all people, whether they be aliens or whether they be British subjects, should be treated with humanity and with justice.

Now, when the war broke out the government set up a committee called the Home Office Advisory Committee whose function it was to advise the Home Secretary with regard to detentions both of aliens and of British subjects. We had at that time in England a great number of aliens, many of whom to our knowledge had come to England fleeing from Nazi oppression - I think the figure would certainly be over 50,000 - and, therefore, at the outbreak of war the government was faced with the problem of what they were going to do first of all with the alien population, and the government decided to set up 100 committees in various parts of the country which committees were

presided over by lawyers, county court judges, King's counsel, assisted by people from the refugee organizations and by the police, and their action was to grade all the aliens into classes A, B, or C: class C being the class of which it was said, "you are perfectly harmless, you are a refugee in the true sense of the word and you may be permitted to be at large"; class B was the class in connection with which there was not too much information but on the whole it was said, "no danger will arise from the fact that they are at liberty, but they must be under certain restrictions, they have to report to the police, they have to report any change of address, and they are not to travel any more than five miles from their place of abode without obtaining permission from the police". Those are not very serious restrictions but are just sufficient to enable the authorities to keep an oversight. Class A was the class it was decided should be interned, and under that procedure a small number - not a very large number - of aliens were interned. There was a special class both of aliens and British subjects who were interned at the outbreak of the war who were on the list of the police or military Intelligence, people against whom something was known, and they were all interned; but all of them had the right to appear before the Home Office Advisory Committee to present their case; and the committee began to sift those cases and to grade them, and as a result a great number of people were set at large. At that time the number of aliens who were interned was few. That was the situation until the following year in 1940, then a great change came over the situation inasmuch as it was seriously

felt that invasion might conceivably take place at any time, and the government quite properly said that in such circumstances it is impossible to forecast what the attitude of the alien population might be, and in the interests of safety and protection there was a much more widespread order of internment and many aliens who hitherto had been at large - those in class C - under the new order were interned. Even then all of the aliens were not interned, but a very considerable number were. The government then set up a lot of committees under the White Paper which you may have seen in which all the aliens were graded into certain classes, physicians, doctors, and so on, and under that procedure, by very carefully sifting again, great numbers of aliens were released until the number which remained in internment was comparatively small. I think the figure was somewhere about 8,000. Not having the official figures with me I would not like to pledge myself to that figure. Compared with the total number of aliens, running into many thousands, the number was comparatively small.

At that time there was added a new problem because under 18b, the regulation deals with British subjects and aliens interned under the Royal Prerogative - "If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations...". That was one clause; that is to say people who had been born in Germany or had associated with Germans or Italians or to be of hostile origin or associations - "...or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of

such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained." The Secretary of State made a considerable number of orders on the information of military Intelligence or the special branch of the police, but the numbers that were interned under that order were again comparatively few. However, in that year - I think it was the month of May - there was an amendment to 18b known as 18b ():

"If the Secretary of State has reasonable cause to believe any person to have been or to be a member of, or to have been or to be active in the furtherance of the objects of, any such organisation as is hereinafter mentioned, and that it is necessary to exercise control over him, he may make an order against that person directing that he be detained."

The organisations which are referred to there are those organisations which are subject to foreign influence or control, or

"the persons in control of the organisation have or have had associations with persons concerned in the government of, or sympathies with the system of government of, any Power with which His Majesty is at war, and in either case that there is danger of the utilisation of the organisation for purposes prejudicial to the public safety, the defence of the realm, the maintenance of public order, the efficient prosecution of any war...."

Now, that order was directed against the British Union of Fascists, and practically everybody, almost without exception, interned under that order were members of the British Union of Fascists, an organisation which was controlled and run by Sir Oswald Mosley. I think somewhere about 1,000 members of that organisation were interned under that order, and that was the principal work of the Home Office Advisory Committee after May, 1940 - dealing with British subjects who had been interned under 18b or 18b (1A).

The regulation, as you know, in England was subject to great parliamentary criticism. This is not the form in which it first came before the House of Commons; when it first came before the House of Commons the House of Commons sent it away and said that they must have more protection of individual rights. It is really a fine thing to think that in a time of war when passions were aroused as they were aroused at that time that there should be in the British House of Commons a strong prevailing sentiment that if indeed we were fighting a war for freedom and if we really were engaged in a contest to see that there should be the supremacy of law it was well that in our own country those principles should prevail, and parliament and the public were extremely concerned to see that those enormous powers put into the hands of any government and into the hands of the Home Secretary should be subject to safeguards and checks so that individual rights upon which we pride ourselves so much should not be in jeopardy. Therefore under 18b (3) the government enacted:

"For the purposes of this Regulation, there shall be one or more advisory committees consisting of persons appointed by the Secretary of State; and any person aggrieved by the making of an order against him, by a refusal of the Secretary of State to suspend the operation of such an order, by any condition attached to a direction given by the Secretary of State or by the revocation of any such direction, under the powers conferred by this Regulation, may make his objections to such a committee."

It was expressly laid down in the amended regulation that it should be the duty of the Secretary of State to see that any person against whom an order is made shall be afforded the earliest practicable opportunity of making to the Secretary of State representations in writing, and he shall be informed of his right to make his objections to such Advisory Committee.

Then the regulation went on to speak of the constitution of ^{the} committee, and the procedure was that the Secretary of State would make an order under the regulation and the man was then to be informed of his right to come before the committee, and the chairman of the committee was expressly empowered by the regulation and directed by the regulation to serve particulars of the reasons for the making of the order against the man in question. He could then come before the committee and present his case, and in fact he was given every facility for so doing. For two very strenuous years I presided

over the main committee and we worked, I was going to say almost day and night, because we felt it was a very serious matter that men were interned, but despite the fact that we worked almost day and night men/ ^{had} to wait sometimes three months before they had an opportunity of presenting their case.

MR.MARTIN: How many committees were there altogether?

SIR NORMAN BIRKETT: There was one advisory committee proper, but we found it was necessary to split ourselves up into various panels, and we had as many as six, I believe, sitting at one time, all presided over by a chairman with legal experience and composed of men and women who are distinguished in every phase of our national life.

Now, the procedure of the committee was, that the man having been informed of his right, having been served with particulars of the reasons for the order, could come before the committee and present his case.

MR. SLAGHT: Did you have such a thing as special labour union representation on your panels?

SIR NORMAN BIRKETT: Yes, we were very careful about that. We had on every panel representatives of organized labour. We felt that to be a very important thing. The Home Secretary, as you know, is Herbert Morrison, a Labour man, and he was keen about it too as indeed we all were. What we endeavoured to do with regard to the committee was to get typical representation of every distinct phase of the national life: Labour representatives, women representing Women's Organisations,

people representing refugee organisations, magistrates, social workers, men of great distinction and experience all came to listen to these cases.

MR. DUPUIS: How many sat on each panel?

SIR NORMAN BIRKETT: About four when we had a full committee. In the beginning we had more, but in order to do the work efficiently and well we had about four representatives on each of the panels, and then before any of the panel decisions were made, the committee met as a body and consulted with regard to them.

MR. SLAGHT: You have just mentioned Mr. Herbert Morrison. As Secretary of State he occupies the office that we in this country have given to the Minister of Justice. Some four months ago I had the privilege of an interview with Mr. Morrison on this subject, and I was wondering whether you thought it was preferable to have that grave responsibility vested in a non-legal authority rather than in a semi-judicial legal authority such as the Attorney General or the Minister of Justice.

SIR NORMAN BIRKETT: Of course, that has been a rather important question with us. The view taken by the government was that the final responsibility must be an Act of Government and that you must have somebody responsible finally who is responsible to the House of Commons. The trouble arose, as a matter of fact, by the fact that the Home Secretary refused in a few cases - not a great number - to follow the advice of the Advisory Committee; that is where the trouble arose, and there was some parliamentary and public feeling about it. Privately, I told Mr. Morrison myself that I thought it was a very

great mistake for him to do that if he had a committee in which he had confidence which had weighed and pondered over the evidence which he had, because he continually told the House of Commons that he had no more evidence than that which came before the committee - I told him that it was a grave mistake for him, so to speak, to overrule the finding of the committee by declining to act upon its recommendation, but after the fullest discussion --

MR. BERTRAND: When you serve the particulars to the interned person do you disclose to him the source of your information?

SIR NORMAN BIRKETT: No.

MR. McKINNON: Is there any such thing as the police withholding any information from this committee which might have a bearing on the case?

SIR NORMAN BIRKETT: No information. We take immense care about that. Of course, as you will appreciate the procedure of this committee had to be more or less by trial and error until it got into its full course and we found, as a matter of fact, very many objectionable features to which we took the strongest possible objection. I have mentioned one or two of them. We insisted - at least parliament insisted by backing us up in the matter - that the Home Office Advisory Committee which was advising the Home Secretary must have every available piece of information upon which the Home Secretary was going to act, and parliament was assured time after time that there was no information which was kept back, and certainly so far as I am concerned I know of no such case where any information was withheld.

MR. MARTIN: What attitude did you take with regard to secret agents?

SIR NORMAN BIRKETT: We had a great battle about that. First of all let me take the illustration of a woman who was not an English woman but was German born, the wife of a British soldier, let us say, who was in the army of occupation at Cologne during the last war, and it was said that this woman was a woman of hostile origin and had been giving expression to views in favour of Hitler. That was quite a common sort of thing. The police would say: "We cannot give you the source of our information; it has been given to us in confidence and we cannot disclose to you the name of the informant." Well, in the first place, the woman would come before the committee and you would say to her: "Now, tell me, do you know many of your neighbours?" She would say: "Yes, I know them." And you would examine her something like this:-

Question: Are you friendly with them?

Answer: Quite.

Question: Have you any trouble with them?

Answer: No.

Question: Did you ever take any part in a discussion about the war?

Answer: No.

Question: Did you ever say anything about Hitler?

Answer: No. I have no use for Hitler.

Question: Well, have you said to anybody, for example, that Hitler was a fine man and had done a grand job for Germany?

Answer: I never said anything of the kind."

You cannot do much more about it, because you do not know at that time that Mrs. Jones is said to have alleged

that this woman said so and so. That sort of thing was no good at all and you could not possibly do anything upon that. You could not say, "I do not believe this woman", without the means of testing the truth of what Mrs. Jones was alleged to have said to the police, and you could not get anywhere at all. We all know that the Mrs. Jones' of this world are so apt to say that kind of thing if they dislike somebody for some particular reason, and it was necessary and essential that we should test this story. We said to the Home Secretary: "This is no good unless the police are willing to give to the committee the names of the informants, and until we can say to the informant, 'you appreciate the responsibility in connection with what you are doing because your name will be given as the source or authority for this matter'." In many cases, the source of information dried up. They said, "no, we are not going to be dragged into this."

MR. BERTRAND: It might be some person employed by the police, and they might say that if the name was given to the internee it might hurt him completely?

SIR NORMAN BIRKETT: Yes. We have had cases where we have been privileged to give the name. We have declined as a committee to act upon anonymous information, because we realized from the start the extreme danger in times of war at least; we could not act upon anonymous information that could not be verified or checked or cross-examined.

Then we come to the much more serious case of the secret agent employed by military Intelligence, and they took the line at the beginning with regard to certain agents that the committee could not know their names

because it would destroy their usefulness but they said you can accept it from us that this is first-class information and we believe it. Well, at first there was a tendency to say that perhaps it would be right, but we soon discovered that that position was utterly impossible, so we again took the line that unless we knew the name of the agent we did not wish to see the agent before us; that we should have an opportunity of checking and verifying the information or we had to decline to act upon it.

MR. BERTRAND: I would like to know whether the internee would know the name of the agent?

SIR NORMAN BIRKETT: No. In certain cases Yes and in certain cases No. In certain cases we felt that we had no right to tell the internee where this information came from; it was enough that we could put the information to the internee; and, secondly, if we could see the agent and cross-examine the agent in the ordinary way then we felt that the ends of justice were attained because then we would be able to say, "this information is reliable or it is not reliable".

MR. MARTIN: But under no circumstances would you fail to know who the agent was?

SIR NORMAN BIRKETT: No. We had a very serious case in England in which a man, a magistrate --

MR. MARTIN: The Justice of the Peace case?

SIR NORMAN BIRKETT: Yes, the Justice of the Peace case. He had been interned for about fifteen months. He had appeared before a committee and this procedure in the very early days had been adopted: "This is the evidence of a secret and confidential agent in whom we have
They said,

confidence; we cannot disclose his name because it would destroy his value" - I had nothing to do with that particular committee - and the committee acted upon that and the man was interned. That was the case of Ben Green, a Quaker. Ultimately he applied for a writ of habeas corpus and the matter went to the House of Lords in the case of Ben Green, a reported case, and it was necessary in that case to state the grounds upon which he had been interned. This matter was given publicity in the papers. The charge against him was based upon the evidence of an agent who was a German, and it was alleged that he had tried to communicate with people in Germany since the war broke out and that sort of thing which, if true, really amounted to treasonable practice. The House of Lords said that they thought, whilst refusing the writ of habeas corpus, that this man ought to be heard by a freshly constituted committee, and I myself presided over that committee. By that time I was firmly convinced in the opinion that the agent must be seen, so in pursuance of that the German was brought merely to see the committee, and I cross-examined him, and it was plain beyond peradventure that the agent was (a) lying (b) grossly inaccurate (c) was exaggerating, and so and so. He had made a written statement with the aid of an Intelligence officer, and after those interviews and after a check with the evidence he gave it was plain that on those extremely serious charges the evidence really was not enough to hang a cat upon. So I took a very strong line about it and said that a grave injustice had been done and characterized the secret agent in the strongest possible terms and I

said that this was a case where a grievous wrong had been done which must be set right and the man ought to be set at liberty; and further that in view of the publicity given to the proceedings in the House of Lords the Home Secretary ought to say that the very serious charges had been investigated and had been proven to be without foundation. This was after the man had been interned for nearly eighteen months; and that was done. That was a clear case, and the Home Secretary never doubted the wisdom of what we advised after that, and that if you were to approximate justice at all you could not act upon the evidence of secret agents about whom nothing was known.

What the motive of this young German was one could perhaps guess. He was seeking no doubt to curry favour. He had been in the country only two years and he was acting in conjunction with the Intelligence services from time to time. Therefore, we laid it down in the strongest terms that no man should after that, and for a long time before, be interned or kept in internment on the advice of the committee unless the committee had seen the agent in person and had themselves been able to verify and investigate the case. That was opposed very strongly by the Intelligence service. They said that it was going to destroy their usefulness and all sorts of things. It was all moonshine because if the agent appeared before the committee and the name of the agent was not disclosed to the internee no harm could possibly be done, and that was the procedure.

MR. HAZEN: I understood you to say that in some cases the internee knew the name of the secret agent.

SIR NORMAN BIRKETT: Yes.

MR. HAZEN: What sort of cases are they?

SIR NORMAN BIRKETT: In this particular case of Ben Green.

MR. HAZEN: In this case he only knew it after the case had come before the House of Lords.

SIR NORMAN BIRKETT: Yes.

MR. BERTRAND: If he had not appealed he would never have known.

SIR NORMAN BIRKETT: No, not in that case.

MR. BERTRAND: Are there cases where he does know where he does not appeal?

SIR NORMAN BIRKETT: Yes, there are certain cases. We use our discretion. It is sometimes essential to put to the men the source of the information because you cannot get at the truth in any other way.

MR. BERTRAND: Would it be possible to illustrate that?

SIR NORMAN BIRKETT: We had, for example, the case of a very well known man, and it was alleged that he was in communication with the German agents in Antwerp. I think those were the facts as I recall them to mind now. He denied the charge utterly. Now, those charges were really based upon evidence given by another agent, not known to this man to be an agent at all but he was in fact an agent of our Secret Service. Well, in view of the blank denials of this man it was essential that the real source of information should be put to him and it was put to him: Do you know John Smith? (naming the agent) Do you know him well? Have you travelled with him to Antwerp many

times? On what business? Did you ever say to him so and so? Did you ever go with him to the office of John Christensen & Son? That kind of thing. In that way we got a view as we would in an ordinary case in court. There was a case where the man did not know he was an agent. We did not say, as a matter of fact: This man is an agent of the military Intelligence; but he was asked: Do you know that man; have you been with him? Every source of information was put to him. In other cases it is not necessary to name the man because the nature of the evidence does not require it, but in every case where we found it was essential in order that the ends of justice should be obtained by revealing the name or revealing the source of the information, that we did.

MR. SLAGHT: What do you mean by the phrase "Intelligence Officer"? Are they Intelligence Officers of New Scotland Yard or of the armed forces?

SIR NORMAN BIRKETT: The armed forces.

MR. SLAGHT: When you use the term "secret service" you are referring to the Intelligence branch of the armed forces or other forces.

SIR NORMAN BIRKETT: Yes, then there is what is called the special branch which deals with Scotland Yard; and that is the police; they work in close conjunction with other bodies. Then there is what we call the M.I.5 - we have M.I.6, 7 and 8 - but 5 is a branch of the military Intelligence which is concerned with security, but when we speak of the Secret Service we mean M.I.5. The military Intelligence have all sorts of agents working for them who are strictly designated as Secret Service men.

M.I.5 is the body with whom we dealt with regard to many phases of national security, and they are concerned also with this particular phase of national security in regard to internees.

MR. BERTRAND: Before your committees, do you give the benefit of the doubt to the internee?

SIR NORMAN BIRKETT: No. In law we give the benefit of the doubt to the prisoner at the bar, but in this case we always take the view - I think it is the proper view - that where the national security is the issue, if there is a reasonable doubt, then the state should have the benefit of it. That is the view we take about it. Because it came to this, that if we said we could not be sure about this case that is a risk we felt no government ought to take; it might involve anything, and therefore although hardship was no doubt the result of it, we felt that the only sane and safe principle to adopt was that where the committee was left in reasonable doubt as to whether it was wise or not to release a man we gave the state and the security of the state the benefit of that doubt.

MR. MARTIN: I understand in England that the Communist Party is not an illegal body; what would be the percentage of communists who are interned, approximately - is there a considerable number?

SIR NORMAN BIRKETT: I do not think there are any. The matter was put to me, I think, last night very privately, or at some meeting, regarding the number of communists that were interned in England. I do not think anybody was interned as a communist. This regulation 18A ^{enough} is powerful/ to detain people who come within the terms of

that organisation: "...subject to foreign influence or control...". I suppose that at the time that regulation was made Russia was not at war and it could have been said that this body was subject to the influence of Stalin, or that persons in control of it have had associations with persons concerned in the government of any power with which His Majesty is at war. You could not say that about the communists. I know of no case where a man was detained on the ground that he was a communist. I know of a case where a man said to be a communist was detained as doing "acts prejudicial"; that is because of something specific he had done. I do not know what one should say about the Communist Party in Great Britain. There is such a party, but it is not in any sense a strong party, and it has no political influence at all. It had a newspaper which was suppressed and is still suppressed, the Daily Worker; and again there was a very great outcry and there still is in certain parts of England about the suppression of that paper; that free speech and a free press are impugned, even by people who do not agree with communism; but I do not think there is any considerable communist feeling in England. There has been no such cry as let us intern the communists or take any particular action against them. We have a communist Member of Parliament, Mr. Galligher.

MR. SLAGHT: When you were in Washington did you have any opportunity of discussing that matter with Mr. Hoover as to what they are doing in the United States with the communists?

SIR NORMAN BIRKETT: No. I spent a day in Washington

with Mr. Biddle and his people discussing the regulations in the sense of what we are doing in Great Britain, but we were not discussing what they were doing with communists. We have really had no experience with them in England, it is not a problem there.

Of course, the coming of Russia into the war made a very curious situation. There had been actually in certain sections of the population a lukewarmness, to say the least, about the war. Those who had been lukewarm about the war became the most violent people for the prosecution of the war. Speaking as the chairman of the Home Office Advisory Committee, I do not think we have ever had a problem to deal with as regards communism.

MR. BENCE: What did you say about lukewarmness?

SIR NORMAN BIRKETT: In the early days of the war it was the most extraordinary thing - there was the utmost freedom of opinion, and there were people in England belonging to the Communist Party and the Fascist Party running papers of their own and there were the Christian Pacifists, and they were all printing and writing arguments that we ought not to have gone into the war, and some people were saying that it was a war entirely brought about by Jewish financiers. There was the utmost freedom. That is what I mean by saying that some people were rather lukewarm towards the war. They did not try to seduce soldiers from their allegiance, but they put forward a kind of propaganda which did not tend to make the nation entirely one, and it was not until the early part of 1940 after the affair at Dunkirk and we started upon our blackest period that the

nation was really keyed up and this kind of thing stopped. There is nothing now.

MR. BENICE: Were any of them put in internment camps because of their activities in the past?

SIR NORMAN BIRKETT: No, the government was very wise. They kept saying in the House of Commons that no man was going to be interned for the expression of his opinions and we never interned anybody for that. As a matter of fact, I must say that the committee was treated with the utmost deference and consideration when these people came before us. We told them that they must come within these regulations: Are you of hostile origin or associations? Are you guilty of acts prejudicial? What are acts prejudicial? The mere expression of opinion? We said, No.

MR. ANDERSON (Department of Justice): May I ask you to explain the procedure as to who is present when witnesses, including secret agents, are being examined?

SIR NORMAN BIRKETT: Only the committee.

MR. ANDERSON: No counsel?

SIR NORMAN BIRKETT: No counsel; we have never permitted that. It has been a great matter of controversy and we have considered it from every conceivable angle. Nobody would be more ready and willing to allow counsel to come than I would, but I came to the conclusion that it would be a mistake.

HON. MR. HANSON: Is the accused represented?

SIR NORMAN BIRKETT: No.

HON. MR. HANSON: And the other witnesses?

SIR NORMAN BIRKETT: No.

MR. CLAXTON: Are representatives of the Security Office of the Home Secretary present?

SIR NORMAN BIRKETT: No.

MR. MacINNIS: What were the specific reasons for the suppression of the Daily Worker?

SIR NORMAN BIRKETT: Well, I suppose the reason was that it was entirely defeatist. I cannot say that I have been a diligent reader of the Daily Worker myself; I saw it on occasion; but it was a kind of paper, you know, which depreciated everything that was done and said the army wasn't any good and all that kind of thing - it was really a defeatist paper.

MR. CLAXTON: Could you speak of the handling of the reports of the Advisory Committee? What is the next step?

SIR NORMAN BIRKETT: I think I ought to say this on the question of legal representation: if the committee had not had the confidence of the legal profession and the confidence of the House of Commons I do not think it could have really functioned as it did, but it did happen to win over the legal officers not only of the House of Commons but of the profession. We never bullied a man. We regarded ourselves as a committee to help a man present his case and to bring out every fact that could be brought out in a man's favour. We did our utmost in that direction, and nobody to my knowledge after appearing before that committee ever protested that they had not had a fair hearing. On the contrary, in the shorthand notes which were taken of all the proceedings you will find, for example, with regard to Sir Oswald Mosley - he was before the committee for five days and I conducted the examination of Sir Oswald Mosley on the lines of this regulation - and at the conclusion of the

hearing I said to Sir Oswald Mosley - it is in the shorthand notes and was quoted by the Home Secretary in the House of Commons - "Is there anything you want to add or do you think that every matter you desire to raise has been brought up?" "The only thing", he said, "is I would like to add this that I shall remember all my life the consideration which I have been shown and the justice which has been displayed during the whole of these five days."

HON. MR. HANSON: That was a great tribute.

SIR NORMAN BIRKETT: That was cited in the House of Commons.

Now, Captain Ramsay, as you know, was one of our cases which excited a great deal of criticism in the House of Commons, he was a Member of the House of Commons. Captain Ramsay came before the committee and I conducted the proceedings for four days. He was kept in internment and the House of Commons was very excited about it because they did not know any of the grounds at all, and the Home Secretary was interrogated daily at one time about it. Captain Ramsay subsequently brought an action for libel and most of the facts were made public, and the House of Commons realized the kind of man they were dealing with. Captain Ramsay came before a select committee of the House of Commons on a question of privilege - you may have seen the proceedings - and he was asked before the select committee whether he had any complaints to make about his hearing and he said, No, that he did not think he could have been treated with greater courtesy and greater fairness than by the

Advisory Committee. That, of course, went from lip to lip in the House of Commons, and so the committee really had the confidence which we needed, because the defects in the organization were really very great. For example, there is a man and he never sees the witnesses against him. Of course, that is unheard of in a court of law.

HON. MR. HANSON: And there is no chance to cross-examine.

SIR NORMAN BIRKETT: No, we do the cross-examination for him. I think the people began to understand that. We do not say: Now you give your evidence and then we will hear the other people; we say: You give your evidence, and we put every single fact to him and say: Would you go away from this table knowing that every single thing that is charged or alleged against you has been put to you this morning; there is nothing kept back? Then when the witnesses come to give evidence we cross-examine them and test the whole matter and ultimately put it up to the man.

MR. DUPUIS: In the presence of the accused?

SIR NORMAN BIRKETT: Never.

MR. CLAXTON: Did you ever proceed without the witness, on the deposition of the witness or on the report of the police?

SIR NORMAN BIRKETT: No.

MR. CLAXTON: You always have the witnesses face to face?

SIR NORMAN BIRKETT: Yes, but you have not counsel. Suppose I had allowed counsel to come and he had cross-examined the witnesses, the Home Secretary might say: "We must have counsel there to cross-examine this man."

You would get into one of those fierce battles that you get frequently in a court of law with some danger that injustice would be done. Our method was better, and the Home Secretary and most other people agreed with it. We were a committee trying to get at the truth.

MR. MARTIN: Would you say that if counsel were allowed to come counsel would only be permitted to come at the discretion of the committee?

SIR NORMAN BIRKETT: We have never allowed counsel to conduct a case. They did come to present a point of view, and we allow that sometimes, but not to conduct a case. Obviously, you can see the reason. What would counsel do? Counsel would rise and say: "I object to this evidence, it is hearsay evidence", as indeed some of it was. Of course, strictly speaking you would say that if that is hearsay evidence it has to be excluded and counsel would say: "I demand to know the name of this witness." "I am afraid it cannot be done." And counsel would say: "I shall object to the whole proceedings."

MR. MARTIN: With great respect, no-one would know that procedure better than yourself.

SIR NORMAN BIRKETT: I do know it. I have made some of those objections in my own time myself; but with a full knowledge of those circumstances, in the interests of the man charged, I am quite satisfied. I presented a memorandum to the Home Secretary on the matter pointing out that our decision was right; that we should not attempt to conduct our proceedings as they are conducted in a court of law, with the same strictness, but we should conduct them as we do. We desire to assist

the man at the table and at the same time approximate what constitutes a court of law.

MR. MARTIN: I suppose when the accused has been heard and you hear the witnesses, if you find from the evidence brought out by the witnesses that there is something against the accused that should be cleared up you call the accused again?

SIR NORMAN BIRKETT: Certainly, sometimes twice or thrice. Perhaps this would be a convenient moment to say this: When we have done all that, when we have finished the investigation, then a written report is presented in every case reviewing the case. You can imagine the labour of that. I used to work, as I say, almost day and night. Indeed, I can say this, that for the first time in my career I was ill. I was never ill at the Bar or missed a case, but this work made me ill and I was in bed for three weeks. I remember listening to the morning service on the radio and hearing that well-known old hymn which contains the lines:

"Behold us, Lord, a little space
From daily tasks set free..."

We had to work under great pressure and present a written report that went to the Home Secretary. That report was never made public. We reviewed the case, the date of the order, the people present, and summarized the evidence in each case and gave our conclusions discussing this, that and the other thing: then came our recommendation that this man should be released or this man should remain in internment.

MR. MacINNIS: Did you have a report sent to the police?

SIR NORMAN BIRKETT: Yes, at first that report was sent to military Intelligence M.I.5 so that if there was any fresh information which was not before the committee it should be sent to the committee; it might alter their view or vary their view; but the Home Office, without my knowledge, sent those reports to the police and received reports back from the police in most cases quite naturally where they had interned people, saying that they rather objected to the release of this man. It did not come to my knowledge for some time, but when it did I went to the Home Office like a flame of fire to see the Home Secretary because, I said, this was interfering with the jurist's verdict; this was a word in the ear of the judge when the verdict was given and if the House of Commons knows of this when the Home Secretary had assured them that the committee's word was the last word, that all the information before the Home Secretary was before the committee - if they heard that the police were popping private words in afterwards there would be the devil to pay; the Home Secretary saw the wisdom of that and he made a rule that after the committee had made its report there should be no communications unless there was further evidence to disclose which would straightaway go to the committee.

MR. SLAGHT: Did the members of your committee and the several panels you have indicated serve without remuneration, or did some serve without pay and were some paid?

SIR NORMAN BIRKETT: None was paid. They were entirely without remuneration. I think some of them

took travelling expenses, but many of them did what I did, served without remuneration and without expenses.

MR. HAZEN: At what stage did you allow counsel to express a point of view?

SIR NORMAN BIRKETT: It was in special cases. I remember my good but somewhat erratic learned friend Mr. Pritt - he was an old friend of mine - a communist, and he came down to our committee to argue the point of legal representation, so we had him in and he presented his argument and I put to him quite plainly and frankly the considerations which hitherto had made us say there should be no representation. His clients for whom he wanted to appear were in the audience room, and I said, "we will consider it." Having considered the matter I said, "we have considered the matter again and we have reaffirmed our view not to have legal representation and you cannot appear, but I think it right to say this, that we will hear your client's case at once and if we think there is some particular matter which you can elucidate or explain to us we will ask you to come in." The clients went out and said to Pritt: "No, we do not want anything; everything is over and we could not have been treated better." And Pritt came back and said he was very much obliged and that our procedure was good.

MR. BERTRAND: We have some cases here where communists have been interned before Russia came into the war, on very good ground, I suppose, but now they are claiming they should not be interned because they are anti-fascist, and they are pressing very hard to be released. Have you had any of those cases?

SIR NORMAN BIRKETT: No, I do not think we have interned any communists.

MR. BERTRAND: They were not interned because they were communists, but because they were subversive.

SIR NORMAN BIRKETT: I do not think we have had any such cases. We have had this kind of case: At the outbreak of the war we heard the cry of Britain for the British and we do not want any interference with Germany or anyone else. Since then we have had the bombings of our cities and our homes and that has changed our mood. At one time people said we won't enter the war until our empire is attacked; Britain for the British: Well, it has been attacked and now they want to be released to do national work; and we have released scores on that ground - not merely because they said that, but because it was futile to keep them there.

HON. MR. HANSON: That is the position our communist friends take in Canada.

MR. BENCE: Today they are absolutely anti-fascist; before Russia came in they were anti-capitalist.

MR. DUFUIS: Is not the policy of the Communist Party in England known to be subversive; that their policy is to overthrow the government by force if necessary?

SIR NORMAN BIRKETT: I do not know whether that is the Communist Party; I think they would disclaim it if anyone said it was their policy in Britain.

MR. DUFUIS: I was wondering if it was their policy in Britain?

SIR NORMAN BIRKETT: Well, I remember the late Mr. Lapointe speaking at a meeting of the Bar Association

about an experience of his in England, and he said he went to a great meeting in Hyde Park and there was a communist orator there who was urging the people to go and burn down Buckingham Palace. Some of the people got quite incensed about that statement and an English policeman interfered and said: "Now, those who want to burn down the palace go this way and those who do not, go the other way; but let us keep order." I was going to say that the application of that to us is this: If it should be thought that the Communist Party policy is subversive with the idea of seizing the reins of government by force, at the moment I do not think our government would do anything about it.

MR. MARTIN: I am afraid that is not true of us.

MR. BERTRAND: I suppose you know of a familiar case in Canada concerning Tim Buck?

SIR NORMAN BIRKETT: No. I think I had better adopt my famous Hess attitude on this. I have been rather careful, and you will always understand me. That is why I made the prefatory observation I did that I would not at any moment give any internal advice with regard to Canada. On this particular matter regarding communism I am merely dealing with our own experience. I do not mean to say that if the government found that the Communist Party were subversive and were committing acts that were prejudicial to its war effort that they would not come under those regulations, but there would be no proscription of the party, largely on the ground that the government says that they do not want to crack nuts with steel hammers, and we will deal with the situation when it arises.

HON. MR. HANSON: You made it clear to the Home Secretary that the procedure is not extreme in practice.

SIR NORMAN BIRKETT: Not in practice, but in theory; but he must disclose to parliament the number of times he has disagreed with the Advisory Committee. It is quite illogical to say to parliament: that "The committee has got every piece of information I have; it is not that I have something that they have not got. It is a committee in which I have very great confidence and yet in this case I am not going to follow their advice." That is illogical. The pressure of parliament and public opinion upon the Home Secretary is a splendid check, and the cases where he has deferred in that fashion are exceptional cases and tremendously detailed cases.

MR. DUPUIS: The decision of your committee is final in practice?

SIR NORMAN BIRKETT: In practice in the great majority of cases where we have advised release from internment, our advice is followed.

MR. DUPUIS: Under your regulations has the Home Secretary power to have the last word?

SIR NORMAN BIRKETT: Yes. It is an advisory committee and the theory of the matter is this: the final act is an Act of Government and by the constitution somebody in the government must be responsible to parliament, but on the whole that is good; because every day at question time the Home Secretary may be questioned about any one of the questions and he may be asked why such a course was adopted.

MR. CLAXTON: Mr. Chairman, I should like to say that

Sir Norman is to address the Canadian Club in a very short time and I said we would not keep him after 12 o'clock.

SIR NORMAN BIRKETT: What I have found in Canada is that the clocks go a little too fast, whether it is Atlantic or Eastern or Central time.

MR. BLACK: When questions are asked in the House of Commons in England as to various cases is the answer given that the reply would not be in the public interest?

SIR NORMAN BIRKETT: Sometimes; it depends upon the nature of the cases.

MRS. NEILSEN: Do I understand that after the regulations are made that they are debated in the House and that the House passes finally upon each regulation?

SIR NORMAN BIRKETT: Yes.

MRS. NEILSEN: That is contrary to our practice here.

SIR NORMAN BIRKETT: In our case what happened was that these regulations - there are many of them - go through without discussion; but theoretically they must be approved by the House of Commons. When the Defence Regulations were brought in on the first debate the House would not accept them, and these regulations are the result of conference between the Home Secretary, the Attorney General and various members of parliament. They then brought back new regulations and it was then that parliament approved them.

MR. O'NEILL: Must the decision of the committee be unanimous?

SIR NORMAN BIRKETT: No, there is no provision about that, but I should say this that with the exception of

cases I could count upon one hand all the decisions have been unanimous.

MR. BERTRAND: If there is a dissenting member does he express his dissent?

SIR NORMAN BIRKETT: Sometimes, if he feel rather strongly about it. The only case I have known of dissent was when the recommendation was for internment and some member felt very strongly that that man ought not to be interned, and you say that Professor so and so, a member of the committee, desires to record his dissent with this view.

MR. MARTIN: Have you a parliamentary committee?

SIR NORMAN BIRKETT: No.

HON. MR. HANSON: The government takes the responsibility?

SIR NORMAN BIRKETT: It is the government's responsibility; we are advisory only.

HON. MR. HANSON: I always thought that should be so here; I think the government must give the policy.

SIR NORMAN BIRKETT: I suppose the appropriate term now is to call order, order, is it not?

THE CHAIRMAN: I think it will fully meet with the approval of members of the committee if I should call upon Mr. Black, the member for the Yukon and former Speaker of the House of Commons, to express our thanks to Sir Norman for his most interesting and instructive remarks.

MR. BLACK: Mr. Chairman, it is very kind of you to extend me this privilege; I know there are other members of the committee who can do it much better than I. I am sure I am speaking for all members of the committee when

I say that we are all pleased and grateful to Sir Norman for coming here and addressing us in his interesting and instructive way. The impression he has made on me is that, perhaps, the matter before this committee is a little better handled in the old country than in Canada. I think

I got the impression that the principle that a man must be considered innocent until he is proven guilty is more observed in the old country than in Canada. Perhaps, that is not quite correct, but that is the impression I got from Sir Norman's description of proceedings over there. That the House of Commons and the public and the legal profession approve the actions that this committee have taken I think can be easily understood when we know that Sir Norman is the chairman of the chief committee, handles the examination, and directs the proceedings of the committee himself; because I am sure that would give confidence even to the accused that they would be handled fairly and justly.

I am looking forward with interest and pleasure to hearing Sir Norman address the Canadian Club today, and if he is any more instructive than he has been with us his address will be worth hearing.

On behalf of the committee I express our thanks to you, Sir Norman, for coming to address us today.

SIR NORMAN BIRKETT: Mr. Chairman and gentlemen, I am obliged to you. I have appreciated very much the opportunity of coming here and enlarging my own experience, and I am very grateful to Mr. Black for his kind observations.

--The Committee adjourned to the call of the Chair.

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