

JOHN HARRY BARCLAY NIHILL, K.B.E., K.C., M.C.

b. 27 July 1892.

M.A. Cantab.

President of the Cambridge Union, 1914.

Military Service 1914 - 1918.

Barrister-at-law, Inner Temple.

	1919	Private Sec. to Sir William Edge, Lord of the Treasury, Britain.
July	1921	Cadet, Hong Kong.
	1926	Acting Asst. Attorney-General, Hong Kong.
	1927	Acting Puisne Judge, Supreme Court, Hong Kong.
	1927 - 32	Legal Sec. to High Commission, Iraq and Acting British Consul in Baghdad.
	1932	Solicitor General, Uganda.
June	1934	Acting Chief Justice, Uganda.
	1935	Attorney-General, British Guiana.
18 Nov.	1938	apptd. Puisne Judge, Ceylon.
12 Dec.	1938	assumed duties.
24 June	1942	Acting Legal Secretary.
7 July	1942	Legal Secretary.
	1946	Transferred. Among the other posts he served in were that of Chief Justice, Kenya(1947-50) and Speaker of the Legislative Council, Tanganyika(1958).

Comments on Interview with Sir. J.B. Nihill, K.B.E.,

10 January, 1966.

Though in his 70's I found Sir J.B. Nihill quite sprightly and also with all his mental powers intact. A pleasant, homely man, he was very cooperative and keen to help. He was intrigued by the tape-recorder. Absolutely candid, though a bit careful when it came to my series of questions on individuals towards the end.

I have little doubt that his desire to help and his amiability were extended towards Civil Servants and Ceylonese alike when he was in Ceylon, and that he would have had little strife. Of his capabilities I could not judge but I would presume that he must have been highly competent in his field given his record in the colonies and the tasks he fulfilled as Legal Secretary in Ceylon.

I should think that he was also a fairly good judge of men. It was but natural that my questions should be orientated to aspects of the Judicial system and to personalities and issues in the period 1942-1946; it was a pity that he was not in Ceylon earlier and for a much longer period than 1938-1946. Apart from his helpfulness to me as interviewer he is the sort of man the Donoughmore Constitution needed.

It may also be of some interest to note that Sir Barclay became a convert to Roman Catholicism in Ceylon, in Jaffna to be particular and partially, at least, in response to Fr. Long.

M.W. Roberts

10.1.66

INTERVIEW WITH SIR J.B. NIHILL

1 JANUARY 1966

- N. ... may be of not the slightest value but I'll do my best.
- I. Oh, that'll be - that'll be fine. If I may begin by asking what colonies you were in before you came to Ceylon?
- N. Ah, yes. Well, I - I first went out to Hong Kong in 1921 as, what in those days was called, an Eastern Cadet.
- I. Yes, I see. ~~But on account of the war~~
- N. But on account of the war I was then 28 years old and I had also been called to the English Bar. Because it was always my intention to practice as a barrister in this country. But owing to the fact that I married in 1919 and the delay of the war years I decided that it was better to try for a Civil Service appointment. And as a result of an open examination I was appointed as an Eastern Cadet to Hong Kong. I then went out to Hong Kong and for the first two years I had to try to study Cantonese at which I was very bad. But on account of the fact that I had a legal qualification I was taken in to the legal branch of the administration.
- I. Oh, I see, yes.
- N. You see? And I quickly became a Crown Counsel and a Legal Draughtsman and then I was lucky enough even, at a very early age, to act as a Supreme Court Judge in Hong Kong for a short time.
- I. And you were in Hong Kong throughout, before you came to Ceylon as ...?
- N. No, I was in Hong Kong up to 1927. I was then offered an appointment by the Colonial Service as Legal Secretary to the High Commissioner - the British High Commissioner in Baghdad. In those days Iraq was what was known as a Mandated Territory. And although it had an Iraqi Government that Iraqi Government was very dependent on British advisors and on the British High Commission, And I was sent there as a sort of legal man to vet their ordinances and that kind of thing. And act as a liaison between the Colonial Office and the local Iraqi Government. And there I stayed till 1934, quite a long time. I was then - during that time I assisted in getting Iraq into the - what was then known as the League
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of Nations. Because Iraq became formally independent of Britain in 1932 when it was admitted as a member of the League of Nations. And in that connection I had to go to Geneva to assist the Iraqis in putting their case for membership of the League of Nations.

- I. Yes, I see.
- N. But my particular work with regard to that was to draft and put into effect a judicial agreement between Great Britain and Iraq, under which a number of British judges were given contracts for ten years from 1932. Well, I don't know whether that's at all of interest but I mean ... That chapter ended in 1934 after we'd got the judicial agreement signed and then I left and became Solicitor General in Uganda. And I stayed there for two years. And then I was appointed Attorney-General in British Guiana in the West Indies where I stayed for another two years and then in 1938 I was appointed a puisne judge in Ceylon.
- I. From what you know of the legal system in Ceylon and those in Uganda and British Guiana could you spotlight any contrasts and comparisons?
- N. Yes. Of course Ceylon was much more advanced and much more sophisticated than any of these countries, other than Hong Kong, I'd served in.
- I. Yes, I see.
- N. Of course the - because of the Dutch influence in Ceylon the - we had a background not only of the English common law but of the Roman Dutch law, which governed such matters as inheritance - inheritance, of wills, and the land system and so on.
- I. Didn't it rather complicate matters?
- N. It made it very difficult for a judge who didn't know much about it. Because on the - on what is called the law of personal relations it was a system of law with which I was not familiar at all. And it made the civil cases, particularly the land cases, very difficult. But most of those [cases] had already been through the District Courts where people like your father and people who had lived in Ceylon all their lives and really had a much better grounding in that side of the law than British judges who'd come there from overseas.... But of course two thirds of my work in Ceylon as a Supreme Court Judge was criminal work. I was always going out on circuit to Jaffna and Galle and Matara and Kurunegala and Trincomalee and Batticaloa. So I got to know the Island very well.
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- I. What about the type of cases as compared with Uganda and British Guiana?
- N. Well, there were many more of them. A great deal - the criminal - I'm not saying that I think Ceylon was a country of criminals but in my day the murder rate was very high.
- I. [Yes], very high.
- N. A great many of those murders were what might be called hot-blooded affairs. So that sometimes it was possible to reduce the charge from murder to one of manslaughter. I should think that probably accounted for over 50% of the capital offences which I tried. We did occasionally - very rarely - get a bad case of poisoning, something very deliberate. But for the most part a great many of them were hot-blooded affairs due to the volatile character of the people.
- I. What were your impressions of the Ceylon judiciary?
- N. Well, we had - of course, we had a Chief Justice. We had, I think, in my day about seven puisne judges. We heard several appeals from the District Courts. We - of course we heard all the major - we tried all the major criminal offences such as arson, rape, murder. Anything which would be an indictable case in this country was tried by - when I first went there - by a high court judge. And then, as well as that, we formed our own court of criminal appeal from which we heard criminal appeals from cases which had been tried in the high court. But of course the man who tried - the judge who had tried the case didn't sit on the court of appeal.
- I. Yes. What were your impressions of the Ceylonese lawyers and proctors?
- N. Ah, that's a very interesting question. I found that they had - they - the best of them were extremely good indeed. I mean of a very much higher character than any I'd found anywhere else except possibly in Hong Kong where there were one or two who were quite up to the best British standards. But some of the leading men in Ceylon in my day were very brilliant people. I can remember particularly Mr. H.V. Perera, who had a very large civil practice and who frequently appeared before me in civil appeals. And then there were people like Mr. Noel Gratien who's now a Q.C. practising in the English Bar. There was another man I remember, Mr. Wijeratne. There was another Mr. R.V. Pereira who was a very
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fine advocate. And thinking of the Tamils I can remember Mr. Ponnambalam who also was a first-class advocate, and a very powerful speaker. Not only in the law courts but in the State Council as well.

I. But what about the average run of ...?

INTERRUPTION

N. The average - well, of course, you must remember it was a very big Bar. There would be about 120 advocates practising in Colombo. You also had the - a lower branch of the profession were known as proctors.

I. Yes, I was thinking of the proctors.

N. But of course as a High Court judge I never had a proctor appearing before me.

I. You see, there is a feeling among some Ceylonese that many of these proctors - or at least a good proportion of them - were more or less parasites in the sense ...

N. That may be so. I don't know. I do recollect that one of my - one of my duties as a ~~puisne~~ judge was to read petitions from dissatisfied litigants.

I. Yes.

N. And we often had - I often had to wade through long letters of complaint by Ceylonese peasants and minor shopkeepers and that kind of thing, complaining that they'd been swindled by their proctor.

I. Oh, there were many, were there?

N. There were many complaints but I don't think that all of them were well founded.

I. How did you - what did you do about these sort of complaints?

N. Well, we had a system that we read through the petition. Very often we could tell that the whole thing was due to a misunderstanding, or was merely the complaint of a man who had lost his case. And with those we took no action at all. But if we felt that what was revealed in the petition was sufficiently - sufficiently well put out to demand further enquiry we used to mark the thing for further enquiry. And then that used to go down to the locality from where it had come and there was an enquiry instituted.

I. Enquiry by whom?

N. And occasionally - well, I think that enquiry was done by the - either by the District Magistrate or by the District Judge. I can't quite recollect that. But it could - if the local judge thought that the case should be still further

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enquired into, it used to then go to what was called the Law Disciplinary Committee.

I. Oh, I see.

N. And that committee could recommend disbarment or ...

I. Did that happen now and then?

N. ... (?) Yes, it happened occasionally but not very often.

I. What about the British legal system as a whole?

N. How - what?

I. Did you feel that - in view of the nature of the rural populace did you feel that you - the British had brought law rather than justice?

N. No, I think that on the whole - of course, the English legal system when I got there had been working for a 100 years or more. And I fancy that the local population on the whole had - had a real feeling that the courts would give them justice. I think the Ceylonese is rather a born litigant. That if he once started a case and if he lost it in the lower court he'd never be content until the matter had been right up to the highest court in the land. But I think that on the whole the local population had a strong feeling that the British system of justice was a just and fair one.

I. No, I was bringing it up in several connections - bringing that point up in several connections. For one thing I was wondering whether it was - well, the system was rather too formalised and too cumbersome for most of the people? Especially at its lower levels where - when the people came into closer contact and when they didn't have to depend on experienced lawyers?

N. Well, that might have been so in the villages. I don't really know. I mean, in Africa we did on the other hand get what were called the native tribunals, which you didn't have in Ceylon. We had - I mean I've experienced those native tribunals in East Africa where you could say they were very much like the old sort of village moot in this country ...

I. That is ...?

N. ... in Anglo-Saxon times.

I. ... justice under a coconut tree?

N. That's right.

I. Yes, my point was associated with this. I was wondering whether we could not have had more of that sort of thing in Ceylon?

N. I think you could have had more of it but - I don't know - I

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think by the time that I got there I rather doubt whether the - if something of that kind had been tried, whether there wouldn't have been opposition from the more educated section of the Ceylonese.

- I. Yes, the Bar would certainly have opposed it. But I was thinking of the villager. Quite often most of what was going on in the court was quite incomprehensible to him and secondly many of them had to travel quite a distance to these courts.
- N. They did. That's perfectly true.
- I. And spend a lot of money on this sort of thing.
- N. Yes, they did. And they had to spend - and the lawyers' fees were heavy.
- I. Yes.
- N. And ...
- I. Mind you in Ceylon they did have these tribunals with very limited power. They had these - what they call the village tribunals.
- N. Yes, I'm trying to remember what they were called. I can't remember them.
- I. Gansabhas?
- N. Of course I had very little to do with them.
- I. Appeals from them went straight to the A.G.A. rather than to any [judge].
- N. Ah, yes, did the A.G.A. have magisterial powers? I can't remember that.
- I. Not normally.
- N. Not normally, no. Of course, in Africa he did, nearly always.
- I. Yes, this question of separation of powers is very interesting. I'm inclined to think that by your time certainly it was not feasible in Ceylon. But for an earlier period - I do not favour this theoretical objection to a combination of powers.
- N. No, no. Of course from a - from the - its difficult for a British lawyer to - a man who'd been trained in the British system is always inclined to look very critically at what is called justice under the palm tree. Because so often according to the way in which we had been trained it so often means that the suspect is brought up there and condemned almost before - without any evidence, in the sense that we understand evidence. If you know what I mean?
- I. Yes, but, of course, you had to cope with the prevalence of perjury in Ceylon. And one great check on perjury, under
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this system of justice under the palm tree, is that the whole village is there. And its much more difficult for a man to pull the wool over the eyes of ...

N. Yes. Well, that may be true and I do think that - I do think perjury was very prevalent in Ceylon in my day. Because I think that the locally trained proctor and so on he knew what the courts above required and I think he saw that the witnesses' evidence was shaped to produce the right result from his point of view.

I. You see, one reason why I raised this point was that during my interviews two or three of the Civil Servants - and both of them men of pretty high calibre - have said that while they were judges in court they felt quite often that their decisions were just a shot in the dark.

N. Yes.

I. And more often than not really.

N. Yes.

I. And just could have been a toss of the coin either way. And one of the - another Civil Servant, who was a Land Settlement Officer, said that in many cases he, as a Land Settlement Officer, knew the ins and outs of a particular case, and he knew that the judge had given the wrong decision. Not because he was a bad judge. It was the right decision on the evidence before him but all the evidence hadn't come before him. Because he was basing his decision on insufficient data.

- N. Yes, yes.

I. So I - in that sort of case I presume it would have been injustice?

N. Yes. The - as far as I remember now with regard to the major criminal offences such as murder the Ceylon system was that if a murder took place in a village the headman had to be sent for at once. And what was known as the headman's notebook was a most important feature subsequently at the trial because he was trained that when he got to the scene of the crime he had to take statements from everybody in the vicinity, and from the dying man if he could. And very often he did take it from the dying man. Well, then, he was supposed - there was always a group of people round. Many of them had seen the crime because it probably took place as a result of some quarrel between the two men. And a great deal depended on the integrity of the headman. And sometimes I suspected, and I think with justification, that very often the - the wrong

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man was deliberately framed by the headman if he wanted to get rid of a particular bad character in his village.

- I. I don't know whether you have read, 'Village in the Jungle'?
- N. Which book?
- I. Leonard Woolf's book, 'Vil ...
- N. Oh, I have read that, yes.
- I. Because, of course, as fiction, he brings the case of how a headman framed another man.
- N. Yes, yes, I have read that book.
- I. Also I'm pretty certain that in most murder cases and criminal cases they'd have got the right man but still I wonder whether the headmen could be classed as proper investigators in that...?
- N. Well, so many of these offences took place possibly 50 miles or so away from the nearest police-station. You've got to remember that; and I think what the Government of the day thought was that if they could get the very earliest statements they were more likely to be true than statements which the people had had time to ...
- I. Prepare?
- N. ... prepare and manufacture. That was the idea behind it.
- I. No, my doubts as to the effectiveness of the system was not so much with regard to criminal cases but with regard to land cases which could be pretty complicated at times. And which often were merely an expression of certain rivalry in the village.
- N. Yes. Yes. That's quite true. And I think - I personally always disliked trying a land case and I gave the judgement that I thought was the correct one on the evidence which had been produced before me. But whether that was really a true result I could never be sure.
- I. Did you - do you think it was feasible for an A.G.A. to be given concurrent judicial power within the district so that he could try cases - simpler cases - while on circuit?
- N. I can't remember. I mean, I can remember in Africa the District Commissioner and the Assistant District Commissioner and even the District Officer were - all had magisterial powers. They were required to pass a law examination first but it was a very elementary examination. I can't quite remember whether the same system [prevailed] in Ceylon. I rather fancy that to some extent that it did. I rather fancy that a Government Agent or an Assistant Government Agent could try certain classes of cases. But I wouldn't like to
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be dogmatic about that.

- I. And - well, originally in Ceylon in the nineteenth century in many of the outlying districts in particular the G.A's were the sole fount of justice.
- N. Yes. Yes.
- I. I mean, they had a combination of powers. This was perforce.
- N. Yes.
- I. But gradually they had to separate it in different areas simply because one side or the other of his duties fell behind, you see. Usually there were arrears of cases because he was busy with his revenue duties.
- N. Yes. Yes. Of course what you may have in mind is - again I'm going back to Africa. In Africa in those very minor courts, where the cases were tried by administrative officers, professional lawyers were not allowed to appear. And I don't - I think by the time I'd got to Ceylon they had the right of appearance everywhere.
- I. Yes.
- N. And there would have been a great opposition from the profession if they had not been allowed to appear.
- I. But one wonders whether this was opposition from a vested interest?
- N. Well, that may be so and I think you might - you might - I think if you asked administrative officers they would always tell you that once the lawyer came in, then justice flew out of the window. But I don't think I would subscribe to that view entirely.
- I. No, I think - you can't be - its very difficult to generalise anyway.
- N. No.
- I. How did the system work in Africa?
- N. Well, there we had a system that the - these cases which had been tried without any legal assistance were subject to revision by the Supreme Court.
- I. Yes?
- N. And the case files had to be sent up to a judge who was always a British barrister, in my day. And he was supposed to look through the record and sometimes he was able to spot some quite elementary mistake that the - there hadn't been a cross examination of a witness or the accused hadn't been given an opportunity of making a statement and so on. If he found an elementary mistake of that kind he used to send it
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back again to the magistrate to try the case again. Or perhaps sometimes he would quash the conviction altogether.

I. The reason why I tend to favour administrative officers having a fair amount of judicial power and if possible to have a combination of duties is that generally they would know the people and the locality much better than a judge who's in the town.

N. Yes.

I. And if they are having the case - trying the case while on circuit and its a land case in particular the configuration of the land could tell him [sic] quite a lot about the case, which again in a town a person wouldn't know.

N. Yes, yes.

I. And therefore he would have a lot of inside information which someone remote from the area wouldn't - wouldn't have. And, again I quote Mr. Leach, saying in one case there was a fight over a boundary and one chap said another had encroached and built a new fence and sort of gained a few yards that way. But he went to the spot and he found that was true simply by looking at the thing. Because the man had cut down one hedge and built another hedge, but he had not uprooted the former hedge. So within a few weeks the old hedge was growing, you see.

N. Yes, yes.

I. And that sort of - that's a simple example but ...

N. Well, you're up against this particular question that you've raised - its a very fundamental one. You see, it is a case where the British conception of justice, as we understand it in this country, is up against something which is quite foreign to it. Because in this country - you've spoken about the District Officer who had a lot of inside information about the parties and so on. Well, now, in this country with a professional judge or magistrate if he had that inside information he would probably say that he was unfitted to try the case at all. Because, as you know, under the British system the judge is really supposed to come to a case with a completely clean mind, without any knowledge of what has happened before that. And to try and determine the case entirely on the evidence which is produced before him. But whether that is a good system for primitive or semi-primitive communities is a matter on which I should hesitate to give a very firm opinion.

I. How did it work in British Guiana?

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- N. Well, British Guiana, of course, is a very small place and really only the coast line was inhabited at all. And I don't think that - I don't think in British Guiana we had anything in shape of what are called native tribunals at all. I think we had the local - I think there we had a system of local justices of the peace.
- I. Yes.
- N. Rather similar to the sort of amateur benches that you get in this country.
- I. If I could turn to an entirely different sphere, you became Legal Secretary in 1942?
- N. Yes.
- I. '42. As Legal Secretary did you have to attend meetings of the State Council?
- N. I did indeed.
- I. And could you comment on the State Council?
- N. Yes, I could. Ha-ha. The State Council in my day was composed for the most part of the elected members on a very wide franchise. There was a small group of non-native members. I think about eight or nine who were nominated by the Governor to represent minority groups, such as the Europeans and the Burghers. And in addition there were the three officials who were known as the three Officers-of-State, of which I was one. I was the Legal one. Mr. Huxham was - in my day was the Financial one and the Chief Secretary was the third one.
- I. Mmm. Drayton.
- N. And we were known as 'the three policemen'. Ha-ha-ha.
- I. Yes. Did you find that the debates in the State Council were rather amorphous and confusing?
- N. Sometimes they were, sometimes they were very good. The standard of parliamentary speaking in Ceylon was very high. I mean, compared to the ordinary colonial dependency.
- I. Did - can you recall any men who struck you as being particularly able?
- N. The best speakers in my day in the State Council I should say were Mr. Bandaranaike and Mr. Ponnambalam. But there were many others as well who were - who were quite good.
- I. What was your conception of your role as Legal Secretary? I mean did you think that you were a policeman?
- N. No, not exactly. You've got to remember that we three Officers-of-State were also members of the Executive Council,<sup>1</sup> which was a kind of cabinet and which was presided over by a

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1. He means the Board of Ministers (which corresponded to the Executive Council of Crown Colony days).

Ceylonese, Mr. Senanayake in my day. And the Chief Secretary was the Vice-Chairman. And they sat opposite each other and the rest of us sat round the table.

I. As far as I know relations in your time were very good unlike in the early 1930's?

N. Oh, yes, they were very good.

I. Did Sir Robert Drayton and D.S. Senanayake get on well?

N. They did. At one time they were very close. I think later on they rather drifted apart.

I. Was that over the Barnes case?

N. Over which one?

I. Barnes - Barnes case, a small matter I think really.

N. It may have been. The meetings of the Executive Council were sometimes very heated and I found that there was a tendency for everyone to want to speak at once. And, in fact, if you didn't shout up quickly you never got your point of view in at all. But of course we had a war atmosphere and besides the Executive Council we had this weekly meeting of the Ceylon War Council, which was a body quite unknown to the Constitution but was merely created by Sir Geoffrey Layton.

I. Yes, I see. Would you say that this Board of Ministers was cooperative - I mean, were they cooperating in the war?

N. They were cooperating very much so far as the prosecution of the war was concerned. And I think that the Officers-of-State, particularly Sir Robert Drayton and myself, we were cooperating with them on their political programme which we knew was designed to bring independence as soon after the war as possible.

I. You knew that?

N. They knew that and I think they trusted us. And they knew that we were trying to help them in every way.

I. I'm not too familiar with the sequence of events but as far as I can remember - oh, yes, there was this statement by the Colonial Office - I think that the Board of Ministers drew up a draft?

N. That's right.

I. And I presume you helped?

N. Yes, I did.<sup>1</sup> I helped with the - there was a statement, a kind of two year plan of the various stages which would reach towards independence.

I. And was Sir Ivor Jennings also consulted?

N. Well - yes. What happened was that we were - I was given the

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1. I was referring to the draft drawn up by the Board of Ministers sometime around 1943-1944 before the Soulbury Commission. But as the subsequent conversation reveals, Sir J.B. Nihill is referring to the draft drawn up after the Commission reported.

task of preparing a kind of interim constitution, a kind of half-way house.

- I. Who asked you to do that?
- N. The Secretary-of-State for the Colonies. And I did that with Sir Robert Drayton who was also a lawyer.
- I. Oh, yes, of course.
- N. Which was a great help from my point of view. And we had a series of meetings with Senanayake, and Sir Ivor Jennings was really Mr. Senanayake's legal advisor. And we used to meet almost continuously at one time, arguing out various articles of the Constitution. And of course Sir Ivor Jennings did a - was a very brilliant constitutionalist and he produced a draft and I produced a draft and we compromised over the wording and that kind of thing. And then eventually I came to London with Sir Oliver Goonetilleke to get the British Government to support the Ceylon draft.
- I. While you were drafting this were you aware of the fact that D.S. Senanayake and others really intended later on to ask more than (?) ...?
- N. We had a pretty good idea of that. But of course I - I left in 1946 - in the autumn of 1946, just before the next big step forward.
- I. Now, they had this draft and then suddenly they found the Colonial Office sending a commission and there was a great amount of resentment at this in Ceylon.
- N. Well, now - which? I mean, this ...
- I. 1943.
- N. Are you talking about the Soulbury Commission?
- I. Yes. Didn't the ministers feel that it was not called for? Didn't they feel that this ...?
- N. They may have done but I don't - I think the Soulbury Commission was accepted. I mean, everybody gave evidence before it and so on. Because the Soulbury Commission really preceeded ...
- I. Independence?
- N. ... my draft. What I call - or the Jennings Draft.
- I. Oh, I see. Preceeded?
- N. It preceeded it. It was a result of the Soulbury Commission that we were instructed to go ahead and produce a draft constitution.
- I. Yes. Well, if I could go back to the time before the Soulbury Commission?
- N. Yes, yes.
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- I. In 1943 the British authorities promised virtual independence after the war and they asked the ministers to draw up something on certain lines within certain conditions. And the ministers drew this draft up.
- N. Yes.
- I. And thought that London would examine this. But London instead of doing so sent the Commission to consult the minority interests.
- N. Yes, that is so.
- I. And there was ...
- N. That's quite correct.
- I. There was a feeling that they were going back on their word.
- N. There may have been a little bit. But, then, I think it was at the end of the Soulbury Commission that the Colonial Office said, 'Well, we - we will go ahead and if we can produce an agreed draft it can be brought in at once even before the end of the war'. Isn't that the position?
- I. Well, the war had ended, I think, by then. I know I'm going into some detail here but according to what Sir Ivor Jennings has written the Ceylon Government surprised the people here because on receiving the Soulbury Commission/<sup>report</sup> and agreeing to it, before they could even draw their breath the Ceylon Government had already plumped a Constitution in front of them - a draft.
- N. Yes.
- I. Because they had been anticipating this and I think this must be the draft ...
- N. That, I think, is the Jennings draft, yes.
- I. ... which you had been working on.
- N. That's right. Yes.
- I. What sort of man did you find Sir Robert Drayton?
- N. Sir Robert Drayton was a man who had a very good mind. I don't think he was a very good administrator.
- I. He doesn't seem to have gone down well with the Civil Servants?
- N. No. Because you've got to recollect that he was a legal man who was appointed to a post which is usually held by an administrative officer. And that caused a great deal of, what you might call, trade union jealousy.
- I. I was wondering whether it was only that and whether he was not - not an affable sort?
- N. I wouldn't call him - well, if you got to know him he was very affable. But he perhaps at first sight may not have seemed very affable.
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- I. Did he have a sort of stern exterior?
- N. He was inclined to be satirical.
- I. Oh, I see.
- N. And he didn't suffer fools gladly. But he was very shrewd and he had a political sense which the average administrative officer hasn't got.
- I. If I may ask something regarding personalities, I want to clear up a point. Because there seems to be an impression that Layton sacked Wodeman whereas it might - Wodeman - and got Drayton to be ...
- N. I think that is true. I wasn't in the - in the colony at the time. I was on leave.
- I. Oh, I see.
- N. So I can't be quite sure. But the story I heard was that Layton rang up Wodeman one morning and Wodeman wasn't very forthcoming and said, 'Well, sir, that'll be very difficult to do that', or something. And Layton lost his temper and said, 'Well, if you find it difficult you'd better go home'.
- I. Oh, I see.
- N. Something of that kind. But, as I say, I wouldn't - that is only what I was told later on. It may or may not be factual.
- I. Layton was rather a bluff sort, wasn't he?
- N. He was, yes, very much so. He had a quarter deck manner but was extremely genial behind it. And I think he - I think all the Ceylonese politicians liked him.
- I. Oh. Well, that's very interesting. They did get on with him, did they?
- N. They got on extremely well with him.
- I. Was he informal?
- N. He was very informal and they liked that. And they were always amused by him at the meetings of the War Council. Because every week he used to go round the various ministers and ask them to report on what they'd done during the week. And the kind of way he used to do it: he used to ask Mr. Kotalawela something and Mr. Kotawela would say, 'Well, sir, I haven't had very much progress with that because some particular official is putting difficulties in the way'. And then Layton said, 'Well, have him up and give him six on the backside'. And then all the other people used to laugh at that.
- I. Yes, I see. What sort of brain did he have? Average or above average?
-

- N. Well, he certainly wasn't an intellectual. But, I think, there again, I think he was helped in the background by ...
- I. Caldecott?
- N. By Caldecott. Who, I think, was one of the best Governors I've served under.
- I. Oh, yes. In what way?
- N. Well, I think under those difficult circumstances, where he had a sophisticated lot of Ceylonese ministers to deal with on the one hand and a rather excitable naval officer on the other, I think the way in which he kept - kept the car on the rails during those difficult years was magnificent.
- I. Did he have a keen intellect? I have read something written by him and he seems quite witty and ...
- N. I don't say that he had a very great intellect but I think that as Colonial Governors go he was well above the average. And in fact I don't think that Sir Andrew Caldecott ever - ever got quite enough credit for what he did.
- I. For what he did. Mmm. What about Moore, how did he strike you?
- N. Well, I don't like saying things about people because - I don't know whether Moore is still alive?
- I. He has died about two years ago.
- N. I think he died about two years ago. I would have put Moore down as a competent Civil Servant but nothing more.
- I. Oh, its very interesting to know that you rate Caldecott much higher than Moore, because Moore seems to have got more of the credit than ...
- N. He got more credit, yes. But I would have put Caldecott higher.
- I. And he [Caldecott] was a sick man too which is a ...
- N. Yes.
- I. Did you know him at all in Hong Kong or was that after you ...?
- N. No, I didn't know him in Hong Kong. I'd gone before he got there.
- I. What about the things they say about D.S., do you ...?
- N. Who?
- I. About D.S. Senanayake?
- N. That's Dudley ...
- I. No ...
- N. Wait a minute. Where's the ...?
- INTERRUPTION
- N. Senanayake in my day was Chairman of the Council of Ministers, and I had a very high opinion of him.
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- I. Did you feel that he was able to control the ministers? As Chairman? Of course he was not Prime Minister, I mean, in the Constitution.
- N. No. I think, within reason, yes. Bandaranaike was the - probably his chief difficulty.
- I. Oh, [among] the ministers?
- N. Yes. Bandaranaike had a very strong personality.
- I. Did you ever feel that Bandaranaike was unreasonable?
- N. Yes, I think at times I probably did.
- I. Because if I may be pretty direct I have - I suspect that he had something like megalomania in - you know ...
- N. A little bit of that type, yes.
- I. Would you say that old D.S. had lots of common sense?
- N. Yes, plenty of it.
- I. Because many people tend to decry him to an extent because he didn't get very far educationally.
- N. Yes.
- I. But on the other hand one could perhaps say he was quite a practical man?
- N. Yes, he had the kind of attribute that you expect from a farmer, from a good farmer.
- I. Would it be correct to say that D.S. and O.E. Goonetilleke were very much of a team? I mean ...
- N. D.S. and who?
- I. Sir O.E. Goonetilleke.
- N. Sir Oliver Goonetilleke. Well, they were very close to each other.
- I. And would you say that throughout it was D.S. who was the leader? I mean he had the hands on the helm more or less? This is just an impression. I ...
- N. Yes. Of course Sir Oliver Goonetilleke was a first-class administrator and a first-class negotiator. That was his strong point.
- I. You think he had a great influence over here, when he was sent to [London]?
- N. Yes, he certainly did. I've never seen a man who could terrify Whitehall quicker than Goonetilleke.
- I. Oh! He really terrified them?
- N. I think he did, very often.
- I. In what sense and what way?
- N. Because he - he was extremely good in argument. He had a pleasant personality as well, but he was able to give the
-

impression of great strength at the same time.

- I. Oh, I see. What was the line they were pushing when arguing for full independence?
- N. When what?
- I. When they were arguing for full independence?
- N. Well, I think it was mainly that they were completely fitted for it.
- I. Did they emphasise the fact that they had cooperated during the war?
- N. Yes, they did.
- I. What surprised me was that after this Soulbury report when D.S. Senanayake came to London and want- and, as planned, asked for full independence they, well, hedged and in the end did not give it then though they gave it one - well, two years later.
- N. Later. Yes.
- I. I was wondering what factors counted in their refusal?
- N. I think that - I think to some extent they were - the - just as in India you've got the division between the Hindus and the Moslems, I think that what was worrying the British Government over here was the ...
- I. The communal ...
- N. ... communal - possible communal strife between the Sinhalese and the Tamils.
- I. But - well, the point was that in 1948 the same arguments for and against applied and - as in 1945, '46. And so in fact they had changed their attitude; at least, at one stage they refused full independence and within two years they'd agreed to it.
- N. Yes, there'd been a change of Government. We had a Labour Government. I don't know whether that had much to do with it.
- I. The Labour Government had already ...
- N. In '45.
- I. Had already come in when Senanayake made ...
- N. Yes, yes, the first time, yes.
- I. There was a change of men. Creech-Jones replaced Hall.
- N. Yes, that's right. Oh, yes, Creech-Jones. Yes, that's right.
- I. What about these Leftist inspired strikes, they didn't have any bearing on the situation? Just as you left Ceylon, I think.
- N. Yes. I don't really know because once I'd left Ceylon and gone to Africa, and become Chief Justice in Kenya, I really lost all contact with Ceylon.
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- I. What did you think of the Tamils' demand for 50-50?
- N. I think that was - I think that was putting the thing too high. I have a considerable sympathy with the Tamil community because as a judge I was always - my favourite circuit was Jaffna and I got to know them very well. But such influence as I had in my day was always directed to try to get a coalition between Ponnambalam and Senanayake in the State Council. I always felt that if independence had come in with a national coalition in which Ponnambalam would have been the minister, it would have been a very good start.
- I. Well, as a matter of fact, I think Ponnambalam did become a minister.
- N. I think he did for a short time but I don't think it worked and I hoped it will.
- I. What about Bandaranaike? I know he was an able speaker but did you feel that he was very communal-minded?
- N. I think he knew that his power rested on, what they call, political Buddhism.
- I. Mmm. And while an able speaker, would you say that his ideas were practical and was he an able man?
- N. He certainly was an able man, there's no doubt about that.
- I. And Sir John, how did he strike you?
- N. Sir who?
- I. Sir John Kotalawela.
- N. Well, he was very pleasant company. I don't think that - and he had a good deal of political ability.
- I. What about this Constitution itself - the Donoughmore Constitution - what did you think of this Executive Committee system?
- N. The what system?
- I. The Executive Committees - each man in charge of a Committee which ...
- N. Oh! Yes, I believe, that was based on the London County Council.
- I. Yes.
- N. It had some advantages and it had disadvantages. Its advantages was that it brought the backbencher into - into contact with the machinery of Government, which was very useful from an educative point of view.
- I. Oh, I see. That's from the training point of view. But didn't it give them sometimes the wrong sense of priorities? Didn't they ...?
- N. It made the work of the Executive Council much more difficult
-

because it rather cut across the theory of cabinet responsibility which we were - Drayton and I were anxious to see established.

I. Oh, you were, were you?

N. We were because we'd been brought up in a British system. But it was difficult there because each chairman, who was a minister, had to convince his Executive ... - his particular departmental Committee.

I. And did you ever feel that some of these chairmen had no control at all over their Committees?

N. I think - I think the - I think that from time to time that did happen.

I. You didn't attend any committee meeting?

N. No. Oh, no.

I. It was a very interesting experiment of course. What about universal franchise itself?

N. Well, that worked very much better than one might have anticipated, I think. Considering that when it started a large majority of the voters were illiterate.

I. Oh, yes, one final question. What were your impressions on the Ceylon Civil Service, as a service?

N. Oh, it was a pretty high standard.

I. I was wondering whether you felt that many officers were too conservative or - and, well, not conservative in the political sense but rather orthodox and tended to move in fixed grooves?

N. Yes, but that - I think applies to every Civil Service.

I. Mmm.

N. Well, that's about got it.

I. Yes.

END OF INTERVIEW