272 Stewart St.
Ottawa, Canada
April 25, 1946

Dear Mr. Gordon:

A group of us here is trying to form a Civil Liberties Association, whose first job will be to tackle the myriad breaches of civil liberties in the government's "spy case" procedure. Four of us have produced the enclosed report, which has not been approved or ratified because there is, as yet, no body to do so. Therefore, if you should happen to wish to use any of it in any way, no reference must be made, except perhaps to "a fact-finding committee in Ottawa." The facts are all accurate, So is the opinion, we feel, but it is merely that of us four.

I thought that you in particular, being a Canadian, might be interested, but I think Miss Kirchwey will find considerable horrified fascination at the detailing of injustices contained therein.

Incidentally, the CLA of Toronto has protested to the government about the "star chamber" methods used, since this report was made up, and I've just seen an editorial of Bruce Hutchison's in the Winnipeg Free Press of Apr. 11 which says, in part: "For the first time, when the country is not at war, the Government of Canada has repealed, for all practical purposes, this most fundamental of all laws (the right of every citizen to a fair and public trial, no matter how guilty he may be) and without consulting Parliament. It has conducted a secret trial, by virtue of a secret order-in-council, found the prisoners guilty and handed them over to a jury with the findings of two judges of the Supreme Court already made. Not only is a fair public trial before an unprejudiced jury thus made impossible, but the highest court of the land has been made a party to this distortion of the courts and seriously discredited by its willingness to participate in such a process."

A kind of spearhead group, mostly CLA members, in Toronto, is trying to get quick action on this problem, as the CLA is still busy on the Japanese-Canadian problem. It consists of Malcolm Wallace, Ned Pratt, Carleton Stanley, Barker Fairley, Dean Beatty, Prof. DeLury, and Edx Corbett and others less given to paper protests than some. They're trying to arrange a public protest meeting (as we are here) and to raise money for a defence fund (as we hope to here eventually, though now it is impossible because of widespread caginess about even taking a stand on the primary civil liberties aspect, let alone activating that stand by helping the defendants into a position of being able to fight back properly against the encrachments.).

Yours sincerely, Paul A. Gardner

PS -- Just called to the phone to be told that Dr. David Shugar, a friend involved, has been discharged -- no evidence! --

PAG

THIS IS THE REPORT OF A FACT-FINDING COMMITTEE

On February 15, 1946, plain-clothes officers of the Royal Canadian Mounted Police entered homes and seized 13 persons without showing warrants of arrest.

These 13 were rushed to the RCMP barracks at Rockcliffe, outside Ottawa, and were held there, uncharged and incommunicado, for periods varying in length from two and a half to six weeks.

The 13 were eventually charged with offences under the Official Secrets Act and, in a few cases, under the Criminal Code as well.

Meanwhile, they were questioned, without any access to counsel; first -- several times -- by RCMP officers; then --- several times -- by the two members of a Royal Commission set up for this investigation and by the commission's counsel.

Reports were issued by the Royal Commission which stated that the 13 -- naming them publicly -- were guilty of certain stated offences, and presented portions of the alleged evidence on which they had pronounced their verdict.

Then the 13 were brought to court, charged, and released on bail.

This procedure struck certain persons as so completely in contrast to the procedure set forth by law, and adhered to in Britain and hitherto in Canada -- with some wartime deviations -- that they decided to find out what they could about the breaches of civil liberties evidently involved.

They offer this report on the facts they have found.

ON THE SEIZURES, AND TREATMENT WHILE DETAINED

On February 15, thirteen persons were seized, with much of their property, by plain-clothes RCMP officers who in some cases at least showed no warrant.

The Prime Minister made a statement which did not state the number of those involved. This led to published estimates of from 400 down to an Associated Press count, from Ottawa, of 22.

The result of this, in our opinion, was to give the affair an aspect of enormity which the facts did not warrant, thus prejudicing public opinion unduly against the suspects.

On February 25, A.Warwick Beament, K.C., told the Ottawa papers that he wished to protest "the complete lack of humanitarian attitude" shown by RCMP authorities in their "arbitrary action" against the 13 suspects. He said his client had not been allowed to have his wife notified of his detention. She did not learn of it until six days later.

Mr. Beament said that a request to allow his client's wife to see her husband "under whatever conditions or circumstances the police dictate" had been repeatedly refused. The only communication so far, he said, was between husbands and wives, by censored mail.

It was two and a half weeks - March 4 - before the first visits of wives were allowed.

Also on February 25, H.P. Hill, another lawyer stated publicly:

"The position of counsel engaged by the detained persons' families has been greatly embarrassed by the unique ruling of the Royal Commission that the persons detained are not to have legal advice at this time.

"For such an extraordinary limitation on the principle of British justice there can be only two reasons. The first is that by barring counsel from their clients no instructions can be given which would lead to their release. No counsel would be willing to take such a serious step as, for example, habeas corpus proceedings, without consultation with his clients.

"The only other possible reason is that the Royal Commission does not trust the members of the local bar to keep silent about information given them by their client

"The first of these reasons is a sad commentary on the way in which our individual liberties are gradually being encroached upon.

"The second reason betrays a disturbing lack of confidence in the discretion of the legal profession in which the public must have confidence if our system of justice is to be maintained."

The wife of one of the seized persons gave a statement which was published in PM on February 27.

They seized her husband, she said, at 6 a.m., then searched the apartment, without showing any warrant. They took a few shares of stock belonging to her, a copy of the Basic Writings of Sigmund Freud, all her personal letters and Christmas cards, her typewriter, copies of Hansard, telephone books, maps of the world and of Ottawa.

(P.C. 6444 permits the Minister of Justice to authorize any RCMP to "seize any article found on the premises which the said member of the RCMP has reasonable grounds for believing to be evidence that secret and confidential information has been communicated to agents of a Foreign Power.")

She called a lawyer, who seven hours later had dug up the Prime Minister's official statement - nothing else.

Next morning her lawyer learned one thing more - she could send her husband books. She took three to an RCMP official in the Justice Building. He OK'd two murder mysteries, but rejected an anthology which she had just bought at a bookstore. "You can't send that in!" he said.

"Spirit of Canadian Democracy" was the title.

Then, she said, he made insulting remarks about her husband: "He's been behaving like a barrack-room sergeant - demanding this and that!" Then, she said, he told me "in a sneering tone of voice" that her husband had asked for a Bible.

Unable to sleep, she rose after midnight and wired a protest to a high government official, one of whose underlings telephoned her that morning not to "do anything rash." She also wired a protest to the Prime Minister, but got no reply.

On Monday she authorized a lawyer to represent her husband, but he was refused access to him.

It was a week, she said, before even the lawyer was informed under what authority her husband was being held. It was 12 days after the seizures before P.C. 6444, passed October 6, 1945, was published. That was February 27, 1946.

The same day another wife's statement was published in Canadian papers. She said she had been out of town when her husband was seized, and "no one took the trouble of informing me what had happened." When she got back, six days later, she found a letter from her husband in the mail.

For six days, she said, her husband had been denied information as to her whereabouts, and as to whether she knew of his arrest, For three days he was refused information as to the authorization under which he was held. At first he was told he could get no legal help, then after three days he was told he could have counsel and could write letters, but could see neither lawyer nor wife.

"I asked why my husband was made to appear guilty until there had been an official inquiry. I have received no acknowledgement."

"Our apartment had been searched. I was amazed to find that the letters we had written each other while my husband was away two years in the services, and my childhood diaries, had been taken away."

Her husband, she said, wrote: "You seem to know more about this than I do. The RCMP claim they are acting within the law; they merely say they know nothing and are only carrying out orders." He had been interrogated several times by the RCMP, "during which the finger of accusation had been pointed at him." He wrote: "One is guilty here of whatever you're accused of, and if one doesn't agree to that, why, back to the guardhouse."

The wife said she found herself in an impossible dilemma. Inquiries into the grounds on which he is held have been met with silence. Request to see him have been denied. Efforts to have legal counsel see him have been of no avail. I have only met with subtle reference to my husband's possible guilt in a serious matter...No one can tell me if my husband is being held as a witness or a suspect... Surely the Department of Justice must know what charge they intend to make...

"I cannot see how this kind of treatment can be justified in any supposed state of emergency. Not knowing where to turn, I appealed to the Prime Minister and presented the facts of the case to him in a letter...

"I strongly object to the denial of my husband's rights as a citizen. I cannot see why Canada cannot deal with any situation that arises through her established democratic procedures, without borrowing the methods of the Gestapo."

We concur in this wife's comment on the handling of the case; and we feel that she and the other wives and the counsel who protested succeeded in bringing about some amelioration of the situation, and are to be commended for their courage and initiative.

(The previous wife's statement to the press included an excerpt from a letter written her by her husband from Rockliffe Barracks. It reads:

"You see, I'm completely in the dark. I'm not even allowed to see the Privy Council order under which I was arrested. As far as I know, no charge has been placed against me - but I don't know. I have been given vague hints that serious allegations have been made against me, but I have not yet been told who made them or how. I have tried to co-operate in every way in spite of being given a nebulous idea of the problem. Officials concerned have been entirely polite,

considerate, I would even say kind, as far as they have been able, but they have not been able to give me any satisfaction on the basic issues of my case. As I write, I have seen no one for two days, except my guards." That letter was written eight days after his incarceration.)

On March 5, Mrs. Albert Choquette, landlady of Mrs. Emma Woikin, one of those seized, said that the latter's sister had written from her home in the west: "I haven't heard from you. Please write." It arrived after she had been seized. Mrs. Choquette said she had asked the RCMP what to do with it, and that they said: "Tear it up and forget about it."

On March 6 the Ottawa Citizen published a story which concluded thus:

"Nothing behind closed doors" is reputed to be the slogan of the Justice Department, and it is said to have been re-echoed by Messrs. Kelley and Howard. "This is to be an open, public trial," said one man who should know.

It was explained that as far as the Crown is concerned, this is to be patterned after the trial of "any ordinary accused person, of any other Canadian or any other charge."

The instructions are said to have gone out from the Minister himself, and they are most definite: "No bullying, no coercion. The accused are to have free access to counsel and relatives. Then a fair trial."

Our opinion would be that the writer of this story was being satirical, were it not that the preceding part of the story seems perfectly serious; and is that, if intended seriously, the story satirizes itself and points up what we can only characterize as a travesty of British justice. (This story was published two days after four of the persons referred to had been condemned as guilty under the Official Secrets Act, in the Royal Commision's first report.)

The same day, both Ottawa papers quoted an Ottawa lawyer as charging that "coercion and third-degree methods" were being used on persons detained in Rockliffe Barracks."

He said he had been told by the authorities that he would not be able to see his client until the man appeared in court. This indicated to him that "the police are holding out for a confession" and they hoped to charge all remaining nine at Rockliffe "with these serious charges which are tantamount to treason." He said his client's wife had told him after a visit to her husband that the detained persons were confined in rooms "where a bright light burned continuously."

Next day, March 7, another wife told the press that on her first visit to her husband - two and a half weeks after his seizure by the RCMP - "I was shocked. He had lost a good deal of weight. His face was pale and haggard. His hands shook. This was after only 18 days. I am under an oath not to divulge any information I learned in the course of that interview."

(After that statement all wives were barred from visits, because "some of them had broken their oath of secrecy." Then the others were permitted to resume, but the wife who made the above statement - which in our opinion clearly avoided violating her oath - was barred for about ten days.)

In her statement she said that her attorney's attempts to gain access to her husband had failed, and that "as far as I can ascertain, letters written to my husband by my attorney have never been delivered to him."

She quoted her husband as saying in a letter written February 28:

"I have repeatedly asked for the order-in-council, the last time on Monday last, but have been refused. I have repeatedly complained about not seeing newspapers that everyone else in Canada can see, but have been refused. I was told the others were not getting them and, in any case, there was very little about the case. I was then told a few things that had been published, apparently what theyssaw fit to tell me."

"I was told something about a Russian statement on the case. I was told that counsel for the Royal Commission had reported on Saturday and that on the basis of their report Mr. King had issued a statement saying that it was more than ever evident that proceedings should be secret.

"I lodged a formal protest against what I considered irregular proceedings and expressed doubt whether I should contine to co-operate under the circumstances. I was told that it ill-behooved me to criticize the commission on which sat two Justices of the Supreme Court. That was news to me and I said so. But even so, I said, and with all due respect to the eminent judges, on the basis of what little I knew, they could still be wrong. I have been questioned three times since I came in - February 16, 19 and 25."

The wife added: "Since Monday my lawyer and I have repeatedly asked that I be allowed to see him again (this statement was made on Wednesday night). Each time we telephoned the officials concerned, we have been put off with promises that 'it might be arranged tomorrow.'"

Later that day an RCMP official, referring to the various statements, stated that "the public is well aware that the RCMP do not resort to that sort of stuff" and explained the reported haggardness and trembling of the detained husband thus: "Any person in the position of the man in question, shocked to involve himself in such a case and having been away from his wife for a length of time, would be in a highly nervous state."

The same day the Montreal Herald reported that one of the detained persons had staged a three-day hunger strike in an attempt to get counsel. This was later confirmed.

On March 9, Mr. Beament told the press that a letter he had written to one of the persons held in Rockliffe Barracks, requesting authorization to act on his wife's instructions, had been impounded by counsel for the Royal Commission. He then wrote the Deputy Minister of Justice, pointing out that "it has been reported in the press from time to time that you or the officers of your department have suggested that the solicitors and counsel of any of the persons detained who may feel aggrieved by the treatment should have resort to the courts."

His letter, which was published, was simply a request for approval of the wife's instructions.

Mr. Hill told the press the same day that three letters written his "clients" at Rockliffe Barracks had likewise been impounded.

That week-end another account by the wife who had written of the seizure of her husband appeared in PM. This time she described the appearance of the four suspects brought to trial.

Of Mrs. Emma Woikin, whose manner and behavior had been remarked on in the local press, she wrote: "She wore no hat and her hair looked as if it had not been combed for days. I can only describe her in one way. Recently a friend of mine was in a terrible motor accident and when I saw her in hospital she was in a state of shock. Emma Woikin looked and acted in the same way - she was "in shock." The first charge against her was read. In a flat, unnatural monotone, Mrs. Woikin said "I did it." The magistrate interrupted to ask her if she wished to be represented by counsel. She merely shook her head and repeated over and over, "I did it." He asked her if she understood what had been said. He told her this was a serious charge and she was entitled to have a lawyer or ask for a remand. She shook her head and said, "I did it" to everything that was said to her. The clerk asked her to plead guilty or not guilty. She replied: "I did it." The magistrate tried to explain that she would have to plead one way or another. She kept on repeating the same three words. Finally he was able to get through to her, and she said, in a voice that could scarcely be heard: "I did it. I'm guilty."

(We note that this hearing came two and a half weeks after the seizure of these persons, by which time the initial shock would almost certainly have worn off.)

Of Miss Kathleen Wilsher: "She, too, seemed confused and unaware of her surroundings. Her clothes were good but her black seal coat looked as if she had slept in it. There were deep black rings under her eyes and deep lines in her

face. She swayed as she stood bent over, her head down. One hand clutched the scarf at her neck. The charges were read and the magistrate asked her if she wanted to be represented by a lawyer. She shook her head. He then asked if she would like a remand for a week before entering her plea. She nodded and in a whisper repeated "Remand."

Of Captain Gordon Lunan: "He stood rigidly at attention, every muscle taut, as the charge was read."

Of Edward Mazerall: "His face was haggard. It reminded me of pictures I have seen of people resuced from German concentration camps. He said nothing and his lawyer asked for a remand."

Then she wrote: "I wasn't able to forget their faces or the strange way they behaved as they were being charged. Surely it must be instinctive for people to want to defend themselves. They weren't being convicted. Nothing had been proved against them. I may not know what a spy looks like or how he acts, but I do know something about human beings. Why didn't they - particularly the two women - ask for help? Counsel had been offered to them and they had refused even this elementary right. What had been happening to them during the 18 days when they had seen no one but police? What have these people been through to make them behave in this way? No one knows but themselves, and they haven't the opportunity to tell."

Of her husband she wrote, after describing him as previously quoted: "He is a strong person who has had a great deal of experience and isn't disturbed. He has said to me in letters that he is innocent and that conviction has helped him bear up under the strain. What methods have they used to make him look like he does?

On March 18, M.J. Coldwell, CCF National Leader, said in the House: "I hesitate almost to say this because I could scarcely believe it, but I was informed by a minister of the gospel last week that a person who has been held in custody in Rockliffe for some time was kept in a room with six lights full on continuously during six days and nights." He said he telephoned the counsel for one of the persons held and the counsel had heard a similar story from a different person. The excuse was that the lights were left burning to prevent suicide. "Since neither of these persons was ever alone, the excuse that lights were kept burning to prevent suicide is an excuse which can have no validity in fact," said Mr. Coldwell. "Such methods, if employed, are those of totalitarian states and must not be permitted or tolerated here." (Ottawa Citizen, March 19)

Three days later, March 21, the Minister of Justice read the House, in reply, a report on the treatment of the suspects at Rockliffe Barracks. "The charge that brilliant lights were focussed on prisoners is ridiculous and is denied," he said. (Ottawa Citizen, March 21)

We here note that the charge of "focussing" lights on prisoners had neither been made nor implied, so that, in our opinion, the denial was an evasion of the issue. To the person drafting this report, as to many others he has known, the shining of lights - even dim ones - all night is extremely hard on the nerves, even for a single night. The continuance of such a condition for many nights would, in our opinion, cause a nervous person, if not others, considerable torture.

"We found it necessary to light a section of the rooms and the guard therein was not allowed to sleep... The lights used were normal lights and on the second night they were shaded so as to provide the minimum of interference," said the Minister of Justice.

He also read an interview in the Montreal Standard with an unnamed suspect who said he had been neither "third-degreed" nor otherwise ill-treated at Rockliffe.

As regards the probable reliability of any statement by Commissioner Wood, we may recall that he was reported by the Ottawa Citizen on March 7 thus: "Branding the rumors and speculations as false, Commisioner S.T. Wood, of the RCMP, said last night to the Citizen that no man had been taken into custody in Kingston in connection with the espionage proble in Canada."

Two weeks later it was revealed that Prof. Israel Halperin of Queen's University, Kingston, had been one of those seized on February 15 and placed in the RCMP barracks at Rockliffe.

On March 22 Mr. Coldwell told J.A. Hume of the Ottawa Citizen that he considred Commissioner Wood's report "evasive." Mr. Coldwell added: "There were some admissions in Commissioner Wood's report, and I was not impressed by the way he attempted to brush off some angles of the treatment given the suspects. There were bright lights for days and nights, particularly in the smaller rooms used to confine suspects, until some of the persons complained and then the lights were reduced."

On March 28, Capt. Gordon Lunan testified in court (as reported by the Toronto Star) that "there were two long rows of lights in the dormitory, and one of those rows was on from sundown to sunup...I made repeated requests to have the lights turned out. The last two nights they were all turned out but two."

(That would mean that all of one row of lights were on all night for more than two weeks straight.)

Asked by Crown Prosecutor Lee Kelley: "Do you consider the lights as part of what you say were third-degree methods?" Capt. Lunan replied: "They were part and parcel of the whole psychological torture."

It is noteworthy that Capt. Lunan was incarcerated in Rockliffe Barracks only from February 15 to March 4 - two and a half weeks - while others were held there under similar conditions as long as six weeks.

Capt. Lunan said: "One guard in particular frequently mentioned suicide attempts by others detained in the barracks, but all these rumors proved absolutely false."

In our opinion, the guard's constant harping on the suicide theme - even had his intimations had any basis whatever in fact - was sadistic and very definitely a part of "psychological torture."

Capt. Lunan testified that he had been interrogated by Inspector C.W. Harvison of the RCMP "half-a-dozen times" before being questioned by the Royal Commission. He referred to the "obviously vindictive" attitude of the RCMP.

Asked "Did Inspector Harvison give you warning?" he replied "No." Neither was he told, he said, that he did not have to answer any of those questions; neither was he able to obtain counsel, although he requested it. "When I asked for counsel, Inspector Harvison said the proceedings were extraordinary, but I could do nothing about it."

In our opinion, when a person detained without a charge in a British country is told by a police official that he can't do anything about it, the word "extraordinary" is a mild euphemism for the proceedings.

Capt. Lunan said he had brought up to the Commission the question of civil rights, but that Commissioner Kellock had told him "this had nothing to do with the charges against me."

He had not been told that he did not have to answer questions, he testified, "but at least once I objected to answering and was told I had to answer."

He said the interrogation had continued "four or five mornings," then he had been brought to court and charged.

Asked about threats, he said: "No direct threats were made but I was told that after making statements to police if I didn't say the same things to the Royal Commission I would be in very hot water...There was always that coloring to suggest threat."

Asked if that coloring might not have been in his own mind, he replied: "It might have been because I was in solitary confinement."

Asked what "inducement" there had been to answer questions, he said the very first approach by Inspector Harvison had been: "We've tangled with you Reds before, and you have always screamed if we laid our hands on you, but this time, by God, we've got you!" (phrasing from the Ottawa Citizen's account, varying only slightly from others.)

Capt. Lunan added: "...or words to that effect...He had built up in his mind some case against me...The threats were constant throughout against what I considered to be my liberty and my right."

The record of Capt. Lunan's hearing before the Commission showed that at the end he asked: "Can you advise me if I should now obtain counsel?"

The answer, from the record, was: "I do not know what good counsel would be to you now."

This reply, from the record of the Royal Commission's interrogation of an uncharged suspect (as read in court and reported in the Toronto Star) is, in our opinion, as cynical as could well be imagined, and detracts heavily from the Royal Commission's protests that they did everything possible to give suspects the fairest possible hearing "in the circumstances."

Questioned by Capt. Lunan's counsel, H.L. Cartwright, Mr. Kelley said, in admitting the record as evidence: "This is not a voluntary confession, but evidence taken at a Royal Commission. "

Mr. Cartwright: "On what principle of law is this admitted as evidence?"

Mr. Kelley: "Unless accused objects to it, it can be taken as voluntary evidence.

This, in our opinion, seems inconsistent, since Mr. Kelley had just termed it "not a voluntary confession."

In another part of his testimony, Capt. Lunan stated that on returning from England he was taken into custody by an RCMP officer with "what he said was a warrant. I asked him if this was an arrest. He hemmed and hawed, and suggested I read the warrant again. I understood from the terms of it that I was in custody." He was then taken to Rockliffe Barracks.

He said his wife had been expecting him, but that he had been given no opportunity of letting her know he had arrived.

(One of the detained suspects, later revealed to be Squadron Leader F.W. Poland, wrote political party leaders, in a letter read to the House on March 14 by M.J. Coldwell: "Someone even cut out of the New Yorker magainze what was apparently a reference to the case.")

On the basis of the above material, most of which we believe can be reasonably accepted as authentic, we find the following breaches of civil liberties in this particular aspect of the case:

(1) Seizure of persons and search of premises without showing a warrant;

(2) Exceeding, in a fashion sometimes ludicrous, always authoritarian, even the wide latitude granted in seizing personal property by the then secret order-in-council P.C. 6444;

(3) Refusing to inform wives that their husbands had been seized;

(4) "Stacking the cards" against suspects seized and held incommunicado, by announcing so little and implying so much that rumors were wild, horrendous and unchecked;

(5) Denying wives access to their husbands during a period of 18 days;

(6) Denying seized suspects access to legal counsel;

(7) Impounding letters written by counsel to detained persons asking authorization to act on their behalf - after the issuance of public statements suggesting recourse to court in case of dissatisfaction;

(8) Refusing to inform either relatives or counsel, for several days, under what authority certain persons had been seized and were being held;

(9) Refusing to inform the detained persons themselves of that authority;

(10) Refusing to admit "Spirit of Canadian Democracy" to an RCMP Barracks;

(11) Sneering at an insulting a detained person, in speaking to his wife;

(12) Treating detained persons "vindictively" and as if they had been found guilty;

(13) Brutality of attitude on the part of the RCMP in telling a woman to tear up a letter of inquiry from the sister of one of the persons seized;

(14) Forcing wives to swear an oath not to reveal anything learned while visiting their husbands, on penalty of not being allowed to visit them again;

(15) Barring wives from visits because one had described her husband's appearance;

(16) Barring detained persons from access to any newspapers;

(17) Censoring mail and magazines sent to and from detained persons;

(18) Keeping bright lights burning all night, despite requests, in rooms where detained persons were trying to sleep;

(19) Torturning one or more the detained persons with repeated talk of attempted suicides in the rooms around him;

(20) Interrogating detained persons without warning them that anything they said might be used against them; and without informing them that they had the privilege of refusing to answer;

(21) Telling detained persons that they could do nothing about their protests against denial of their rights as citizens;

(22) Threatening, indirectly, detained persons;

(23) Using the fact that Supreme Court Justices sat on the Royal Commission as a moral bludgeon to silence protests;

(24) Treating detained persons in such a manner that they appeared in court (18 days after seizure) haggard, nervous, dazed, shocked, confused; and that some of them even at first refused their natural right of having counsel;

(25) Cynically admitting the deliberate use of interrogation without counsel to induce a detained person to implicate himself beyond the help of counsel;

(26) Admitting as voluntary evidence in court material admittedly "not a voluntary confession";

(27) And - perhaps the most shameful and revealing of all - the reported statement of Inspector C.W. Harvison, RCMP: "We've tangled with you Reds before, and you have always screamed if we laid our hands on you, but this time, by God, we've got you!" ("or words to that effect")

This, if even <u>substantially</u> true, is in our opinion an indication of the most utterly improper motives on the part of a high-ranking RCMP official entrusted to question, without counsel, the detained persons.

It is reasonably certain, in our opinion, that most if not all of these breaches of civil liberties have actually occurred, thus far, in the handling of this case.

We note that protests by wives and counsel, and in one case by one of the detained men himself in letters read in Parliament, brought quick improvement in the conditions of detention.

We consider this an indication of what a widespread public protest against such breaches of civil liberties would do to prevent the recurrence of such mockery of British justice.

01. THE TREATMENT OF UNTRIED SUSPECTS BY ROYAL COMMISSION REPORTS

The first interim report of the Tashereau-Kellock Commission, issued March 4, 1946, made this statement:

"The evidence heard so far, however, establishes that four persons, namely, Mrs. Emma Woikin, Capt. Gordon Lunan, Edward Wilfred Mazerall, Miss Kathleen Mary Willsher, all employees of the Dominion Government, except Kathleen Mary Willsher, who is an employee of the Government of the United Kingdom, have communicated directly or indirectly secret and confidential information to representatives of the U.S.S.R. in violation of the provisions of the Official Secrets Act, 1939, 3 George VI, Cap. 49."

Thus the Royal Commission, before giving the four persons named any opportunity of a public hearing, declared them guilty of an offence punishable, under the Official Secrets Act, by a fine up to $2,000. or imprisonment up to seven years' hard labor, or both; or, under the Criminal Code, by a fine up to $500, or imprisonment up to a year's hard labor, or both.

Nowhere in either the Inquiries Act, under which this Royal Commission was set up, or in PC 6444, the order-in-council which empowered it, is the commission authorized to make public its report -- except that a section of PC 411 authorizes the commissioners to "adopt such procedure and method as they may deem expedient for the conduct of such enquiry and may alter or chage the same from time to time, an authorization which gives it virtually absolute power.

In our opinion the Royal Commission ought to have refrained from revealing the identities of the persons involved in its reports until they had had the opportunity of a public hearing. It would, in our opinion, have been perfectly possible to publish the report with the actual names of the suspects omitted, although with the colorful pseudonyms found in the documents allegedly stolen from the Soviet Embassy. This would have prevented one of the many serious breahces of justice.

The same report states: "Each of these persons has given evidence before us, and has admitted the substance of the above."

The second half of that statement is, in our opinion, extremely loos and inexact, in circumstances which, especially in view of their questionable authority (see our report on the Inquiries Act), ought to have prompted the utmost exactitude.

"To each, in accordance with the provisions of Sections 12 and 13 of the Inquiries Act ... an opportunity was given to have counsel or to adduce any evidence in addition to his or her own testimony," states the report.

This statement, in our opinion, is misleading, and appears to be deliberately so. There is testimony that certain of the suspects definitely desired to be represented by counsel. Some of it appears in our reports "On PC's 6444 and 411" and "On the Seizures, and Treatment While Detained." Also, Capt. Gordon Lunan stated in court on March 28 that he had "brought up the question several times," first at the airport on Feb. 16, when he was arrested on returning from England for "special work."

In any case, no opportunity of access to counsel was given until <u>after</u> repeated questioning by the RCMP and, under oath, by the battery of five judges and lawyers representing the Royal Commission. This was admitted to the House by the Minister of Justice on March 19, when he said: "It is after they are examined under oath that they are given that opportunity."

On this point, an Ottawa barrister was quoted by the Canadian Press on March 6 as saying: "It seems strange that when the four appeared before the magistrate Monday, two of them had arranged for counsel and a third asked for time to consider . . ."

Also on this point, as we note in our report on Seizure and Treatmer While Detained, the record of the Commission's hearing, as read in

court on March 28, showed Capt. Lunan asking, at the end of the hearing, if he should then obtain counsel, and one of the commissioners replying: "I do not know what good counsel would be to you now."

This, in our opinion, clearly suggests that the commissioners deliberately discouraged the seeking of counsel -- after examination without permitting it -- and that at that particular point, and for that particular occasion only, some of the suspects did refuse counsel; only to ask for it when, eventually, they were given a hearing in an open court.

The second report, made public March 15, again declared guilty four persons who had not had a public hearing.

The outstanding example of injustice in this report, in our opinion was the following statement: "We were not impressed by the demeanor of Shugar, or by his denials, which we do not accept. In our view we think he knows more than he was prepared to disclose."

This, as we show in another section of our report, follows the National-Socialist (Nazi) principle of justice -- of judgment on "character".

In our opinion, this principle is not one fit to be followed by anybody connected with the administering of British justice. In any case, in our opinion, the passing of character judgments is outside the scope of the present commission, set up to discover facts.

In the same report, the commission committed another similar, though less flagrant, breach of British justice and probably also, in our opinion, of its function -- in its statement on Squadron Leader Matt Nightingale: "His interview with Rogov, his explanation of those interviews which we are unable to accept . . ."

In the case of only one of the 13 persons named in the first three reports has the place of birth of any person been noted. Dr. Shugar is stated, in the second report, to have been born in Poland. (This was also noted in the newspaper reports of Fred Rose, M.P., who unlike the 13 was arrested and brought to public hearing at once, in accordance with accepted procedure. The newspapers, however, also noted that Capt. Lunan was born in Scotland.)

This, in our opinion, appears to be deliberately calculated to play upon (as some newspapers' subsequent actions proved) the prevailing prejudice against persons born in countries unfortunate enough to be situated outside the British Empire, and whether deliberate or not is manifestly unjust.

It is noteworthy that this second report ends on a note of defence of the commission's methods of holding incommunicado and examining without counsel. This, in our opinion, indicates the commission's sensitiveness to increasing public awareness of its methods.

The third report, made public March 29, declared five persons guilty before they had had the opportunity of a court hearing.

This report, however, is noticeably more cautious and defensive than the first two, reflecting the growth of public and parliamentary protest.

Of Eric Adams (whom the commission declares guilty in considerable part because of his "conduct and associations and personal sympathies" (again the"character judgment" principle), the report says that these and other factors "leave little doubt in our minds that he has conspire

In the case of J.S. Benning, of whom the commission reports: "whil there is no direct evidence that he gave information, we do not attach any weight to his denial" (an extreme use of the "character judgment" principle) it goes to the length of quoting verbatim a very large part of the Official Secrets Act in defence of its methods of deducing guilt

In another section of our report we have shown that the Official secrets Act, in the sections quoted by the commission, directly violates the basic principle of British justice -- that a man is innocent until proved guilty.

In the case of Squadron Leader F.W. Poland, extreme caution is evidenced, and the commission makes it clear that he is being declared guilty almost solely under protection of the aforementioned "guilty unless he can prove innocence" sections of the Official Secrets Act.

In this connection we deem it pertinent to quote from an editorial in the Ottawa Citizen of March 14: "This far-reaching provision could be taken to mean that an embassy cocktail party is a perilous function for a civil servant to attend if he knows any sort of official secret." In our report on the Official Secrets Act, we add: "... or if someone thinks he might know any sort of official secret, or is interested in making it appear that he does and has divulged it."

Besides the two previously noted examples of the use of the "character judgment" principle of National-Socialist justice, this report contains another. Of Prof. Israel Halperin it is s aid:"...but his refusal to furnish any explanation and his general demeanor convince us that he violated the Official Secrets Act on more than one occasion."

This extension might be called the multiple character judgment!

On the basis of the material above presented we find the following breaches of civil liberties in the first three Royal Commission reports:

(1) Declaring guilty certain named persons who have not been brought to a public hearing;

(2) Implanting in the public mind, by this method, the certainty that these untried persons are guilty! (The person who is drafting this report was told on March 30 by a bank teller: "There was a spy in here a few minutes ago ... he has an account here," naming one of the suspects released on bail the day before and not due for his <u>first</u> public hearing for almost a week.);

(3) Stating extremely loosely that suspects had admitted their guilt (in statements given without counsel and admittedly "not voluntary" -- Crown Prosecutor Lee Kelley in court, March 28);

(4) Thus making a fair trail almost, if not quite, impossible;

(5) Misleading the public, deliberately or unintentionally, by stating that certain of the suspects had refused counsel, when actuall they had merely refused the assistance of counsel <u>after</u> the end of the examination by the commission and <u>before</u> knowing that they would be granted a court hearing;

(6) Frequent use of the National-Socialist (Nazi) "character judgment" principle of justice;

(7) Appealing, deliberately or unintentionally, to prejudice against the "foreign-born" by mentioning the birthplace (Poland) of only one of the 13 suspects, although at least one other was also born abroad -- but in Britain;

(8) Leaning ostentatiously on the un-British "guilty until proved innocent" principle embodied in certain sections of the Official Secrets Act, to pin purported offences on certain suspects.

A signed letter to the Ottawa Citizen on April 2 said: "This morning I went to cash my pay cheque. The teller remarked: 'There was a spy in here a few minutes ago ... he has an account here.' Then she mentioned one of the five suspects just released from six weeks' detention, then charged and set free on bail.

"I was shocked at this evidence of the effectiveness of the pretrial condemnation of these suspects in flagrant violation of the basic principles of British justice: that a man is considered innocent until proved guilty in an open court."

JUDGING BY INTUITION: A NATIONAL-SOCIALIST PRINCIPLE OF LAW

In the second report of the Taschereau-Kellock Commission (March 15 1946) the following passage occurs:

"Shugar denies having given, or having agreed to give, any secret information but has no explanation for the existence, in the documents above referred to (i.e. code telegrams - Ed.), of the references to himself. We were not impressed by the demeanor of Shugar, or by his denials, which we do not accept. In our view we think he knows more then he was prepared to disclose. Therefore, there would seem to be no answer on the evidence before us, to a charge of conspiring to communicate secret information to an agent of the USSR."

The underlined sentences disclose an approach to law that departs from the principles of rationality usually deemed to be the basis of all true law. A similar approach can be found in the Official Secrets Act of 1939 (para 3, sec 2) in which a judgment of character, rather than a proven act, was explicitly to be made the basis for conviction:

"On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State...."

But whereas the application of the above principle of making judicial intuition sufficient grounds f or conviction may, under the exceptional circumstances of war, be a necessity however distasteful, it is incompatible with the concept of rationality and inadmissible in times of peace as a profoundly undemocratic procedure.

Its real philosophical basis may be seen clearly by comparing it to the legal principles of Nazism, which , as is known, succeeded in dissolving contractual relations and substituting for them relations of command - i.e. authoritarianism. The following quotation is from a book by one of the leading authorities on the structure of the Nazi state:

"Like political theory, National-Socialist criminal law has shifted from the idea of the totalitarian state to that of racial imperialism. In the first period, it was merely authoritarian. Its approach to crime was the volitional theory. Not the objective facts but the subjective will makes man a criminal. No distinction exists, therefore, between a criminal attempt and the consummated act.

"When the doctrine of the authoritarian state was abandoned, the simple volitional theory went too. The most important - though not yet completely official - school in criminal law today (1942 - Ed.) is the so-called phenomenological school, combining vitalism with Carl Schmitt's 'thinking in concrete orders'. Take the example of theft. Traditional criminal law defines a burglar both by his acts and by the intent. The phenomenological school defines him by his personality. A burglar is one who is a burglar 'in essence' (wer seinem Wesen nach ein Dieb ist). The judge must decide by intuition whether to convict or not. There could be no more complete negation of the rationality of law, nor a better means of terrorizing the masses without the restraint of predictable rules." (Franz Neumann: Behemoth, 1942 Oxford University Press).

There is an obvious parallel between the above quotation from the second Taschereau-Kellock report and the so-called "phenomenological" school of Nazi law.

Other similar "character judgments" are dealt with in our report on the treatment of suspects by the Royal Commission reports.

ON PC'S 6444 AND 411

P.C. 6444 was passed on Oct. 6, 1945. On Dec. 6, 1945 John Diefenbaker (PC - Lake Centre) questioned the Minister of Justice about the existence of secret orders-in-council. He mentioned others, including one concerning seamen, which (quoting him from Hansard): "denies the right of counsel to appear on behalf of any man examined before the commission set up ... I asked for a return of those orders which deny the right of counsel to appear on behalf of men charged or being investigated. I asked for that on Oct. 5."

Mr. Mackenzie: Was it produced?

Mr. Diefenbaker: Yes, it was produced. It was passed last May and produced on Nov. 5. The minister says he does not know of the existence of this order. Will he tell us how many more secret orders there are which have not been produced?

Mr. St. Laurent: That is not a secret order, and there are no secret orders. The hon. member says that it was tabled in the House. Well, if it was tabled it is not a secret order.

Mr. Diefenbaker: No longer, no.

The order-in-council was published in the press on Feb. 27, 1946.

On March 19 the Minister of Justice told the House in reference to that occasion: "I said that was no a secret order and that there were no secret orders. I had no thought at that time of this order, which had not been used."

In our opinion this attitude of the Minister of Justice displays an extreme disregard for civil liberties which it is a vital part of his duty to protect.

Mr. Diefenbaker said in the House on March 21: "Sir, it is not an indication of what power will do to men, what it will do to a former president of the Canadian Bar Association, one who had stood for the safe-guarding of rights of parliament and the individual, that he should forget an order-in-council which did more to sweep aside the rights of individuals than any other order-in-council passed in the history of Canada?"

He declared that the powers granted under PC 6444 transcended even those under Section 21 of the Defence of Canada Regulations, which "gave power to pick up aliens and enemies of the state during the period of the war. It gave the power of detention, but not the power of examination ... I defy the government to produce a case where during war, insurrection or rebellion when any British government acted not only to detain but to examine ... Parliament would never have passed the emergency transitional powers bill had it known of this secret order-in-council."

He also decried the policy: "The end justifies the means."

Note the first two sections of PC 6444:

"1. The acting Prime Minister or the Minister of Justice, if satisfied that with a view to preventing any particular person from communicating secret and confidential information to an agent of a foreign power or otherwise acting in any manner prejudicial to the public safety or the safety of the state it is necessary so to do, may make an order that any such person be interrogated and/or detained in such place and under such conditions as he may from time to time determine.

"2. Any person shall, while detained by virtue of an order made under this order, be deemed in legal custody."

It will be noted that these sections of this new order-in-council, passed in peacetime, grant the Minister of Justice the same powers of detention which he enjoyed under Section 21 of the Defence of Canada Regulations, PLUS the power of pre-trial examination; without any of the limitations and safeguards which parliament soon imposed, during wartime, on that authority. These safeguards were contained in the 15 paragraphs of Section 22 of the Defence of Canada Regulations. Both sections were revoked on Aug. 16, 1945.

In our opinion the granting of such nearly absolute power to one man is unwarranted and dangerous even in wartime, as parliament decided when it imposed the safeguards of Section 22; but particularly so in time of peace. This order contravenes Magna Carta, the Bill of Rights and Habeas Corpus, three foundation stones of British justice. Its continuance would completely shatter them in Canada.

We note with regret that the Canadian Bar Association has uttered no protest against the infringement of civil liberties under this order and the other acts and orders employed in the present case. This despite the C.B.A.'s public enunciation of five principles as recently as 1944, at its 27th annual meeting, in Toronto, describing them as having acquired "almost sacred significance." These principles the C.B.A. enunciated thus:

(1) The right not to be detained at the mere arbitrary will of the Crown, or any government, or administrative authority;

(2) The right not to be arrested, unless under the authority of a magistrate's warrant, issued on a complaint duly executed, and based on ordinary law;

(3) The right, when under suspicion, or arrest, or sentence, not to be coerced to give any information or evidence against oneself, or to testify in one's own case;

(4) The right to have an open trial before the courts of law;

(5) The right to a full defence, with the assistance of counsel.

We note with approval, however, that R.M. Willes Chitty, editor of the Fortnightly Law Journal of Toronto, has published an editorial, reprinted in Saturday Night, from which we quote:

"Let us quote that charter (Magna Carta) as it still stands on the statute books of Ontario, as it still stands as the foundation of the foundations of the constitution of Canada upon which the British North America Act, 1867, is erected. 'No man shall be taken or imprisoned ... unless he can be brought in to answer and prejudged of the same by due course of law ... and the King shall sell to no man, nor deny or defer to any man, either justice or right.'

"It remained for Ottawa after six years of bureaucratic orgy ultimately to pass beyond the pale of mere bureaucracy and adopt the final role of dictatorship by tearing up the most venerated document in the proud history of the British peoples ...

"By British justice we understand the fundamental idea of innocence until proof of guilt, and all that entails, and it certainly entails the right of the arrestee to free and private consultation with a legal advisor of his own choice, and arraignment before a court of competent jurisdiction at the earliest possible moment after his arrest. It was to safe-guard those inalienable rights that the writ of habeas corpus was designed so far back in the annals of our legal history that its origin is shrouded in the mists of time. The House of Lords not so long ago condemned an attempt to deny those rights, and set its seal upon their inalienable nature ...

"Yet Canada tolerates, with scarce a voice raised in protest, the sweeping away with a stroke of the pen all the fruits of the struggle of the British peoples for freedom and democracy ...

"Does it strengthen confidence in our courts when Judges of the Dominion Court of last resort accept a commission which denies constitutional rights? Is the Bar Association aided in its public professional relations when its President accepts the chief counselship to such a commission? ...

" ... the shadow of fear lengthens across the country as the hand of the political police reaches out to snatch men and women from their homes into the concentration camp, uncharged and unaccused, to be held incommunicado for inquisition and perhaps worse without the benefit of counsel and denied the cherished right of habeas corpus, the age-old remedy designed to prevent the very thing ...

"In our eyes, much as we despise the treason those now charged and yet to be charged with the contemptible crime of espionage, the crime committed in the name of freedom by bureaucrat and politician is far more heinous. They have deprived men and women of their constitutional rights, not to be arrested uncharged, not to be held in prison unarraigned, not to have justice deferred or denied, they have subjected those men and women thus illegally arrested and imprisoned to inquisition and all that that implies. But beyond that they have destroyed the independence of the judiciary and suborned the courts to lend the appearance of legality to their crime. They have established bureaucracy, and seated dictatorship in the saddle. They have slain democracy, they have murdered freedom. They have begun their reign of terror. Gentlemen, what is your verdict and what will be the verdict of history?"

We also note, with approval and admiration, the courageous attack of Hon. C. G. Power, former cabinet minister, Liberal member for Quebec South, on the procedures in this case. Speaking in the House on March 21, Mr. Power said:

"We, the victors, have adopted some of the manners and customs of the vanquished in the procedure adopted in the espionage case ... If this is to be the funeral of Liberalism, I do not desire even to be an honorary pallbearer."

(Of that declaration the Toronto Star said editorially on March 22nd: "Comments like that should make the government think.")

"The most important and most famous article in the Magna Carta," said Mr. Power, is this:

"No freeman shall be arrested, imprisoned, dispossessed, outlawed, banished, or hurt in his person or property, nor will we (meaning the king) in person or through our officers lay hands upon him save by the lawful judgment of his peers, or the law of the land ... We will to no one sell, deny or delay right or justice."

Let me place alongside of that the order-in-council, P.C. 6444, of October 6, 1945:

"1. The acting Prime Minister or the Minister of Justice, if satisfied that with a view to preventing any particular person from communicating secret and confidential information to an agent of a foreign power or otherwise acting in any manner prejudicial to the public safety or the safety of the state it is necessary so to do, may make an order that any such person be interrogated and/or detained in such place and under such conditions as he may from time to time determine.

"2. Any person shall, while detained by virtue of an order make under this order, be deemed in legal custody."

Those are the two documents, the Magna Carta and this order-in-council, which I think it is relevant we should compare. In his address on March 19, to be found on page 92 of Hansard, the Minister of Justice himself said:

"I told them (I think he meant the counsel for the commission) that if the order were one that was going to be made, then it would not be in that form; that I did not think in peacetime it was proper that any member of the executive should have the kind of powers the order expressed; that I thought no one should be detained even for interrogation, without there being some form of intervention of the judicial authority; that we would act only as if that were the provision, and that there would have to be a recommendation from some organ of the judicial authority to make me feel that I should exercise those powers."

Later on, in the course of the same address the minister repeated that he acted with a great deal of reluctance and hesitancy.

Mr. Power then quoted the Prime Minister's defence of the right of a man "not to be dispossessed of his rights without the lawful judgment of his peers under the law of the land; not the law made by the governor-in-council, not the law as made by some unnamed and as yet unexisting body, but the law of the land as known to everyone." (Hansard, April 19, 1934) He added: "With those authoritative statements I rest my case against what would appear to be a revocation of Magna Carta, after 731 years of existence."

Mr. Power also said: "Precedents are dangerous things, and I regret far more than I can say that a precedent has been created in this case. I freely admit that in the popular mind the government is doing the right thing. I do not controvert or deny that; I only regret it."

In our opinion Mr. Power is perfectly right about the creation of a precedent, and about the popular approval of it. We believe that this popular approval springs only from the deliberate denial of full information to the people; and we urge that this precedent be abolished.

In this connection we note that one phase of this denial of full information to the people is in what has been termed "trial by newspaper." Before sufficient facts were available, a number of anonymous government officials, including cabinet ministers, passed out to the press speculations and rumors which became the basis for newspaper stories of considerable flamboyancy and created an atmosphere of horror in which it is difficult for the suspected persons to receive a fair trial.

On that point the Halifax Chronicle observed editorially on March 4: "Meanwhile, both the Minister of Justice and the press services of Canada would enjoy a fuller measure of public confidence if they abandoned at once the undignified and unwarranted practice of failing to identify by name those cabinet ministers who comment on the procedural aspects of the espionage affair."

We note with regret that the Ottawa Bar Association on March 1 decided to shelve, until after the report of the Royal Commission, a resolution condemning the action of the government in suspending the constitutional rights of Canadians under "the espionage order-in-council" and requesting the government "to repeal forthwith these objectionable features of the order-in-council and to lay forthwith such charges as the evidence warrants or to set free the persons imprisoned."

In moving this resolution Redmond Quain, K.C., remarked of the 13 persons seized and detained under PC 6444: "If their rights to Habeas Corpus has not been taken away, then the same effect is being accomplished by refusing them the means which will enable that right to be exercised.

"No one questions that some advantage may be gained in the case of every spy or other criminal by imprisoning him without trial, and even subjecting him to various forms of the third degree, but it has always been understood among the democratic nations that what could be gained by such procedure could not under any circumstances (except in time of war, possibly) justify such actions."

We find it especially regrettable that two such bodies of lawyers, who are privileged to know far more of the facts, in such a wholesale contravention of established law as this, that the ordinary citizen, should have failed even to make a protest at a succession of breaches of the law under which they make their livelihood.

Our position is that, no matter what guilt or innocence may eventually be proved regarding the detained persons in this or any case, such procedure and methods are completely unwarranted and utterly contrary to the principles and tradition of British justice.

In support of this position we call attention to such markedly contrasting procedures as these:

(1) Dr. Alan Nunn May, a suspect in the same case which at present involves a number of Canadians, was arrested on March 4th in Britain, and was brought to public hearing next morning. He was then taken to a remand prison where he was allowed to receive "all the visitors he wants." (Canadian Press, March 5, 1946) He was later denied release on bail, while the Canadian suspects who were eventually brought to court were released on bail.

Since the Official Secrets Act (Section 12) grants authority to hold without bail, this could have been done here too. However, that would have meant granting the recognized right of access to counsel at once. The passing of PC 6444 permitted evading of the Official Secrets Act by holding suspects without access to counsel. This went to the extreme of (as the Minister of Justice admitted to the House on March 19) allowing counsel only <u>after</u> the Royal Commission hearings had been completed.

The Toront Star on March 23, editorially quoting this admission, made this comment: "So it is clear that detainees who have been offered counsel did not receive the offer until after examination on oath. The excuse that this examination without the benefit of legal advice is not designed to determine whether they have done anything personally" completely ignores the fact, promptly noted by Mr. Arthur Smith and admitted by Mr. St. Laurent, that such an examination touches upon 'the conspiracy' not only as it affects 'the body politic' but as it affects the persons who are examined and who later may have to face trial. The purpose of such an examination, as set forth by the Minister of Justice, does not alter the fact that the effect of it is to deprive the man who is examined of his legal right. It is an unjustifiable procedure."

Later, Mr. Smith said: "What is the good of offering counsel to people after they have been held in solitary confinement and examined? Can anyone suggest that these are voluntary statements ... Within six months the spy scare in Canada will be gone, but in your lifetime and mine we will regret and we will never live down the fact that we abrogated the rights and liberties of our nationals."

(2) Spy suspects in Britain during wartime had access to counsel from the first. This is on the authority of a Canadian newspaperman who covered their trials.

(3) A U.S. citizen who was convicted of selling war secrets to the Italians, then allied with the Nazis against us, had counsel from the first.

(4) Even such known criminals, guilty of the most inhuman crimes, as those 26 tried at Nuremberg, were granted access to counsel from the first.

(5) Even in Nazi Germany, those accused of setting the Reichstag fire were granted counsel.

In view of all these contrasting procedures, it is our opinion that Canada, while she permits PC 6444 to remain in force, makes and maintains herself an area of drastically restricted justice, and that these restrictions, if not removed, may easily lead to others even more drastic.

Mr. H.P. Hill, a lawyer representing families of two of the detained persons, made public protest on Feb. 25, and his words were incorporated into an editorial in the Ottawa Citizen on Feb. 26, which the Toronto Star reprinted on Feb. 27.

The Halifax Chronicle reprinted the same passage from the Minister of Justice's words in the House, and observed editorially on March 4:

"Does the Minister of Justice believe, as his attitude would appear to suggest, that the detention and solitary confinement of British subjects and Canadian citizens for an indefinite period without access to counsel or to their families, is not a gross and flagrant "abridging" of the rights of the subject?

"Does the Minister of Justice no longer consider Habeas Corpus as a cornerstone of the judicial system upon which our democracy is built?"

In our opinion, events in this case indicate that the minister of justice has misused the powers granted to him and which he interpreted clearly in the above reply to Mr. Diefenbaker, by permitting the questioning of detained persons without counsel, first by members of the RCMP, then by the Royal Commission and its three counsel, with the purpose of causing them to incriminate themselves. In our view this constitutes prosecution and counsel ought not to have been denied.

On this point Mr. Diefenbaker, addressing the House on Dec. 21, said: "Is it not strange that these people were detained until such time as they say something that implicates them? Then they are granted right to have counsel and permitted to face trial. They are granted that opportunity once they confess. When that happens, they are withdrawn from the custody of the crown, from this so-called passive internment, and have the opportunity to be at large."

In a letter to the Ottawa Citizen, published Feb. 27, W.M. Arnott of Cumberland, Ont., wrote: "Where do justice and the rights of the individual stand today in the light of this extraordinary product of Canadian law, that order-in-council that deprives Canadians of their rights as British subjects? Nothing approximates such an order short of the 'lettre de cachet' that sent French citizens to the Bastille in the days of Louis the Fourteenth.

"The order-in-council is Canada's counterpart of that infamous document that deprived French citizens of their liberty, their rights as individuals, placed them incommunicado, denied them counsel. The amazing thing is that Canadians have suffered this invasion of their rights without protest.

"In one sweeping stroke the order-in-council has revoked democratic rights that have been in existence for hundreds of years. It has set aside Magna Carta, that established the right of the individual to trial by his peers, to freedom from unjust incarceration without trial. It has delivered a blow at democracy and democratic rights which, if not speedily remedied by the Canadian people, will render useless all the wars for freedom ever fought by our forefathers, by our fathers, by our sons and brothers a few short months ago.

"I hold no brief for those Canadians who have forgotten their loyalties and have trafficked with a foreign power. Their guilt or innocence will be established and there will be, if they are found guilty, certain punishment. But in the light of present events the crime, the really great crime, is not that perpetrated by a few foolish people who have, perhaps, taken foreigh gold; it is the blow delivered at Canadian freedom, at democratic rights, by an order-in-council, conceived in secret and executed in secret in a secret court. It is the kind of thing that a really aroused free press should pursue until it goes back into the limbo from whence it was dragged by minds intent on trammelling and chaining a free people.

"It is a blow at human rights -- it should not be tolerated."

The Citizen, the same day, referring to the above as "an admirable letter" states: "The instructions issued under the order-in-council disclosed today have deprived of an elementary right British citizens who are innocent until the courts have found them guilty. Such deprivation can be justified only in time of supreme peril to the state."

The Ottawa Journal, in editorials on Feb. 28 and March 2, dealt similarly with the matter. They follow:

(Feb.28) "The Government has made public the text of the order-in-council passed October 6 of last year (when the Prime Minister was in England but in close consultation with his cabinet) which set in motion this espionage inquiry that now is coming to its slow head. The order itself should be read carefully, and studied carefully.

"We quote this extraordinary clause:

'The acting Prime Minister or the Minister of Justice, if satisfied that with a view to preventing any particular person from communicating secret and confidential information to an agent of a foreign power or otherwise acting in any manner prejudicial to the public safety or the safety of the state it is necessary so to do, may make an order that any such person be interrogated and/or detained in such place and under such conditions as he may from time to time determine.'

"It will be observed that either of these cabinet ministers, if satisfied himself of its necessity for the safety of the state, can order the detention of any individual, can set the place and conditions and duration of that person's incarceration. These powers have been applied, so far as we know, in 13 cases, and these 13 individuals are held without charge, without hearing, denied visits from their families or consultation with such counsel as their families may engage. For them the Magna Charta does not exist; there is no such thing as habeas corpus.

"Another clause gives either of these ministers the power to delegate to any member of the RCMP authority to search the premises of any person detained, to search the person of every person found on the premises, to seize documents and articles.

"No wider powers could have been given a cabinet minister during the war if there had been uncovered a plot by Canadian citizens to supply information to Germany, Italy or Japan. In October the war was over.

"Presumably Mr. Ilsley, when he ceased to be Acting Prime Minister, departed from the spy picture, the Prime Minister taking his place. Of necessity Mr. King and the Minister of Justice will be guided largely in the matter by the advice and recommendations of the Royal Canadian Mounted Police. We gravely doubt that so much secret power should rest in the hands of any police force or police official, or any cabinet minister, except perhaps in the desperate emergency of war.

"All this is an amazing departure from the accepted standards and procedure of Canadian justice and the Government hardly can justify its policy by even the most sensational disclosures. The Government will find itself confronted by the necessity of proving to the people that the safety of the state would have been endangered by any other course, because nothing but the most imminent peril could justify so radical a departure from the principles of law Canadians prize so highly."

(Mar.2) "One of the most welcome signs we have observed in this country in a long time is the disturbed tone of the press over the methods of the Government in dealing with persons detained in this spy business. Our newspapers are not all at one in dealing with Russia's part in this matter; they are unanimous in misgivings over the Government's seemingly totalitarian technique in imprisonments and detentions.

"This is to the good. For what it shows is a vigilance for the liberty of the subject - a vigilance, we must admit, that has not always been evident in this country. If the war has brought that gain to us, given us deeper awareness of what liberty means, plus eagerness to fight anything that may seem encroachment on liberty, it was not wholly in vain.

"We are not holding that the rights of the individual must always take precedence over the security of the State. Occasions there are, especially in war, when the security of the State must be paramount. What we must never forget, however, is that danger to the security of the State can come in different ways, that such danger is implied when there is unnecessary recourse to arbitrary measures, that there is such a thing as a government itself being lawless.

"Secret laws; secret orders for arrest; police visitations before dawn; mistakes in identity; anonymous prisoners - these things have been justified to us on the ground of the 'security of the State'. It was precisely on the same ground - the 'security of the State'- that Hitler justified his concentration camps and his purges; what the late President Roosevelt called 'the quicklime and the ditch'.

"Circumstances may exist making the Government's course right. No member of the public has the information upon which to judge. But the explanation when it is made, if ever it can be, of the international threat to the security of the State will have to show that it was overwhelmingly grave in order to balance damage to the domestic security of the State consequent upon the course adopted. That course may well have repercussions on public acceptance of the activities of other departments which exercise wide discretionary and compulsive powers but are in no way concerned with this particular situation.

"In any event, we can rejoice that the Canadian people, faced with what seems to them arbitrary action, are showing dislike of that action - showing that they care for liberty. The warning implied in vigorous expression of that mood may serve us well in the future."

We are informed by the editor of one of the Ottawa newspapers that after publication of editorials early in this case a government official visited him and, while not threatening him, warned him that if he did not cease his editorial criticism of the government's actions he might "find himself out on a limb" when all the facts came out.

In our opinion this constitutes unwarranted interference with the freedom of the press, a basic civil liberty.

The premise of that government official appears to have been that on which an unnamed official of the Department of Justice stated for publication, early in March, that the investigation "involves issues more important than any temporary breaches of individual freedom." The Ottawa Journal on March 6 stated editorially that a highly-placed official of the same department --likewise unnamed-- had given assurance that that statement by no means represented official policy.

In our opinion, however, events both previous and subsequent in this case could have occurred only under such an official policy.

On March 2, Mr M.J.Coldwell, national leader of the CCF, commented: "When individuals are arrested and placed in custody and are not permitted for days to communicate with their relatives, friends or legal advisers, a serious abuse of civil liberties has occurred.

"Such violation ... is a violation of the very basis of Canadian and democratic justice. It is very bad in wartime, but it is even worse in peacetime. Having defeated totalitarianism in Germany and Italy we must not permit totalitarian methods here ... If we permit the established rights of any citizen to be set aside the rights of all are endangered."

Two days later the Ottawa West and South CCF Riding Association protested against (a) the refusal of legal advice to those detained;
(b) arrest and search without warrant by plainclothesmen;
(c) detention without charges being laid.

The Association also declared: "This meeting calls on all members of Parliament individually, as supporters of democratic principles, to force the repeal of the offending Order-in-council as soon as possible ... and to make and support legislation which will make it unconstitutional for any government of Canada, present or future, to pass Orders-in-Council which may deprive Canadian citizens of civil rights or curtail those rights."

A week later E.B. Jolliffe, CCF Ontario leader, termed the procedure "scandalous".

On March 14 a letter was written by one of the detained persons still held in Rockcliffe barracks, to the leaders of all political parties. It was read to the House by Mr. Coldwell. It follows:

"On the occasion of the opening of the House of Commons, I am writing to you, in exactly the same words that I am addressing to the leaders of all the political parties in the House, to advise you on a matter which I consider of grave and urgent importance to the people of Canada.

"I have now been held nearly four weeks in this improvised jail without any charge being laid against me and without being allowed to consult counsel. I have been refused access to the Order-in-Council under which I was arrested, and even to the terms of reference of the Royal Commission which I am told has been appointed to investigate a "plot", the details of which have been withheld from me. I am not allowed to see any newspapers. Someone even cut out of the New Yorker magazine what was apparently a reference to the case. This is on a par with the search of my apartment, during which the police seized such books as "The Basic Writings of Sigmund Freud" and a thesis my wife was preparing for her course at McGill University.

"My protests against the illegality of these proceedings have been met by the police with intimations that they are investigating an extremely dangerous matter which has to be handled secretly. Accepting their assurances, under protest, I have readily given them all the information I have -- which is little -- that could possibly have any bearing on the case so far asit has been described to me. I have only been told that I was arrested under an Order-in-Council covering persons "reasonably suspected of communicating with agents of a foreign power". I have not even been told whether I am so suspected, or whether a charge will be placed against me. But I am certainly not being treated as innocent (which I am) until proven guilty.

"Sir, I want my freedom or a speedy, fair trial. But not any more than every Canadian citizen needs these basic rights. The people of Canada can do without my freedom or trial, but they cannot dispense with assurances of their own freedom from illegal arrest and detention.

"That is why I feel justified in detailing my experiences, through you and the House of Commons, to the people of Canada. Fortunately it is not yet given to most people to suffer illegal arrest and imprisonment. But I feel bound, while there is still time, to warn everyone of their insecurity. I have seen injustice--and it works. Let no one say: "They can't do that to me!" "They" can. "They" have done it. There is no guarantee that "they" will not do it again.

"So I come to my main argument. Canada is now a great nation, second to none in its "traditions" of individual freedom. But its citizens are completely defenceless in this respect, because we have no written charter of basic rights. The events of the past few weeks have proven that we urgently need such a charter, comparable if you like, to the Bill of Rights in the United States.

"In utmost seriousness, I propose to the people of Canada that they take immediate steps to call a charter convention with the purpose of drafting such a charter of basic rights. This movement shouldbe above and beyond the present "plot inquiry" which should, of course, be put on a legal basis and be prosecuted speedily and thoroughly, and independently of the broader issue.

"May I respectfully emphasize, sir, the importance of a non-partisan approach to this national problem. It would be a great historical tragedy if the present events were made the occasion for a political field day in the search for narrow party advantage. I am sure you will agree with me that every individual representative of the people should be judged by the practical, patriotic action he or she takes in this important matter. In this connection, there seems to me no contradiction in my addressing political parties. Hitler showed us that no political party can exist without such basic guarantees against discrimination on grounds of religion, race or reasoning.

"But the charter convention should have repres entation from, and consult with, every aspect of our national life -- religious, industrial, trade union, agriculatural, political, cultural, etc., and of course, legal. Its hearing should be held in large enough halls to accomodate wide groups of observers. The convention should report to the people of Canada, not necessarily through Parliament. The charter should be put to referendum.

"This will be a difficult task for the Canadian people, far more difficult in some respects than the problems before the Dominion-Provincial Conference. But it is a vital problem and I am completely confident that we can solve it with our known human resources. To the extent to which we fail, I believe, to that extent will we be handicapped in the solution of other serious problems that face us.

"I make no apology for this lengthy presentation because I believe it to be warranted by the scope of the events we are witnessing. In fact, my thoughts are always on the problem and I would welcome the opportunity to discuss it further with you in writing, or in person if you can come to me since I cannot go to you. I should be grateful to learn your opinions on this matter as well as to receive your written acknowledgement that you received this letter, since I have no other means of knowing. I am taking the liberty of releasing a copy to the press."

The Ottawa Citizen commented editorially on March 16 that his suggestion "assumes that the existing laws of Canada are not enough to assure the liberties of the citizen. Yet nothing could be further from the truth. All the immemorial rights of free British citizens are the Canadian people's too --- Magna Carta, Habeas Corpus, the Bill of rights and everything in between.

"Canada, moreover, enjoys as well the lex non scripta, the unwritten law of England, based on precedent and custom. It is nothing less than the foundation of laws for the English-speaking people everywhere.

"No, there is nothing wrong with the existing law and there is no need to replace it with a new Canadian "charter of rights." What is in question now is not the law but the administration of it. The government has no rights but those which Parliament lends it. And what Parliament lends, it can take away. The remedy for the denial of citizens' rights, for manifest injustice, for harsh use of executive power, is appeal to the high court of Parliament or to the law courts of this Dominion. These have not yet proved to be inadequate."

That, in our opinion, is a step which should immediately be taken. Also, since there seems to be considerable doubt as to exactly what part of our/Magna Carta and the Bill of Rights are, and exactly how they can be invoked in such a case, we endorse the suggestion that a Bill of Rights for Canadians be drafted, and purpose to undertake the drafting of such a bill, enlisting the aid of any interested person with knowledge and skill which he is willing to place at our disposal.

This passage from the Bill of Rights speaks for itself:

"The pretended power of suspending of laws or the execution of laws by regal authority without consent of parliament is illegal."

Mr. Diefenbaker was quoted by the Ottawa Journal and the Toronto Star of March 22 as having said in the House the night before "that persons held for questioning in the espionage investigation had been denied the rights of British justice," and that they "are entitled to be tried by law and not by administrative lawlessness." He was also quoted as having proposed that Parliament should pass a Bill of Rights establishing by statute the "freedom of religion, of association and speech, and freedom from capricious arrest and from interrogation, other than under the rule of law."

The Toronto Star next day, referring editorially to the "stigma upon the government "of keeping suspected persons incommunicado, denying them access to counsel, and thus depriving them of the fundamental rights which everycitizen is supposed to enjoy," observed: The declaration (regarding the citizen's rights) by Mr. Diefenbaker is one which every citizen should approve."

On March 18 one of the detained persons, Squadron Leader Fred W. Poland, wrote a letter to the Prime Minister, indicating that the letter immediately before referred to had likewise been written by him. It follows:

"Dear Mr. King:

I have your secretary's letter of March 14 saying that my letter of March 12 was received and is being brought to the attention of the Department of Justice for consideration. I shall be glad to hear the fruits of that consideration.

I may say that I already have a pretty clear idea, from experience, of the views of the minister of justice on this matter of what I consider illegal arrest and imprisonment. My purpose in writing to you, sir, as leader of the Liberal party and not as prime minister, was to elicit your personal but political opinion as to the propriety of the actions against me which I described.

I would be glad to have a reply on that point.

I make no apology for insisting on a clarification of the present unprecedented events, since my considered views on the urgency and importance of the matter coincide exactly with those of the late great Sir Wilfrid Laurier, whom I believe you knew intimately.

May I remind you that in his first speech in the House of Commons on the question of an amnesty for Louis Riel in 1874, Sir Wilfrid Laurier said, in part:

"It will be argued, perhaps, that the reasons which I advance are pure legal subtleties. Name them as you please, technical expressions, legal subtleties, it matters little; for my part, I say that these technical reasons, these legal subtleties, are the guarantees of British liberty. Thanks to these technical expressions, these legal subtleties, no person on British soil can be arbitrarily deprived of what belongs to him. There was a time when the procedure was much simpler than it is today, when the will alone of one man was sufficient to deprive another of his liberty, his property, his honor and all that makes life dear. But since the days of the great Charter, never has it been possible on British soil to rob a man of his liberty, his property or his honor except under the safeguard of what has been termed in this debate technical expressions and legal subtleties ... (See O.D. Skelton: Life and Letters of Sir Wilfrid Laurier, vol.1, pages 197-8).

Under the present extraordinary circumstances I believe I am justified in engaging in this open correspondence on what I consider a matter of vital concern to the people of Canada, since I am confident that you inherited, with his political mantle, the great principles for which Sir Wilfrid Laurier has become famous among Canadians in particular and the world's democrats in general. I am therefore taking the liberty of sending a copy of this letter to the press and another to Mr. Coldwell, who kindly replied to my letter to him last week.

Yours sincerely,
FRED W. POLAND

His quotation from Sir Wilfrid Laurier was read in the House and commended to the Minister of Justice and to the government by Mr. Coldwell, on March 18.

We concur in the opinion of the late great statesman, and believe that the government is wrong in having robbed certain persons detained in the present case of their liberty, their property and their honor without the safeguards mentioned by Sir Wilfrid.

The same day, the Halifax Chronicle said editorially, "The people of Canada are rather confused about this espionage probe. They can't understand why ordinary justice can't deal with offenders in Canada; it seems to suffice in Britain. They don't understand why the RCMP should be invested with the powers of a Gestapo.

"They don't understand why a Minister of the Crown in a British nation should take unto himself the power of confining anybody he wishes to prison for an indefinite time without benefit of the advice of counsel and without visits from family members, unless such members take a solemn oath to tell nothing they might see or hear during such a visit."

Next day, John Bracken, national leader of the Progressive Conservative Party, told the House it was feared by many that a "dangerous" precedent was being followed in the present procedure. (Ottawa Citizen, March 19)

That night, (of March 18) the Prime Minister made a long, comprehensive statement on the situation. In it, we note with interest, he said "My hope had been that it might be possible to have an inquiry whic.

would attract very little in the way of public attention, at least, until matters were in such shape that only those who were found to be absolutely guilty may be apprehended and committed for trial; and that possibly we might have members of the public service whose names unfortunately have been brought into this situation examined by deputies and ministers of the departments, in the presence of the Minister of Justice, and that the matter might be dealt with in that way."

In our opinion, the examining and declaring of any person to be absolutely guilty before his being apprehended and committed for trial is contrary to all recognized British procedure. We feel that the Prime Minister ought not even to have considered such a step. In our opinion, however, the procedure followed by the Royal Commission, in having certain detained persons questioned, without counsel, by the RCMP and by the Commission and its counsel, and in having declared a number of them guilty of certain punishable acts before their being committed for trial, is essentially the same as the procedure which the Prime Minister originally hoped to follow, and is equally contrary to all recognized British procedure.

On March 13, H.L. Cartwright, counsel for one of the suspects brought to public hearing, was quoted by the Toronto Star as stating:

"Some, if not all, the accused have been arrested and held in police barracks without any information of the arrest having been given to relatives.

"Demands for representation by counselhave been ignored by the police and by the Royal Commission. Apparently no opportunity has been given accused to cross-examine witnesses giving evidence against them before the Commission. An oath has been demanded that the accused will keep secret the proceedings before the Commission.

"With regard to the last item I have requested the Crown Prosecutors to refer me to any authority for theexaction of this oath. They have referred me to the Inquiries Act which does not anywhere authorize such an oath. Byron Howard (special crown counsel), stated the accused would be released from this oath, on request, to a sufficient extent to instruct counsel and to defend themselves, an extremely magnanimous gesture, especially since there is no authority for administering the oath in the first place.

"The Inquiries Act says: 'No report shall be made against any person until reasonable notice shall have been given to him of the charges of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel.'

"On the facts I have, this section has been disregarded,as also has the section which states that such person has the right to be represented by counsel if a charge is made against him in the course of the investigation.

"To most people these rights appear to be elementary and, in fact, theywere given to Goering, Hess and all other Nuremburg defendants.

"The Official Secrets Act under which the persons are charged at Ottawa says that certain things are offences if they are done for a purpose'prejudicial to the state.'

"This means, I take it, that the purpose in the accuseds' minds must be to do something prejudicial to the state and it would be a question for the judge or jury who must eventually try these persons as to what their purpose may have been. The report of the Commission, however, states either directly or by implication that the four charged are guilty and all this without giving them an opportunity to examine the evidence and to cross-examine the witnesses upon which suchconclusion is based. The mere publication of this report has rendered it difficult or impossible to secure a fair trial.

"The contrast between the handling of these cases in Canada and the handling of a similar charge against Dr. Alan May in England is startling. He apparently was arrested and brought before a court in the ordinary wayimmediately after his arrest. This procedure adopted by the Canadian government might be justifiable in war, but there does not appear to be any justification for it in peace time.

"Of course we have in this country a great many people who have consistently regarded Russia as an enemy even when she was fighting on our side while the war was on. I heard a remark to that effect made by a judge on the bench."

On March 20, J.P. Erichsen-Brown, counsel for another of the suspects brought to public hearing, disclosed that he had taken an oath of secrecy preliminary to reading the evidence given by his client before the Royal Commission. But, he added, he was still not permitted to see the evidence. "Surely they can trust me," he said to the Magistrate. Lee Kelley, special crown prosecutor, advised Mr. Erichsen-Brown to address a request to the Commission counsel, adding that he thought the request would be granted. (Ottawa Citizen, March 20)

We are informed that the counsel for another of the suspects refused to take this oath, on the ground that there was no authority for exacting it; and that he was permitted to see the evidence his client had given under oath before the Royal Commission.

In our opinion these lawyers deserve commendation for their protests against the exaction of unauthorized oaths, and against the unauthorized behavior of the Royal Commission.

Mr. King's defence of the passing of P.C. 6444 was that "the government was taking every step possible, on the one hand, to make the fullest possible investigation and, on the other hand, to protect persons or the liberty of persons, to protect the names of persons until the very last moment at which some disclosures would have to be made with regard to what they had been doing in the way of violating the Official Secrets Act. This step was to protect these persons themselves, some of whom are today on trial. Until the last moment everything was done to keep them unknown so that there would/not brought into the discussion the names of persons who were concerned." bo

Since the government has claimed that the right of Habeas Corpus was not denied by the Act, and since any application for Habeas Corpus would necessitate naming the person involved, we are not impressed by the alleged motive of "protection." As to the motive of "making the fullest possible investigation", we are of the opinion that whenever that reason is given it should be accompanied by these words or their equivalent: "...while not depriving any person of the rights guaranteed him under British law."

The same evening Mr. Coldwell said in the House: "In spite of all that has been said tonight and last week, the fact remains that men and women have been summarily arrested. As a letter I received from one of them states, they have been held for weeks without charge, without access to their friends and without counsel"..(Mr. Coldwell then quoted the passage from Sir Wilfred Laurier's speech, previously refered to herein)...

"Through the ages our forefathers have fought vigorously to prevent secret trials and actions affecting the liberty of the subject without fair and proper trial. During the war members who were here will recall there was considerable debate in the House. The Defence of Canada Regulations were modified, but many members were disturbed by the manner in which those regulations and the War Measures Act were used not only against those who endeavored to assist the enemy, but against members of religious sects and indeed Canadians of Japanese origin."

On March 20 the Ottawa Citizen observed editorially: "On the issue of the passage of secret orders-in-council whereby suspected persons were detained, the Prime Minister justified it on the ground of the gravity of the evidence before the Royal Commission, the necesity of the fullest investigation, and the desirability of protecting the names of the innocent. While these considerations may be admitted as paramount, it is difficult, nevertheless, to see why counsel for the suspected persons should also have been excluded. They could have been bound to secrecy insofar as was necessary. Their presence, moreover, would have gone far to reassure the public about what some suspected to be an arbitrary use of executive authority.

On March 19, in reply to Arthur L. Smith's charge of violating civil liberties, the Minister of Justice declared in the House "that what was done to the persons was strictly within the law of Canada, a law passed years ago by Parliament. It was done, he said, under the Inquiries Act, not under the Criminal Code." (Toronto Star, March 20)

Actually, according to P.C. 411, the Royal Commission was set up under the Inquiries Act "and any other laws thereto enabling."

Obviously, this permits the enlisting of any of the unrevoked sections of the War Measures Act (they are still in force under the National Emergency Transitional Powers Act) or any section of the the NETPA, in case the authority of the Inquiries Act were challenged. In our opinion, the Minister of Justice's reply was an evasion and a half-truth.

(We deal with the Inquiries Act in a separate report.)

On February 5, 1946, P.C. 411 (originally known as "minutes of a meeting of the committee of the Privy Council) was passed. It was not made public until February 27, when the Minister of Justice, after one refusal, finally made public too the Order-in-Council, P.C. 6444, passed October 6, 1945.

P.C. 411 set up a Commission of two named judges of the Supreme Court of Canada, and gave them this authority: "...that the said Commissioners may adopt such procedure and method as they may deem expedient for the conduct of such inquiry, and may later or change the same from time to time." (Section 5) There are no limitations or safeguards provided.

In our opinion this gives the Commissioners absolute power in this investigation, and permits them to disregard any rules of procedure, including apparently those specified in the Inquiries Act itself. We believe such absolute power is unwarranted, and urge that this section be not repeated in similar future orders.

On March 19, in the House, the Minister of Justice said: "I am confident that the public of Canada when this thing is over will...feel that we took the right course, the courageous course."

In our opinion, no course is courageous which subjects one person to being held incommunicado, in a room lighted day and night, then to being questioned without counsel, first by police officers and then by a battery of two judges and three counsel.

In our opinion, too, no course is right, regardless of the other issues involved, which includes the denying of civil rights guaranteed by law and tradition to every British subject.

We are unconvinced that the abrogation of laws considered to be the very foundation of our form of government can be construed as its salvation. This may be considered the Phoenix theory of justice.

On the right of habeas corpus, the Minister of Justice said on that same occasion: "There has been no setting aside of the statute of Charles for habeas corpus, All that the habeas corpus statute provides for is that anyone detained may require that he be brought before a judge so that the judge will determine whether or not there is a legal case for his detention. Any one of these persons could have applied for an obtained a writ of habeas corpus, but it would have done him no good, because as soon as the judge would have been shown the order-in-council under which such person was detained, and the order-in-council which authorized it, he would have said, 'You are legally detained.'"

In our opinion, that means that while habeas corpus has not been set aside, it has simply been fixed so that it can do no one anygood if the Minister of Justice wishes it so.

The Minister of Justice continued: "It is no business of the custodian of a person who is held to provide an opportunity for the issuing of these writs." (This was in reply to a question as to how a person held incommunicado could bring a writ of habeas corpus.)

In our opinion, this statement expresses disregard of, if not contempt for, the rights of the individual. We believe it to be the duty of the Department of Justice to provide opportunity for the exercise of any and all rights guaranteed by law.

The Minister of Justice also said: "...on October 6 we were requested to be ready to take action here in Canada if an arrest were made in London on the following evening. It is under those conditions that the order-in-council printed in this white paper was made."

In our opinion, the Canadian government was already ready to take proper democratic action, such as the British government took (without resort to order-in-council) in apprehending Dr. Alan Nunn May, a suspect in the same case and presumably the man referred to in the clause "if an arrest were made in London on the following evening." Actually, of course, the arrest did not take place for some months.

Of Dr. Dunn May, the Minister of Justice said: "Dr. May, like everybody else, is deemed to be innocent until found guilty."

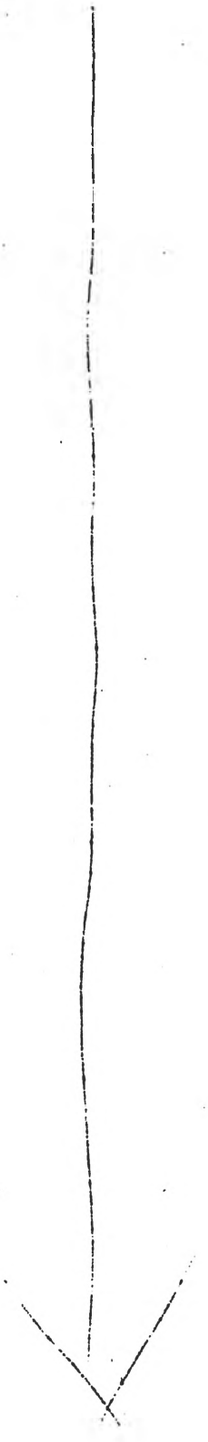
Since the Royal Commission has unequivocally declared eight Canadian citizens guilty before their appearance in any court, we are not impressed by this assertion of the Minister of Justice.

The Minister of Justice further said: "One of the most embarrassing features about public life that I have been up against is the necessity of making decisions based upon facts you know but cannot fully disclose to the public. This is not the first time that I have been up against that difficulty."

In our opinion, the Minister's embarrassment might have been lessened if he had paused to consider that his actions should be guided by the laws of the country, rather than by certain "facts." There are numerous laws to guide him in this case.

The Minister of Justice said further: "I submit, and I take full responsibility for the view, that when gentlemen suchas the two members of the Royal Commission, such as the eminent counsel who have been associated with them, report that the only effective way to make the investigation which the circumstances require is to detain and interrogate persons who may have knowledge about it, it was proper to accept that advice and to proceed with that investigation.

In our opinion that is calculated to divert attention from the issue of denial of civil liberties. We deplore the suggestion of infallibility in the persons of the Commissioners and their counsel. That their opinion should be considered to outweight the tradition of justice which is our heritage indicates, in our opinion, that a false sense of values has permeated the Department of Justice.



The wife of one of the detained persons disclosed the contents of a letter from her husband in Rockcliffe barracks, which was published in the press. In it he said that he had been refused a look at the order-in-council under which he was detained, and yet had been several times questioned; but that when he questioned the regularity of such procedure he was told it ill behooved him to criticize a commission on which sat two judges of the Supreme Court.

According to his letter, he replied that that was "news to him." It is news to us too, that any person in this country is considered above the criticism of any other person. In our opinion, such a doctrine is undemocratic and dangerous.

The Ottawa Citizen remarked editorially on March 21: "Not a bad definition of democracy, after all has been said about it, is this one -- 'To allow the most disagreeable person you know to say the most disagreeable things you have ever heard, to say them, moreover, in the most disagreeable fashion -- and fight to a finish for his right to say them.'"

Saturday Night, in its leading editorial on March 23, said: "The fact that two Royal Commissioners on the spy case are Justices of the Supreme Court should not mislead us. It is not in their capacity as Justices that they are inquiring into the spy allegations. If they bring any special qualifications to that task, it is not because of their official position, but because of the judicial experience which they have gained while in that position. They are not even trying the alleged spies. What they are actually doing is something entirely outside of the whole system of British justice, though it seems to bear some resemblance to the work of the juge d'instruction in the French courts.

"In the ordinary course of events these prosecutions would presumably have been made by the RCMP, so that the two Supreme Court Justices are in a way serving a s assistant investigators and legal advisers to that excellent police force. That they are also contributing very materially to the prestige of the prosecution can hardly be doubted, and if the matter were one concerning which public opinion would be the ultimate judge, this would perhaps be a desirable condition. It has not in this country, at any rate since the trial of Riel, been generally held that decisions in criminal prosecutions should be much influenced by public opinion."

In this connection we might observe that in our opinion the published glorification of Igor Gouzenko (a witness in the present investigation who regardless of his assistance would unquestionably be regarded as a spy were the situations reversed) is improper, and reflects no credit on the unnamed government officials quoted as having given it to the press. This impropriety is brought into stronger focus by the fact that it is permitted while an interview with Mrs. Dorise Nielsen, former M.P., which appeared in the home edition of the Ottawa Citizen on March 25th, had been removed by the time the night edition appeared, an hour and a half later. Since it ordinarily would have appeared in both editions, it is assumed that its removal was ordered as pertaining to a case which was sub judice. (The interview quoted Mrs. Nielsen as charging that Gouzenko had been "planted long ago" as a spy, by the British Secret Service.)

On March 22, Mr. Bracken read to the House a letter received from Prof. Israel Halperin of Queen's University, stating that he had been held in Rockcliffe barracks since Feb. 15 by an order signed by the Minister of Justice. The letter, which speaks for itself, follows:

"Dear Mr. Bracken:

"Although I am not a member of your political party, I feel sure that the matter about which I am writing to you will have your most serious consideration.

"Since the 15th day of February, 1946, I have been held a prisoner by the RCMP at their barracks in Rockcliffe, Ontario, by an order signed by the Minister of Justice, the Honorable Louis St. Laurent.

"It may sound fantastic, but I have to tell you that no charges have been laid against me and that I was given to understand that my status was simply that of a'prisoner', held at the pleasure of the Minister of Justice, for an indefinite period of time, and with absolutely no civil or legal rights other than those specifically granted by the Minister of Justice. I still do not know which rights, if any, the Minister of Justice has granted to me.

"For thepast five weeks I have been held in isolation, imprisonment, denied access to legal counsel and newspapers, in short, cut off from the outside world.

"I have written twice to the Minister of Justice in protest against this Bastille-like imprisonment. His replies referred to some Royal Commission but made no change in the incredible situation in which I find myself. They have, in effect, merely confirmed that the Minister of Justice is fully aware of the conditions of my imprisonment.

"If I am accused of crime or misconduct, I deny the charge. I cannot know what accusation or slander has been presented to the public by the Department of Justice, either directly or through the mouths of others. But I have the certain knowledge that there cannot be a shred of true evidence for what is completely false.

"This imprisonment is a terrible injustice to me and I charge the Minister of Justice with using his authority in a way which sets a dan gerous precedent, one which s hould alarm every Canadian citizen.

"I appeal to you to raise your voice on this matter and I beg you to read this letter in the H ouse.

"If you are interested in who I am, I will tell you that I am a native-born Canadian, whose occupation is that of professor of mathematics in Queen's University, Kingston, Ontario. I come from a family whose concern for our country was sufficient to put two sons in uniform. One of them is writing this letter, the other is at the bottom of the ocean.

"Since my letters are intercepted and I am never told whether they are sent on, I would be gratoful if you would trouble to acknowledge this letter, if you receive it.

"Yours very sincerely,

(Sgd.) ISRAEL HALPERIN."

The Toronto Star commented editorially, on March 23, on Prof. Halperin's letter. Quoting his statement "This imprisonment is a terrible injustice to me," The Star declared: "It is a terrible injustice to all who have been so detained. It is repugnant to all the principles of justice..... The guilt or innocence of Prof. Halperin is a matter for the courts. But the circumstances of his detention -- and that of other suspects -- is a matter upon which an aroused public opinion is making itself felt."

REPORT ON THE INQUIRIES ACT

Section 5 says: "The commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is invested in any court of record in civil cases."

In referring to the setting up of the Royal Commission under the Inquiries Act, Arthur L. Smith (PC - Calgary West) said in the House on March 19: "It (The Inquiries Act) was never intended to track down spies.

The Minister of Justice replied: "Until quite recently in this country it was never thought that any government would have to track down spies in its own service ..."

In our opinion there is a distinct inconsistency in using an act conceived with the equivalent of civil cases in mind for an investigation whose aim seems clearly to discover evidences of criminal acts.

Section 12 says: "The commissioners may allow any person whose conduct is being investigated under this Act, and shall allow any person against whom any charge is made in the course of such investigation, to be represented by counsel." (Emphasis ours)

In our opinion, the procedure of the present commission, in arriving at and announcing a "guilty" verdict before allowing access to counsel or a court hearing clearly indicates that the above provision is less than just. We urge that "may" be changed to "shall".

(In this connection, see H. L. Cartwright's statements in our report on PC's 6444 and 411)

Section 13 says; "No report shall be made against any person until reasonable notice shall have been given to him of the charge of misconduct alleged against him and he shall have been allowed full opportunity to be heard in person or by counsel."

In our opinion, the course of the present inquiry clearly shows that this safeguard has been ignored, in spirit if not in letter. (See statements of H. L. Cartwright referred to above.) In any case it is our opinion that the phrase "reasonable notice" is vague, and should be more clearly defined.

ON THE FLOUTING OF BRITISH JUSTICE CONTAINED IN THE OFFICIAL SECRETS ACT

Section 3, Paragraph 2, of the Official Secrets Act, passed in May, 1939, states: "On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the state ... For the purpose of this section, but without prejudice to the generality of the foregoing provision, (a) a person shall, unless he proves the contrary, be deemed to have been in communication with an agent of a foreign power if (1) he has either within or without Canada visited the address of an agent of a foreign power or associated with such an agent; or (2) either within or without Canada, the name or address of, or any other information regarding, such an agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person."

The expression "an agent of a foreign power" is specified to include "any person who is, or has been, or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without Canada, prejudicial to the safety or interests of the state." ~~This clearly includes trade commissioners and other commercial representatives.~~

The Toronto Star, quoting the above excerpt from the Act, in an editorial on March 12, adds: "also, a person found with what might be reasonably suspected as the address at which a 'reasonably suspected' agent received communications would have to prove his innocence of having been in communication with such an agent."

The Star comments: "The sections of the Official Secrets Act ... involve a presumption of guilt unless the accused proves his innocence --- a dangerous principle which seems not to have been questioned in parliament when the legislation went through in 1939 ..... In many respects war limits democratic practices. They are limited by the Official Secrets Act to an extent which will be repugnant to many who have not the slightest sympathy with people who betray their country."

Of the last paragraph quoted from the Official Secrets Act, the Ottawa Citizen observed editorially on March 14: "This far-reaching provision could be taken to mean that an embassy cocktail party is a perilous function for a civil servant to attend if he knows any sort of official secret."

We might add: " ... or if someone thinks he might know any sort of official secret, or is interested in making it appear that he does and has divulged it" -- since the onus of proof is entirely upon the accused.

Another section of the act gives the court the power, without any limitations or safeguards, to close any or all of the trial to "all or any portions of the public" if the prosecution requires it. Only the sentence must be heard in public. It is easy to see how this might be abused.

The dangerous prihciple herein found is precisely the reverse of the basic principle upon which British justice has always rested --- that a man is innocent until proved guilty. In our opinion, the Official Secrets Act should be so rewritten that the British principle is adhered to, not flouted.

ON RULE BY OLIGARCHY

As few as four of the 18 members of the cabinet may, as a quorum of the committee of the Privy Council, pass an order-in-council.

(This information is from "Parliamentary Rules and Forms" by Dr. Arthur Beauchesne, clerk of the commons. We note with interest that this volume also contains this emphatic statement, quoted by I.N.S. of the Ottawa Journal in a recent editorial page article: "Parliament is sovereign.")

An order-in-council may be passed without knowledge of parliament, and apparently may be kept secret for months, since the Minister of Justice implied in the House on Dec. 6, 1945, in answer to Mr. Diefenbaker, that any order eventually tabled was not a "secret" order. (For details, see our report on PC's 6444 and 411) This may, apparently, be done despite the provision, in the National Emergency Transitional Powers Act, that any such order-in-council must be tabled before Parliament within 15 days, if the House is sitting, otherwise within 15 days of the opening of session; and for its publication "forthwith."

Although the latter provisions will not again, probably, be disregarded lightly, four persons still make enforceable decisions affecting the lives and liberties of Canadian citizens. In our opinion this constitutes rule by oligarchy, and is undemocratic, making utter mockery as it does of the statement quoted above: "Parliament is sovereign."

We urge that the quorum necessary to pass an order-in-council be increased to a majority of the total of cabinet members at the time. At present, this would mean raising the quorum from four to ten.

ON THE NATIONAL EMERGENCY TRANSITIONAL POWERS ACT

Section 4 of the NETPA, passed December 18, 1945, continues all War Measures Acts not previously revoked -- even though it provides that the war with Germany and Japan can be considered ended on January 1, 1946.

In our opinion, this continuing of war measures past a date more than four months after the actual end, and almost four months after the official end, of the war appears to be an attempt to maintain permanently powers granted solely because of the emergency of war. We urge that this section be revoked, and that any War Measures Act orders which the cabinet wishes to maintain be brought forward to be passed on individually by parliament.

On April 5, 1946, the Toronto Star said in its leading editorial:

"It is to be hoped that never again will the civil rights of Canadians be violated as they have been under the order-in-council which now has been revoked. It is to be hoped, too, that the National Emergency Transitional Powers Act, under which the order-in-council continued in force until this month, will itself be done away with at the earliest possible moment, and the Dominion revert to peacetime procedure, with parliament, instead of the cabinet, making the laws of the land."

In this hope we emphatically concur, and urge all members of parliament to press for the repeal of the NETPA, and the ending of government by order-in-council.

CONCLUSION

In concluding this report, we urge that all citizens interested in maintaining civil liberties refuse to be satisfied with the revocation of PC 6444.

We point out that, unless parliament acts specifically to prevent the repetition of PC 6444 in similar, perhaps modified form, there is no guarantee that it will not be repeated at any time the Minister of Justice wishes.

We urge that everything possible be done to ensure that such orders are made impossible in the future.

We also urge that everything possible be done to ensure that the trials the 13 receive shall be fair and just; recognizing that, whatever the outcome may be, they have suffered serious and irreparable encroachments upon their rights, and that unless effective action is taken now that noxious encroachment will become entrenched in our tradition.