

THE VICTORIAN ROYAL COMMISSION
ON COMMUNISM, 1949-50:

A study of anti-Communism in Australia

by

Vicky Rastrick

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This thesis is my own work, and all
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ABBREVIATIONS

The following abbreviations have been used in the text.

<u>A.C.P.</u>	Australian Communist Party.
<u>A.C.T.U.</u>	Australian Council of Trade Unions.
<u>A.L.P.</u>	Australian Labour Party.
<u>A.S.H.</u>	Australia-Soviet House.
<u>A.S.I.O.</u>	Australian Security Intelligence Organisation.
<u>B.W.I.U.</u>	Builders' Workers' Industrial Union.
<u>C.C.L.</u>	Council for Civil Liberties.
<u>C.P.A.</u>	Communist Party of Australia.
<u>C.S.I.R.O.</u>	Commonwealth Scientific and Industrial Research Organisation.
<u>F.E.D.F.A.</u>	Federated Engine-Drivers' and Firemen's Association.
<u>F.I.A.</u>	Federated Ironworkers' Association.
<u>L.C.P.</u>	Liberal and Country Party (Victoria).
<u>R.C.T.</u>	Royal Commission transcript.
<u>R.S.L.</u>	Returned Services League of Australia.
<u>S.E.C.</u>	State Electricity Commission of Victoria.

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INTRODUCTION : ANTI-COMMUNISM IN AUSTRALIA 1945-1949

For the greater part of its history, the Communist Party of Australia has been a numerically tiny and politically ineffective organisation, isolated from the Labour Party by mutual animosity, and possessing only marginal influence in the Labour movement as a whole. Non-Labour parliamentarians seemed able to ignore these facts with impunity in their habitual utilisation of the Communist bogey at every Federal Election after 1925. But there was a period of years in the 1940's when their public tirade on the dangers posed by the Communist Party bore a much closer relation than usual to the realities of Communist influence in Australian politics; a period when the Party itself seriously anticipated the advent of revolution in Australia within the space of a decade. In the light of the present status of the C.P.A., it is difficult to imagine that in the mid-1940's it had more than 22 thousand members, and financial resources sufficient for the purchase of Marx House in Sydney at a sum of £30,500; that Communists held executive control of most of the main transport, mining and heavy industry trade unions, and, with their sympathisers, a majority at the 1945 A.C.T.U. Congress; and that they were the guiding force behind a variety of prospering 'progressive' community organisations.¹

The Party took advantage of post-Depression working-class militancy to make important advances in the unions in the late 1930's, but the upward swing in its fortunes was not consolidated until after Hitler's invasion of the Soviet Union. In 1943 the Party, newly released from a two-year ban imposed by the Menzies-Fadden Government, discovered that its connection with the Russian 'gallant ally' and its adoption of a policy of whole-hearted support for the Australian war-effort, brought a wave of public approbation.

1. My information on the position of the Communist Party 1945-1949 throughout this introduction relies heavily on the work of John Playford, Doctrinal and Strategic Problems of the Communist Party of Australia 1945-62, (P.H.D. thesis, Australian National University), and of Alastair Davidson, The Communist Party of Australia (Stanford, 1969).

Its recruiting rate soared with the new-found respectability, as did its success in joining with 'small l' liberals and the Left Wing of the A.L.P. in 'united front' activities outside the Party. For the first time, Communists began to permeate the community at large. In the unions additional gains were made, the Communist officials using their position to encourage industrial production for war purposes and to discourage strikes. The Party's revolutionary programme, already much softened after the 1935 Comintern directive for a 'Peoples' Front' against war and fascism, was further modified to meet the changed circumstances arising from the fact that the Soviet Union was now an ally of Western Capitalist powers, and from the influx into the Party's ranks of considerable numbers of middle-class intellectuals unfitted to accept the rigours of a doctrinaire organisation. In 1944 the C.P.A. changed its name to the Australian Communist Party to emphasise that it proposed a nationalist approach to socialism.

This high-tide of popularity ebbed quickly with the break-down in Soviet-Western relations in 1946. Many new recruits, who had joined the Party largely because of their admiration for the Soviet stand against the German armies, allowed their membership to lapse; others, objecting to the re-introduction of 'democratic centralism' after the flexible system of the war-time Party, added to the exodus. The general public, prompted by an increasingly anti-Communist news media, began to absorb the implications of the developing Cold War. Liberal-minded citizens severed their connections with Communists in the front organisations, while in non-Communist bodies such as the Returned Servicemen's League, there was established a practice of exposure and expulsion of Communists which later became fashionable throughout the community. By 1947 the A.C.P. was losing ground in all spheres except the trade unions, where rank-and-file recognition of the successful leadership qualities of Communist officials enabled the latter to stave off, temporarily, a growing challenge from the infant Industrial Groups. The Party reacted to the Cold War situation with a reversion to doctrinaire revolutionism, and used its sole

but effective weapon - its hegemony in the unions - to strike a blow at Russia's opponents.

In 1947 Cominform formally declared the end of an era of Communist accommodation with the forces of social reformism: a final, bitter confrontation with Capitalism was the order of the day. The A.C.P., in a mood of revolutionary fervour and optimism resulting from the rapid strides it had made in the latter years of the war, probably believed that one last hearty shake would bring the edifice of Capitalist society tumbling down. Moreover, by the late 1940's Communists were feeling the pressure of the anti-Communist offensive: the fear that their newly-won advantage might slip from their grasp added an element of urgency, if not desperation, to their onslaught. Thus the Party embarked upon a policy of 'adventurism', initiating a series of major strikes apparently motivated more by political considerations than genuine industrial grievances.

The effectiveness of these strikes was ensured by Australia's economy of shortages.² The public, smarting under inflated prices and deprived of vital consumer goods, were easily convinced that their hardships were engineered by the Communist Party in its effort to retard the industrial potential of the Capitalist system. The seven week long Coal Strike by the Communist-led Miners' Federation in 1949, which cut off supplies of fuel and light in the middle of a bad winter, which closed down sections of industry and put thousands out of work, instanced the rude awakening of those who still needed to be persuaded that the Party was committed to a deliberate scheme to ruin Australia's chances for prosperity and affluence. Who could doubt it, when the Federal Labour Government, known for so long to be the stooge of the Communist union bosses, itself declared in a press advertisement that the Coal Strike represented an attempt by the Communist miners' leaders to 'climb to power over the ruins of industrial and social Australia.'³

2. See L.F. Crisp, Ben Chifley, (Melbourne, 1961) pp. 354-355.

3. *Herald*, 2 July 1949.

The Party's utilisation of its industrial power for political ends was for many people evidence that for the first time it possessed the means to put into effect its revolutionary aims. The situation took on even more sinister under-tones in the light of the international scene. A drastic *volte-face* in the C.P.A.'s attitude to the war in both 1939 and 1941 had amply demonstrated its subservience to the dictates of the Soviet Union - a country with which Australia, by 1948, was on a virtual war footing, at least according to the public statements of Federal Opposition Leader R.G. Menzies. In the Report of the 1946 Canadian Royal Commission on Espionage, the Commissioners had expressed confidence in the evidence of Soviet defector Gouzenko that Cominform was actively engaged in transforming Communist Parties throughout the world into fifth-column agencies for Soviet Russia.⁴ The import of these findings was reinforced by the pronouncements of some leading American statesmen that Russia would not launch a frontal attack on the Western Democracies while it could rely on 'subversive infiltration' by local Communists, and the capture of under-developed countries through the fostering of nationalist uprisings.

The Australian anti-Communist press after 1947 saw Australia as lying directly in the path of a Soviet expansionist move in the Pacific. Journalist Denis Warner wrote a series of articles for the Melbourne *Herald* in mid-1949 claiming that the military victory of the Chinese Communists and the revolutionary situations in Malaya, Indonesia and Indo-China were all part of a Russian design for the Sovietisation of East Asia. Press editorials warned that what had happened in China 'could happen here', and Country Party leader Arthur Fadden, who himself could clearly see the 'red glow' of Asia from Australian shores, told his Party conference in May 1949:

... So carefully has the strategy been planned that Soviet Russia need not appear openly in the conflict until the final blow is struck. It is hoped eventually to Sovietise Australia by using local Communists through the method developed and perfected in China and now being put into practice along the South-East Asian peninsular.⁵

4. Report of the Canadian Royal Commission on Espionage (Ottawa, 1946) p. 33.

5. *Argus*, 20 May 1949.

The existence of an international Communist conspiracy seemed proven when a major London Dockers' strike 'coincided' with the Australian Coal Strike, and when Communist leaders in the principal Western nations simultaneously declared that in the event of a Capitalist war against the Soviet Union, their Parties would fight on the side of the Soviet forces.

A deluge of anti-Communist propoganda prompted an attack on the Australian Communist Party on two levels: public and governmental, or 'illegal' and legal. During the two years preceding the 1949 Federal Election, the public developed a feverish anxiety about the internal Communist problem. Anti-Labour forces persuaded many people that the Federal Government's policies for bank nationalisation and a national health scheme were part of a programme designed to 'soften up' the country for a Communist coup.⁶ Mr. Menzies traversed the nation after his return from Europe at the end of 1948 telling receptive public audiences that the A.C.P. was 'organised for high treason' and that it was attempting to weaken Australia industrially as a prelude to handing it over to Moscow.⁷ A Canberra political journal speculated in March 1948 that if the Federal Labour Government continued to avoid legislating against the Communists, 'there is certain to be a group of citizens who will take the law into its own hands as soon as the anti-Communist ferment reaches a ripe stage'.⁸

The Federal Government did adopt some stringent measures to curb Communist Party activities during 1949, but by that stage the public response to anti-Communist propoganda was in full swing, and governmental action merely underlined for the people the wisdom of their own efforts to make social and political outlaws of the Communists. Numerous organisations in the community expelled Communists from their ranks and adopted new constitutions to sanction expulsion on

6. See for example: Australian Country Party, Election Pamphlet 1949, The Red Twins - Communism, Socialism. This put the alternatives to Australian voters in the following terms: 'Is the Australian coat of arms to be our symbol under free enterprise, or is the kangaroo to be bludgeoned to death by the hammer, and the emu hacked to pieces by the sickle?

7. Age 18 January 1949; 3 May 1949.

8. *Inside Canberra* 18 March 1948.

political grounds. Others issued declarations denying that they operated under Communist influence, and avowing their loyalty to Australian 'democratic values.' Public accusation and denial became the medium through which was expressed a growing mood of intolerance, an aggressive assertion of Australianism. It was a mood expressed also in acts of violence. Visiting Communist evangelists were forcibly expelled from some country towns by local inhabitants imbued with an impulse to protect their fellow-men from exposure to alien political doctrine; Communist Party bookshops were the object of vandalism. Political meetings convened by the A.C.P. were frequently the scene of clashes between Communist speakers - defended by a 'vigilance corps' - and organised groups of disrupters among whom ex-servicemen predominated. On one such occasion at Bourke, Western Australia, in March 1949 a Communist was admitted to hospital with serious concussion.⁹ In the unions, the most important venue of the anti-Communist offensive, both Communists and Industrial Groupers showed an increasing tendency in the late 1940's to resort to tactics of physical force in an attempt to over-awe their opponents.

One contributor to the *Australian Quarterly* in June 1948 described the prevailing political atmosphere as 'a period of decay of democratic sentiment', and another declared that 'political intolerance is raging in Australia'.¹⁰ Melbourne's 'freedom of speech controversy' in the early months of 1949 showed their comments to be apt. During February and March numerous municipal councils, including the Melbourne City Council, voted to cancel bookings of their town halls by the director of Australia-Soviet House, John Rodgers, who intended to give a series of public lectures based on his impressions gained during a recent visit to the Soviet Union. The R.S.L., a major pressure group behind the moves to prevent the use of 'civic facilities for the spreading

9. See Playford, *op. cit.*, p. 137.

10. *Australian Quarterly*, vol. 20 no. 2 (June 1948):
 J. Anderson, 'The Politics of Proscription', p. 7 and
 N. Cowper, 'The Menace of Communism', p. 20.

of subversive propaganda', expelled two of its own officials for appearing on the public platform with Rodgers. A group of prominent Melbourne clergymen incurred the disapproval of the Victorian R.S.L.'s journal *Mufti* when they signed a letter to the Press drawing public attention to 'the denial of city halls to the representatives of citizens and organisations, organised disruptions of legitimate meetings, repeated failure of the police to prevent disruption of the meetings, and economic and social reprisals against individuals who have stood to affirm the right of free association and free speech'.¹¹

According to a report in the *Age*, when John Rodgers gave a lecture in the Victorian country town of Shepparton, he was opposed by a demonstration of 400 returned soldiers from R.S.L. branches over a wide area of the Goulburn valley, whose loud and continual heckling completely drowned out his speech.¹² Replying to criticism of this incident, an editorial in *Mufti* quoted the words of the President of the Shepparton R.S.L. branch: 'I was proud of the way in which my members behaved; there was not a single action that could have been taken exception to by the police. In fact, the police were highly complimentary about the part played by the R.S.L.'¹³ The President went on to explain the basis of R.S.L. opposition to Mr. Rodgers. 'The League has a ... regard for decency and public safety, and has striven to check speeches designed to form cells in this country to undermine its security and to lessen its ability to defend itself.'¹⁴

While political activists among the general public took the law into their own hands, the Federal Labour Government was prodded by a voracious Opposition campaign into adopting a number of anti-Communist measures. Official A.L.P. policy had been strongly opposed to Communism since the formative years of the C.P.A. During the late 1930's

11. *Argus*, 6 April 1949

12. *Age*, 24 March 1949

13. *Mufti*, May 1949.

14. *Ibid.*

when Australian Communists were attempting to penetrate the Labour Party and to make common cause with its members in the anti-war movement, and again in the immediate post-war years, the Federal A.L.P. distinguished itself by the passage of a series of resolutions aimed at preventing Labour men from sharing the public platform with Communists, and from participating in Communist front organisations. Left-wing A.L.P. members who defied these resolutions were expelled from their Party.¹⁵

But in the political environment of 1948-49, such a record was inadequate as proof of genuine anti-Communism: the Labour Government remained sensitive to charges from the Liberal and Country Parties that it was 'hamstrung' on the Communist issue because it relied on the goodwill of Communist-dominated trade unions for electoral support; that in fact it had no serious argument with Communism because its own Socialist Objective was so closely allied with Communist aims. With the advent of election year, the Government took the initiative. It organised a new intelligence body (the Australian Security Intelligence Organisation) and tightened security control over government research establishments. It gaoled Communist Party officials for 'seditious utterances' and Communist trade unionists for contempt of the Arbitration Court. As a measure against the possibility of Communist fraud in trade union elections, it amended the Arbitration Act to provide for an Arbitration Court-controlled ballot where an election was shown to have been manipulated. Branding the Coal Strike as a Communist plot to sabotage the nation, it introduced National Emergency legislation which operated to 'freeze' Miners' Union funds and to prevent other unions from using their funds to support the strike. Eight Communist union officials were gaoled for a period of weeks for contravening this law, and their unions

15. See L.F. Crisp, The Parliamentary Government of the Commonwealth of Australia, 2nd Edition (Adelaide 1954) p. 84; L.F. Crisp, The Australian Federal Labour Party 1901-1951 (London 1955) p. 178; Playford, *op. cit.*, pp. 12, 123.

were heavily fined. The emergency legislation enabled the Government to use the army as a strike-breaking force, and to authorise Security raids on Communist Party headquarters in which large numbers of documents were seized.¹⁶

The Federal Cabinet's drastic methods of crushing the Coal Strike - while producing bitter divisions within the Labour Party - certainly disproved allegations that the Communist Union bosses 'ran the Government'. But they did nothing to ease the pressure of the anti-Government campaign. The dramatic denunciations of Communist treachery in Government Press advertisements during the course of the strike were subsequently put to effective use by the Opposition as proof that Labour's efforts to deal with Communism fell far short of the correct solution to the problem. As the Australian Constitutional League pointed out to readers of the *Herald*,

..... If the supreme government of the Commonwealth is really serious in its denouncement of the "Reds" why hasn't it promptly used the adequate power at its disposal to protect the people from the menacing threat of which it warned them? The Government cannot be excused from such callous inaction in the face of its admission of the existence of a plot to destroy the nation¹⁷

In the latter part of the 1940's the increasing use of the Communist issue as a weapon to embarrass the Government had compelled Labour to engage in the argument over what kind of action should be taken against the Communist Party. It was a debate on methods only, for none of the opposing parties disputed the existence or nature of the problem. As early as 1946 the Country Party decided that the A.C.P. should be declared an illegal organisation, although it was not until 1948 that the Federal Liberal Party fell into line with this policy. Previously, Mr. Menzies' attitude had been closer to that of the Labour Party: in time of peace, Communism could be effectively dealt with

16. For a fuller account of the Labour Government's anti-Communist action, see G. Sawyer, Australian Federal Politics and Law 1929-1949, pp. 187 ff.; L.F. Crisp, Ben Chifley (Melbourne 1961) pp. 356 ff.

17. *Herald*, 30 July 1949.

'in the open'. But in March 1948 he thought that 'the time for tolerance [had] gone'¹⁸ and his Party altered its platform to provide for the banning of Communists in Australia. The Opposition Parties thus joined forces to attack the Labour Government for its allegedly unrealistic and dangerously unconcerned attitude to the Communist problem.

Labour politicians argued consistently throughout the period against the banning of Communism. Prime Minister Chifley told Parliament in March 1948: 'The Government does not propose to place a ban on any class of political philosophy or thought'¹⁹ and was thereafter damned by his anti-Communist opponents for having declared that Communism was 'just an ordinary political philosophy'. The basis of Labour's point of view was probably practical rather than libertarian. *News-Weekly*, putting the Industrial Grouper view, explained the effect of a ban thus: 'The Party would go underground, be publicly martyred, would win a lot of support from liberal humanitarians, and would flourish accordingly'.²⁰ Generally, Labour men argued that the experience of the 1940-42 ban had demonstrated the ineffectiveness of governmental repression; that Communists should be allowed to operate in the open where Security would find it easier to keep a check on their activities; and that the best method to contain the growth of Communism in the unions was for responsible, moderate unionists to vote Communist officials out of office. They claimed that ultimately Communism would be defeated only when the conditions in which it thrived - social and economic deprivation - were eliminated.

The demand for an official inquiry into Communist activities in Australia became a persistent feature of this debate, both inside and outside Parliament. The idea of a Commission on Communism seems to have been raised in the first

18. *Sun*, 13 March 1948

19. *C.P.D.*, vol. 196, 4 March 1948, p. 368

20. *News Weekly*, 2 July 1947. It should be noted that with the outbreak of the Korean War, *News Weekly* changed its policy to favour banning.

instance by extreme right-wing organisations like the League of Rights and the Sane Democracy League. Several of their pamphlets produced in 1946 and 1947 discussed the findings of the Canadian Royal Commission on Espionage, and suggested that a parallel inquiry in Australia would unearth evidence of an Australian section of an international Communist spy-ring. The writers exhibited a pre-occupation with the link between the Australian Association of Scientific Workers and a similar organisation in Canada, the chairman of which was implicated in the Canadian Commission's findings.²¹ In Federal Parliament at about the same time, two Opposition members (J.P. Abbot, Country Party, and A.G. Cameron, Liberal Party) voiced demands for a Royal Commission which they apparently envisaged as an instrument for ferretting out evidence of Communist espionage in government scientific establishments.

These early proposals for a Commission were thus based directly on the Canadian model, but between 1947 and 1949 individual members of the Federal and Victorian State Liberal Parties began to make regular requests in Parliament for the institution of an inquiry into Communism in its broader aspects. While still quoting the Canadian Royal Commission as an example, their pre-occupation widened to concern about a Communist security risk in the public service as a whole; and it was not merely the possibility of espionage, but the whole spectrum of Communist Party affairs which required investigation. In May 1947 Harold Holt, M.H.R., urged upon Prime Minister Chifley the need for a public inquiry into the 'objectives and activities' of the A.C.P.,²² and he remained the most unflinching proponent of the idea in Federal Parliament during the next two years. At

21. E.D. Butler, The Real Communist Menace: The Canadian Royal Commission's Report on Espionage and other Communist Activities in Canada (Melbourne 1947); Betrayal - A Short History of Australia's Fifth Column (Sane Democracy League, Sydney, 1946); Traitors in Canada! How Many Here? (Melbourne 1947).

22. C.P.D., vol. 191 (15 May 1947) pp. 2448-2452.

first the Liberals advocated a Royal Commission as part of their 'bring Communism into the open' policy, their assumption being that the influence of Communist ideology would collapse when 'seen through' by the people. Communism flourished only because the Party succeeded in disguising from the ordinary 'decent' Australian the reality of its aims. An inquiry was needed, not to furnish the Government or Security Service with facts about the A.C.P. - for these were already known to them - but to demonstrate to the public the anti-democratic, subversive and alien nature of the Party. Some Liberal politicians continued to press for a Royal Commission even after Menzies initiated his campaign to outlaw the A.C.P., apparently the purpose now being to use the inquiry to convince the electorate that Australian Communism ought to be banned.²³

Small sections of the Labour and Country Parties supported the demand for a Royal Commission on the Communist Party, but the official attitude of both was, for different reasons, against it. While the leader of the Country Party in N.S.W. proposed such an inquiry on two occasions in 1948,²⁴ the more usual stand of his colleagues was to argue that enough information was already available to warrant the banning of Communism, and that an inquiry would serve only to give additional publicity to the Communist cause. From a very different starting point, the A.L.P. reached the same conclusion. As a Labour Party official writing for the *Sydney Morning Herald* in October 1947 explained:

The Communist Party is not a mystery to the Labour Government or the Labour movement even if it is to the Liberal Party. A Royal Commission would not tell Labour anything it does not already know. [It] would be a complete waste of public funds and would very probably increase Communist influence rather than lessen it. The Communist Party lives on the publicity it gets from people who are supposed to oppose it, and a Royal Commission would undoubtedly be a free advertisement.²⁵

23. *Age*, 19 January 1949.

24. *Sydney Morning Herald*, 6 April 1948; 11 August 1948.

25. *Ibid*, 16 October 1947.

Chifley always argued that the Security Police had their finger securely on the pulse of the A.C.P., and that a Commission would interfere with their operations. Thus the request for a Communist inquiry from the 1948 annual conference of the A.L.P. Industrial Groups was turned down by the Federal Labour Government with equal firmness as were those requests which came from Liberal politicians.²⁶

The successful unearthing of a Russian-directed Communist spy-ring in Canada was a major inspiration behind the Australian demands to investigate Communism. Despite the assertions of Eric Butler, director of the League of Rights, that there had been a conspiracy by Australian newspapers to suppress the findings of the Canadian inquiry,²⁷ the event did receive considerable Press coverage at the time, and afterwards politicians never tired of quoting the Commissioners' conclusions during Parliamentary debates on the Communist issue. The United States' version of a public inquiry into Communism was given far less attention by Australian proponents of the idea. This might be explained partly in terms of the inapplicability of the Congressional Investigation to the Australian political system, and partly because by the late 1940's the un-American Activities Committee had been discredited - even in the eyes of the Australian anti-Communist Press - by its witch-hunting techniques.²⁸

Leaving aside the fact that the Canadian Commission had demonstrated that this form of investigation could be highly effective in discovering and publicising evidence of Communist misdeeds, it remains to be pointed out that in the 1940's in Australia, the Royal Commission had become a very common device for dealing with controversial public issues.

26. *Ibid*, 5 April 1948.

27. Butler, *op. cit.*, pp. 1, 13.

28. See Chap. 1, p. 38.

In the State of Victoria particularly, Commissions frequently had a strong political flavour:²⁹ They seemed to be regarded as a general panacea, both for Opposition politicians seeking to pressurise their Government, and for governing Parties seeking to ease themselves out of delicate political situations. Since the demand for a public inquiry was virtually an automatic response to any serious issue in political life, it is hardly surprising that it featured so prominently in the Communism debate.

For more than three years, the idea of a Royal Commission on Communism was bandied about by an enormous variety of anti-Communist groups in Australia. But it was in Melbourne, the 'ideological' city, home of the 'Red University', headquarters of almost one-third³⁰ of Australia's Communist population, and stronghold of the Roman Catholic 'Movement' and A.L.P. Industrial Groupers, that such an inquiry was finally appointed. It was the creation of a Liberal Government in a State where Communists were numerically and industrially more powerful than anywhere else in Australia, with the possible exception of New South Wales. But N.S.W. was governed by the Labour Party. The only other State Governments in 1949 whose Party favoured the use of a public investigation as an anti-Communist measure were those of

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29. D.H. Borchardt, Checklist of Royal Commissions, Select Committees of Parliament and Boards of Inquiry, Part III, Victoria 1856-1960. (Sydney, 1970). Introduction x-xii. See also the *Australian Law Journal*, vol. 28 no. 5 (September, 1954) pp. 229-30. The political nature of Royal Commissions was reflected in the Victorian Judiciary's traditional opposition to the practice of government's appointing Judges to conduct them. This tradition dated back to the so-called 'Irvine Memorandum' of 1923, when the Victorian Chief Justice (Sir William Irvine) in a letter to the Premier of that State expressed the view that Judges should not be commissioned to act in inquiries whose subjects were likely to attract public or Parliamentary controversy, as the effect would be to lower the standing of the Judiciary in the eyes of the community. For a discussion of this whole issue, see the *Australian Law Journal*, vol. 29 no. 4 (August, 1955) pp. 253-272.
30. Report, Victorian Royal Commission on the Communist Party, p. 43.

South and Western Australia, and in these States Communist trade union influence was negligible. So Melbourne was to be the venue for Australia's first exercise in a public trial of the Communist Party. Deep ideological divisions in the politically-conscious section of its community might lead one to predict that the trial was also to be Australia's first exercise in Communist witch-hunting.

CHAPTER ONE : THE APPOINTMENT OF A ROYAL COMMISSION

Those persons troubled by the Communist presence in the trade unions saw their fears materialise during the 1949 Easter weekend in Melbourne. Two events brought the issue into the headlines of the Australian Press at that time: the Victorian A.L.P. Easter Conference, and a series of newspaper articles which came to be known as the 'Sharpley exposures'. As Labour's delegates to the Conference converged upon the Trades Hall, billboards in Melbourne's streets proclaimed to the passers-by that they could read in the Saturday edition of the *Herald* the 'inside' story of the A.C.P. written by a recently defected top-ranking Party member. Perusal of the first of his seven articles revealed the ex-Communist to be Cecil Herbert Sharpley, until January 1949 a member of the Victorian State Executive of the A.C.P., and its *chargé d'affaires* in the unions. Sharpley's allegations of Communist-rigged union ballots and other nefarious Party practices gave the *Herald* Australia's 'most sensational Press scoop for years', at least according to *News Weekly*.¹ For many months an increasingly large amount of space had been devoted in *Herald* editorial comment to the industrial aspect of Communist Party activities, and in particular, to applauding the Industrial Groupers' point of view on the matter. Sharpley, with his specialised knowledge of the Party's presence in the unions, gave much credible support to the *Herald's* campaign; indeed, its Management could hardly have found a more appropriate and saleable source of information had it handpicked the defector itself.

I

By Easter, Sharpley had been under contract to write his story for approximately two months.² Probably seeing an

1. *News Weekly*, 27 April 1949.

2. C.H. Sharpley, The Great Delusion, (London 1952), p. 122. See also Royal Commission transcript, p. 1195.

opportunity to enhance the articles' public impact, the *Herald* timed their release to coincide with proceedings of the A.L.P. Conference, which proved to be, like its predecessor of 1948, a forum for bitter allegations of Communist-inspired ballot rigging in the unions and of Communist fellow-travelling in the A.L.P. The twin issues of ballot rigging and the influence of the A.C.P. in the trade union movement dominated the 1949 proceedings more than at any previous Conference; and out of the clamour of accusation and recrimination there came a resolution calling upon the Federal Government to legislate for 'clean' union ballots. But nothing which emerged from the Conference was in itself especially startling to the public: the A.L.P. had been squabbling about these same matters for years. What transformed the events of that Easter into the material of political crisis was the fact that the allegations levelled against Communist unionists by Grouper delegates to the Conference were simultaneously given precise confirmation by Sharpley's articles. And the daily Press, in according enormous prominence to the affair, naturally pointed out that Sharpley was in a position to know the truth.

Hard upon the Press furore produced by these revelations of Communist Party malpractice came the announcement (on Easter Monday, April 18) that the Victorian Government intended to appoint a Royal Commission on Communism. Premier Hollway had almost certainly known of the forthcoming *Herald* articles when he had, the previous week, responded sympathetically to the request from a Liberal backbencher for such an inquiry. In the Legislative Assembly on the evening of April 13, Mr. E.R. Reynolds (L.C.P., Toorak), a practicing barrister who frequently conducted legal work for the *Herald's* solicitor, told the House he believed that 'evidence exists which can be collected and made available for such a tribunal, which will tend to show that the [Communist] activities to which I refer are disruptive, sinister and probably seditious'. In reply Mr. Hollway expressed the hope that 'as a result of inquiries already in course', sufficient evidence would be unearthed upon

Today's Armstrong

"STANDBY TO WINDWARD"



which to base a Commission.³ If this did not immediately appear to be a 'set-up' exchange, it must surely have done so the following afternoon, when the *Herald* notified its readers that the first instalment of an exposure of Communism coming 'from the inner councils' of the A.C.P. would be published on Easter Saturday, April 16.⁴

The Press forecast that the appointment of a Royal Commission would be speedy; but Hollway's determination that the inquiry should be placed 'on the highest and very best judicial plane' through the acquisition of a Supreme Court Judge as Commissioner, occasioned considerable delay.⁵ When approached by the Victorian Attorney-General, Chief Justice Sir Edmund Herring drew attention to the Victorian Judiciary's long-standing tradition of opposition to the participation of its members in 'political' inquiries. Sir Edmund expressed his reluctance to make a Judge available.⁶ Candidates were sought unsuccessfully in other States, the choice probably being limited to those under Liberal Governments, due to Labour's official policy of opposition to the appointment of the Royal Commission.⁷ The alternative of a County Court Judge was apparently rejected by the Victorian Cabinet as inadequate for its purpose.⁸

The Government also hesitated over the framing of the Commission's terms of reference because libel writs had been taken out in the Supreme Court by several members of

3. *V.P.D.*, vol. 229, 13 April 1949, p. 432.

4. *Herald*, 14 April 1949. Hollway had at least one source of information about the affairs of the *Herald* and *Weekly Times Ltd.* in his friendship with J.F. Williams, Editor-in-Chief of the *Herald*. Katherine West in *Power in the Liberal Party*, (Melbourne 1965). p. 19, describes Williams as one of Hollway's 'boon companions'.

5. *Argus*, 21 April 1949.

6. *V.P.D.*, vol. 229, 11 May 1949, p. 937.

7. Western Australia and Tasmania were the only other Liberal States at the time.

8. *Argus*, 3 May 1949.

the Communist Party against Sharpley and the Herald and Weekly Times Ltd.⁹ There was considerable speculation by the Press as to the possibility that these would make the all-embracing inquiry desired by the Premier *sub-judice*. Indeed, Attorney-General T.D. Oldham recommended to Cabinet on May 2 that the inquiry should be limited to specific charges against the Communist Party in order to avoid trespassing on the scope of any Supreme Court hearings that might have eventuated. But his report was over-ruled. Mr. Hollway's Ministers voted to legislate to 'overcome the technicalities put forward to prevent the Commission'.¹⁰ Thus for the first time in the history of Victoria a Royal Commission was set up under Act of Parliament.

The Act provided for the appointment of a Victorian Supreme Court Judge 'as sole Commissioner', with strengthened powers for combatting contempt; and set out the inquiry's terms of reference, giving Parliamentary sanction to their extraordinary width.¹¹ The Legislative Assembly passed the Bill for the Commission with one amendment (an addition to the terms of reference) on May 11, and the Council followed suit on May 18. Finally, on May 19 the Act was proclaimed, accompanied by the announcement that Sir Charles Lowe had undertaken to conduct the inquiry.

9. Writs were taken out in the Victorian Supreme Court on 29 April 1949 claiming unspecified damages for libel. Sharpley's allegations were to provide the framework for the terms of reference of the Commission, and thus the possibility was created that the Commission would be inquiring into similar matters and taking similar evidence to that which might be simultaneously presented to the Supreme Court in proceedings relating to the writs. It is standard legal practice in this eventuality for the decision as to whether a Commission should temporarily suspend its hearings to be left to the discretion of the Commissioner.

In the event, the libel writs were withdrawn before they were considered by the Court - a fact which seemed to confirm the opinion shared by many anti-Communists that the writs had been simply an attempt to obstruct the the Royal Commission by restricting the scope of its inquiry.

10. *Age*, 3 May 1949; Press statement by the Premier, *Argus*, 3 May 1949.

11. Royal Commission (Communist Party) Act, 1949: Act of the Victorian Parliament, no. 5366. A more detailed outline of its provisions is given on pp. 50-52 of this chapter. SEE APPENDIX (A) FOR A REPRODUCTION OF THE ACT.

II

THE SHARPLEY STORY

Cecil Herbert Sharpley, the man largely responsible for this frantic political activity, was the son of an English clergyman, and a 'little brother' immigrant to Australia in 1928 at the age of twenty. A political education of Depression unemployment and a short spell in the Labour Party led Sharpley in 1935 into the C.P.A. During the period of war-time disruption he rose quite rapidly in the Party's ranks, gaining election in 1946 to the Victorian State Executive as head of its 'industrial' sub-committee, a position based on his quite extensive experience in the trade unions.¹² Although not widely known by the Victorian public as a Communist, he was prominent in union circles throughout the 1940's. In January 1949, after a period of disillusionment with Communism which he claims in his autobiography had its origins as far back as 1937,¹³ Sharpley secretly left the Party. His exit passed unremarked in the Communist Press, and most rank and file Party members did not learn of it until April when the *Herald* advertised the forthcoming Sharpley articles.¹⁴ The *Guardian* then responded with the statement that Sharpley had been expelled from the Party the previous January for 'theft, lying, drunkenness and gross immorality'.¹⁵

Soon after leaving the Party, Sharpley brought himself to the attention of the Chairman of the *Herald* and *Weekly Times Ltd.*, Sir Keith Murdoch, in a letter 'setting forth certain proposals' on the grounds that he possessed an

12. Sharpley had been secretary of the Communist fraction in the Federated Clerks Union in 1936; Assistant Secretary of the Victorian Munition Workers' Union in 1942; and later, Victorian Assistant Secretary of the Federated Ironworkers' Association. C.H. Sharpley, The Great Delusion, pp. 18, 32, 34.

13. *Ibid*, p. 24.

14. Interview, Rex Mortimer, Canberra 12 March 1971.

15. *Guardian*, 22 April 1949.

abundance of information which could prove to be of interest to the *Herald*.¹⁶ His former position in the Party was probably in itself sufficient bait for an anti-Communist newspaper. A *Herald* journalist was despatched forthwith to meet Sharpley 'at 8 p.m. beneath the second street-light west of the main pub in Shepparton', the Victorian country town where Sharpley had gone into hiding from his past comrades.¹⁷ In March 1949 Sharpley returned to Melbourne with a contract to write a series of articles for the *Herald* revealing the inside story of Communism as he knew it, with emphasis on union ballot-rigging and industrial disruption. He was promptly installed in an hotel at Brighton Beach with the same journalist, R. Gilmore, to help him write his story and an ex-Police Officer, also provided by the *Herald*, to act as bodyguard.¹⁸

Sharpley's autobiography paints a drama-laden picture of his sojourn at the hotel. 'I lived quietly under an assumed name, going out only after dark', behaviour made necessary, he explained, by the danger of physical attack from Communists, should they have discovered his whereabouts.¹⁹ Despite these adverse conditions, the combined efforts of Sharpley and Gilmore produced seven articles ready for publication by the Easter weekend. According to Gilmore, they were the result of his 'reworking' of Sharpley's drafts to add 'squirts of local colour' and to transform them into

16. Sharpley in cross-examination to Hill, R.C.T. 1195.

17. R. Gilmore to V. Rastrick, 20 May 1971.

18. Sharpley, *op. cit.*, p. 122.

19. *Ibid.* According to Sharpley, after the Royal Commission commenced sitting, 'the authorities ... took the view that [one police officer] was not enough, that the danger with which I was threatened was sufficiently serious to make necessary the mounting of a guard of four armed detectives. Thus I had a small army to protect me, two units of which slept in the same room with me with loaded revolvers. I was never permitted to be alone.' (The Great Delusion, p. 127). The only concrete instances of 'attack' however, other than threats in the Communist Press and slogans painted on buildings, were those quoted later by Sharpley in evidence at the Royal Commission: two occasions when he had been approached by Communists in the street and vocally abused. (R.C.T. 2650-1).

saleable journalese. The *Herald's* editorial policy apparently did not contribute any political slant to the articles. He states that 'the only directives that came to me from the Editor of the *Herald* were to minimise the possibility of factual error that might enable the A.C.P. to say "as he's wrong in this verifiable fact, how can you believe anything he writes?"'²⁰ Subsequently, *Herald* solicitor B.K. Donaldson checked the articles to safeguard against a possible libel challenge, and caused certain passages to be re-worded in a legally safer way. Much later, during the Royal Commission proceedings, the barrister in charge of the case against the Communist Party, R.R. Sholl, produced the original drafts of Sharpley's story, revealing that a number of references to the names of people had been, as he called it, 'toned down'.²¹ Sharpley himself, in one of his published articles, drew attention to this procedure. 'I have omitted many names and details', he wrote, 'but I could give them to a Royal Commission or other properly-constituted legal authority.'²²

The articles were written in a sensational style appropriate to Sharpley's role as Australia's first real Communist defector on the pattern of those produced by the

20. R. Gilmore to V. Rastrick, 24 June 1971. The 'inside story' of the *Herald's* dealings with Sharpley is given in C. Edwards, *The Editor Regrets* (Melbourne 1972), pp. 119-121. Edwards, who was assistant editor of the *Herald* at the time of Sharpley's defection, describes a 'cloak and dagger assignment' involving secret meetings with Sharpley and with the Managements of other major State newspapers in which the *Herald* wished to publish his 'memoirs'. The main problem, as indicated by Gilmore, was the potential libels they contained, and according to Edwards the chairman of directors of the *Sydney Sun* 'shied away in horror' when shown Sharpley's material. 'Too dangerous, was the verdict.' After a painstaking check on the factuality of the articles, the *Herald* made one serious slip in its publication of the first instalment on Easter Saturday. A photograph of Australian Building on the corner of Elizabeth Street and Flinders Lane outlined the wrong set of windows as those of the Communist Party headquarters. Edwards writes: 'During the afternoon, an agitated dress-maker rang to complain that the windows on the ninth floor, facing Flinders Lane, that we had identified as the Communist Party's were hers; customers would think her business was a Communist front. Too late, I remembered ... [that the A.C.P. offices] faced Elizabeth Street, not Flinders Lane.'

21. R.C.T. 3575.

22. C.H. Sharpley, *I was a Communist Leader*, (Melbourne 1949), p. 12.

Cold War in America. Grouped together later by the *Herald* as a booklet predictably entitled I Was a Communist Leader, they appeared in the Press under captions such as 'How Reds Call Industrial Tune', 'Strike Action and Ballot Swindles' and 'How Moscow Cracks the Whip'. Sharpley described his story in an introduction as one of 'perverted ideals, of dishonesty, of rigged union ballots, of moral and physical pressure on weak men'. He outlined a peculiar combination of ubiquitous Party power and personally weak leaders. He endowed every activity with a cloak and dagger aura, recounting the 'secret deliberations' of the Party Executive as it plotted revolution 'in the cold Party rooms high above Elizabeth Street'.²³

As requested by the *Herald* management, the bulk of the articles were devoted to Communist activities in the industrial sphere. Sharpley affirmed that most Australian strikes during the 1940's had been initiated and directed not by the unions but by the leaders of the Communist Party, and that in pursuing these strikes the Party did not aim to better working-class conditions but to 'create poverty, unemployment and discontent' from which it could profit politically. All its operations within the trade unions, he said, were aimed at retarding industrial production, weakening Australia's defences and lowering the worker's real wage - being part of a plan to aid and abet the interests of Soviet Russia in its world-wide conspiratorial war against the forces of Democracy. Ultimately, 'my comrades wanted to see social reform instituted through an Australian Soviet police state.'

Sharpley's detailed evidence concerning the Communist Party's attempts to tamper with ballots in several Victorian trade unions (notably the Builders' Workers' Industrial Union, the Blacksmiths' Society and the Federated Engine-Drivers' and Firemen's Association) was quite impressive.²⁴ Other allegations, while prefaced by very

23. *Ibid*, p. 2.

24. Sharpley alleged that the A.C.P. had contemplated or attempted rigging ballots (sometimes successfully) in the B.W.I.U., the Ironworkers' Union, Postal Workers' Union, Blacksmiths' Society, F.E.D.F.A., Amalgamated Engineering Union, Boiler-makers' Society and Waterside Workers' Federation.

damaging statements about the Party's underlying motives, had less substance. For instance, much emphasis was placed on the claim that Communists in certain key industrial establishments were organised to sabotage Australia's industrial and defence potential in the event of war with Russia. A 'handful' of Communists at the R.A.N. Dockyard at Williamstown had 'infected hundreds of ordinary decent Australians' (their fellow workers) and were thus instituting a go-slow policy in the building of the destroyer *Anzac*. The only fact offered as proof of the Communist presence in the Dockyard was that Sharpley himself obtained a job there for two weeks at the end of 1948, and left 'without the Navy knowing I was a Red'. Sharpley also described a Party plan to control the S.E.C. plant at Yallourn, from where 'we could turn out nearly every light in Melbourne'. The Communist sabotage in this case amounted to an unsuccessful attempt to get the Party's choice elected to the position of Victorian Secretary of the F.E.D.F.A., the major union at Yallourn.

In similar vein, Sharpley exposed some of the A.C.P.'s front organisations - the Eureka Youth League, Australia-Soviet House, and the New Housewives Association - and named leading Party members connected with these bodies. One article devoted a section to 'Party friends' and 'useful liberal-minded citizens' including an academic (Professor Woodruff, University of Melbourne) and two clergymen (Canon Maynard, St. Peter's Church, Eastern Hill, and the Rev. William Bottomley, Unitarian Church, Melbourne). In another article dealing with Moscow's control of the A.C.P., Sharpley claimed that the Party received its directives via Cominform publications, Moscow Radio, and direct orders to Australian Communist leaders on visits to the Soviet. One of the Party's alleged 'Moscow-dictated' policies was to aid revolutionary bandits in Malaya and Indonesia. Sharpley's only proofs that it was 'working towards a Red Asia' consisted of the fact that an A.C.P. Congress had adopted a resolution urging Malayan Communists to wage a revolutionary struggle against British imperialist interests, and that Communist-led unions had imposed a ban on the use of Australian ports by Dutch ships. A discrepancy between

Sharpley's actual information on the Party's activities, and the sinister interpretation he placed upon them, ran through all of the articles. Nevertheless in most cases the weakness tended to be obscured by a confident tone and fluent style, giving rise to the impression that Sharpley possessed extensive knowledge of the workings of the Party. To those readers already partially convinced of Communist treachery, his allegations must have seemed irrefutable. And of course Sharpley could always defend himself from the critics by pointing out that proof of the allegations could not be furnished within the confined scope of journalism.

With the publication of his articles, the *Herald* launched Sharpley into a brief career of public prominence. For his original seven articles, and several more which appeared in subsequent weeks, he was paid a sum of money which, as Mr. Justice Lowe later remarked, 'must have seemed to him munificent'.²⁵ The *Herald's* Chief-of-Staff interviewed Sharpley for a commercial radio broadcast which was transmitted to stations in most Australian states and filmed for a Movietone newsreel. His talents as a public speaker were sought for a variety of functions including the annual dinner of the Overseas League, a monthly luncheon of the Victorian Institute of Advertising, and even the Melbourne Wesley Church's 'Pleasant Sunday Afternoon Service'.²⁶ The public queued outside Melbourne's No. 1 High Court for his appearance as witness at the Royal Commission, and devoured articles such as *Truth's* front-page story on Mrs. Veronica Sharpley's maintenance case against her husband: 'The Private Life of the Sharpleys - Even His Wife Doesn't Know

25. Royal Commission Report, p. 7. In an editorial note in August 1949 the *Herald* claimed that total payments (not then finalised) would not exceed £1000. (*Herald* 5/8/49.) According to Sharpley, in the contract with the *Herald* the agreement was that he would be paid £10 for each of the seven articles. 'In October [1949] I was paid a very much larger sum because I had written additional articles for this newspaper, and because they considered them of a higher standard than they had earlier expected.' (The Great Delusion, p. 132).

26. *Herald*, 13 August 1949, and 6 June 1949; *Guardian*, 17 June 1949.

Ex-Red's Pay on Herald Stories'.²⁷ Sharpley apparently enjoyed his newly-found notoriety. In his autobiography he describes the 'violent rush of abuse' from the Communist Party: 'factory walls proclaimed my ill-fame; and those Melbourne citizens dashing to work of mornings in their trams might see my character pithily outlined on railway bridges'. Of the numerous invitations he received to speak in public he writes, 'It was all wonderful while it lasted, and I was happy and exhilarated in the feeling that I was being of use to mankind'.²⁸

POLITICAL limelight also brought Sharpley a considerable amount of adverse criticism, the most vociferous of which came from his erst-while comrades. Counter-attacking their 'renegade', the Communists asserted that Sharpley had left the Party not on a stand of political principle, but following his expulsion for various misdemeanours including the theft of £175 from Party funds, and also for leading a degenerate private life.²⁹ As a witness at the Royal Commission, Sharpley admitted that his record with the Party had been 'in bad standing', but his description of the manner of his departure (which the Communist lawyers did not challenge) would seem to indicate that his 'expulsion' was simply confirmation of what was already fact. The *Guardian* dismissed Sharpley's most serious charge against the Party thus: 'During the latter stages of his Party membership he on several occasions

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27. *Truth*, 30 April 1949. The Sharpleys were separated after about May 1948. Mrs. Sharpley, a member of the Communist Party, was represented in the case by A.C.P. lawyers E.F. Hill and E.A.H. Laurie. In the light of the Party's reaction to the setting up of the Royal Commission (as evidenced in *Guardian* articles and the initiation of the Supreme Court writs) it is probable that the event of the maintenance case in April 1949 was part of the Party's campaign to discredit Sharpley as a potential Royal Commission witness.
28. Sharpley, The Great Delusion, pp. 123-5.
29. *Guardian*, 22 April 1949. One incident quoted by the Communist Press as evidence of Sharpley's moral degeneration was his conviction by a Melbourne magistrate of an offence 'committed in particularly disgusting circumstances'. The offence, not described by the *Guardian*, was in fact nothing more serious than urination in a public place late at night.

proposed that union ballots be faked. These proposals were categorically rejected. Sharpley's attitude on this matter was one of the reasons for his expulsion'.³⁰ His articles were supposed to have been 'ghosted' by a *Herald* journalist, known to be an agent of the secret police, so as to accord with the *Herald's* most sensationalist anti-Communist line. 'Experience of Sharpley's latter period in the Communist Party reveals that he would do anything for money. He is now doing "anything" for Sir Keith Murdoch's money', said the *Guardian*.³¹ The image of Sharpley which all Communist publications sought to project was that of a turncoat, symbolised in cartoons by the figure of a rat with malicious eye and venomous tooth.

Nor was this type of comment confined to Sharpley's Communist opponents. In the House of Representatives, W.G. Turnbull (Liberal, Victoria) described him as a man who 'rats on his cobbers' and is paid to do so;³² and T.W. White (Liberal, Victoria) expressed the opinion that since the Communist Party was made up of 'dupes, knaves and traitors', Sharpley must fall 'into one category or another'.³³ But much of the anti-Communist opinion was pre-occupied with the idea that he might in reality still be a Communist. The Director of the Victorian League of Rights, Eric Butler, thought for instance that 'the most important aspect of ex-Communist Cecil Sharpley's recent series of articles on Communism is ... that Mr. Sharpley says that his Socialist views remain unmodified'.³⁴ The response of the Federal Minister for the Navy echoed a common anti-Communist suspicion that the proclaimed ex-Communist merely pretends to renounce his Party as a ruse to dupe his political enemies. In denying Sharpley's allegations about Communists at the Williamstown Dockyard, Mr. Riordan also took the opportunity

30. *Guardian*, 22 April 1949.

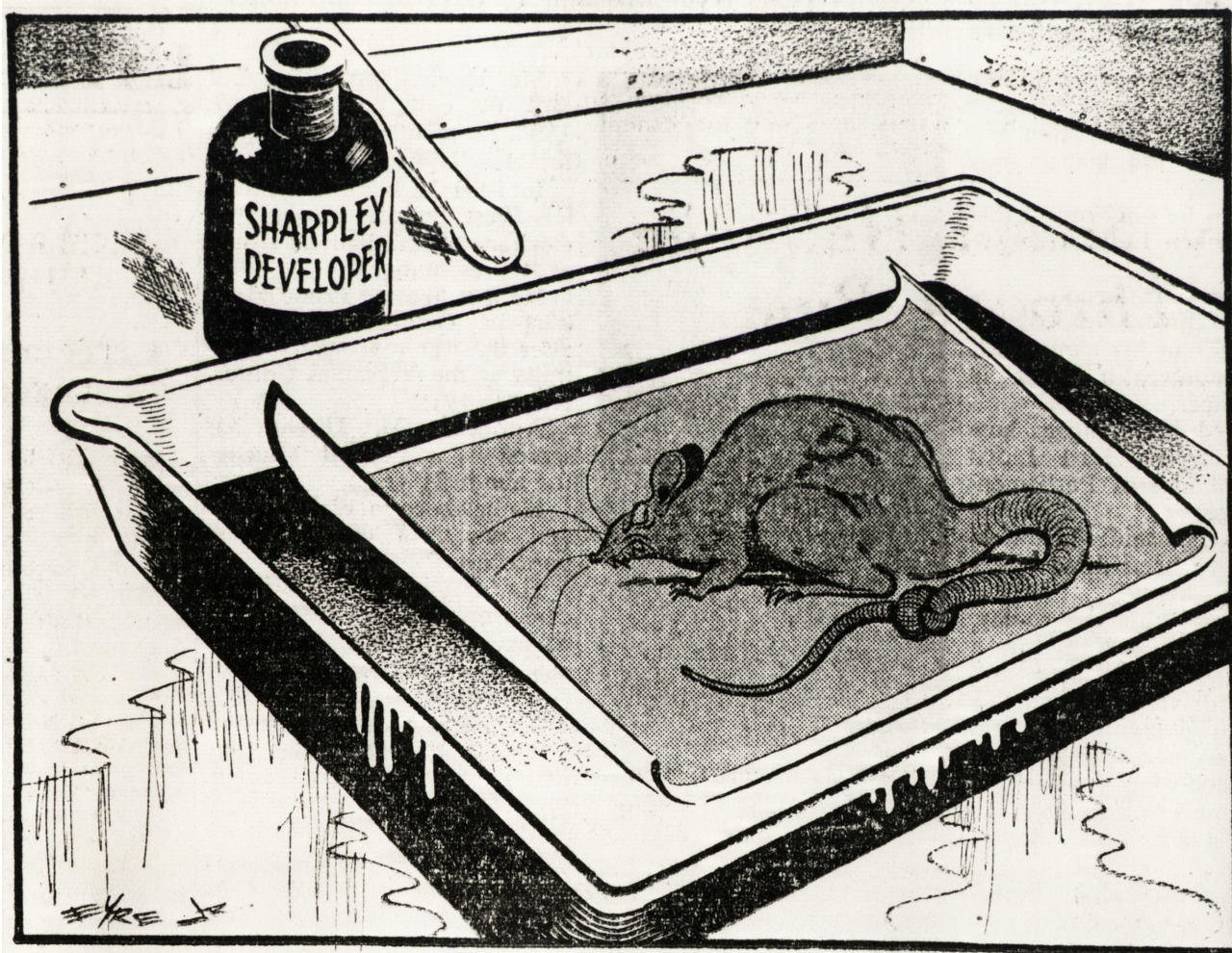
31. *Ibid.*

32. *C.P.D.* vol. 202, 26 May 1949, p. 223.

33. *C.P.D.* vol. 204, 23 September 1949, p. 559.

34. *Argus*, 3 May 1949.

PERFECT EXPOSURE



to equate Liberal political aims with those of the A.C.P. He told Federal Parliament:

A pertinent demonstration of the unholy alliance that exists between the Communists and the Opposition is provided by the publication in the Press of the articles supposed to have been written by an alleged ex-Communist named Sharpley ... Sharpley went to the Melbourne Herald as a Communist or self-confessed ex-Communist, first to support the attack of the Leader of the Opposition on the Government for its alleged failure to deal with the Communists ... and [second] to carry out an instruction from the Communist Party.³⁵

But neither critics in Parliament nor the daily Press seemed to carry their disapproval of Sharpley into their evaluation of the worth of his writings. The *Catholic Advocate* alone cast some doubts on the possible value of the articles because of Sharpley's Communist past; it concluded, however, that his personal character did not necessarily invalidate the 'first rate importance of his revelations in the public interest'.³⁶

Political commentators were eager to point out that Sharpley's articles said nothing that had not been said many times in preceding years by anti-Communists on the public platform. The *Advocate* recorded triumphantly that the information they contained 'has been publicised by Catholic leaders and the Catholic Press when newspapers like the *Herald* were still printing Communist-slanted news, and even lauding the "gallant Russian ally"'.³⁷ And Labour members in Federal Parliament claimed that 'any good Labour Party man' could have told the public what Sharpley had told them. Most commentators seemed to be in agreement, nevertheless, that Sharpley's story had real significance because it provided authoritative confirmation from within the Party itself of facts which until that time could always be dismissed as mere propaganda.

35. *C.P.D.*, vol. 202, 1 June 1949, p. 371.

Comments in Federal Parliament about Sharpley as a person (as distinct from the 'public service' of his articles) were almost without exception adverse. In the Victorian Parliament there were very few personal comments of any kind made about Sharpley, debate showing far more pre-occupation with the issue of the Royal Commission.

36. *Advocate*, 28 April 1949.

37. *Ibid.*

In addition, and just as importantly, the information had captured public attention through wide circulation in the news media.³⁸ Virtually all the discussion about the articles kept within the context of Communist activities in the trade unions, urging the pressing need for legislation to curb these. Pressmen and politicians were unanimous in their expectation that the articles would help to dispel the apathy of 'unthinking' unionists, and spur them on towards a more hardened opposition to the Reds.

The major impact of Sharpley's allegations (in conjunction with the similar but less precise revelations of the Victorian A.L.P. Conference) was felt on trade union politics. Sharpley heaped fresh fuel on the conflict which had smouldered between the Melbourne Trades Hall Council and the leadership of militant unions since the Essential Services dispute of the previous November. Industrial Groups found in Sharpley's articles additional substance for their attack on Communist union executives, which they pursued with renewed vigour. The Trades Hall Council enlisted the services of Sharpley in an inquiry instituted to examine his charges concerning affiliated unions, but some Communist-led unions refused to co-operate with it. A joint statement issued by militant unions denounced Sharpley's articles as 'figments of a distorted mind' which aimed at dividing union leadership and furthering the policies of the Industrial Groups.³⁹ The Secretary of the Painters' Union (D.D. Thomson) alleged that the Trades Hall investigation was loaded against one section of the trade union movement, having been initiated as an instrument to 'white-wash friends and smear enemies'.⁴⁰ One union official, the Secretary of the Federated Engine-Drivers' and Firemen's Union, resigned from his position in response

38. *News Weekly* probably best summed-up the general Press attitude in its comment that 'The Sharpley story ... owes its importance not so much to what it tells as to its source and the time at which it has appeared'. *News Weekly*, 27 April 1949.

39. *Tribune*, 27 April 1949.

40. *Argus*, 13 May 1949.

to Sharpley's allegation that he had been elected in a rigged ballot. He was subsequently reinstated after being cleared of complicity.⁴¹

The turmoil affected an even wider spectrum of Melbourne society, with numerous people accused of harbouring Communist sympathies clamouring for the opportunity to make a public denial. Mr. John Rodgers, Director of Australia-Soviet House, wrote to each of the newspapers which had published the Sharpley articles stating his refutation of the allegation that the policy of his organisation was decided in concert with the Communist Party.⁴² The Reverend William Bottomley, another of Sharpley's fellow-travellers, assured the *Herald* 'I detest [the Communists'] cunning, their "technique", and their aims of violent revolution', and claimed that he was well-known as their opponent.⁴³ Olympic athlete Shirley Strickland also felt it necessary to write to the *Herald* to deny that she had ever been a Communist, although Sharpley's reference to her had been as a 'non-Communist member' of the Eureka Youth League.⁴⁴ Other people lost their jobs following 'exposure' by Sharpley, the *Herald* setting the trend by dismissing from its staff five journalists named as Communist Party associates.⁴⁵ Mr. John Bennett (A.L.P. candidate for the Federal Elections) voluntarily resigned from his position as compere of a commercial radio programme, 'Labour's Views on the News' - until such time, he later told the Royal Commission, as he could clear himself

41. *Argus*, 29 April 1949.

42. *Argus*, 22 April 1949.

43. *Herald*, 23 April 1949.

44. *Herald*, 17 May 1949.

45. *Herald*, 6 July 1949. *Herald* Chairman Sir Keith Murdoch encouraged others in the publishing world to take similar action. According to Clem Christeson (Editor of *Meanjin*), Murdoch rang Specialty Press and informed the printer of *Meanjin* that it was 'an under-cover Communist rag'. As a result Christeson was told by his printer that Specialty Press would no longer print his magazine, 'and what's more, son, I'll make certain, as President of the Master Printers' Association, that you don't get your magazine printed anywhere else in Melbourne'. (C. Christeson to H. McQueen, 8 October 1971).

of Sharpley's charge that he put forward propaganda 'applauded' by the Communist Party.⁴⁶ In yet another case, the State Council of the Shop Assistants' Union suspended Mrs. E. Morley from her post as union organiser 'pending further investigations' into the allegation that she had been helpful to the Party.⁴⁷ In the R.S.L. and other organisations named as Communist spheres of influence, Sharpley reinforced a purge-mentality. The Secretary of the Victorian Police Association, for instance, suggested that the Police Department should search the Force for Communists and 'appropriately deal with them'.⁴⁸

Prominent figures in Federal politics also joined in the *mêlée*. Sharpley's allegation concerning Communist sabotage of Australia's defence installations, and a vague reference to the organisation of Communists in the C.S.I.R.O., were all that were needed to focus attention on national security, the lack of which the Opposition had been lamenting for the last two years. The Director-General of Labour's newly-formed A.S.I.O. recommended to the Government that action should be taken against Communists and fellow-travellers in the Commonwealth Public Service.⁴⁹ H.E. Holt, M.H.R., commented on the obvious need for an urgent review of safeguards in Commonwealth civil offices, research and defence departments if a leading Communist could walk into a naval dockyard and obtain employment without being challenged.⁵⁰ But Sharpley's story about Williamstown was energetically denied by the Minister for the Navy. Mr. Riordan told the House of Representatives that the Navy Department had been aware of the presence and identity of Sharpley while he worked there, and that the Government had no evidence of Communist sabotage at Williamstown.⁵¹ In Victoria the chairman of the State Electricity Commission also felt obliged to make a

46. RCT. 2301.

47. *Age*, 5 May 1949.

48. *Age*, 1 June 1949.

49. *Argus*, 25 April 1949.

50. *Herald*, 26 April 1949.

51. C.P.D., vol. 202, 24 May 1949 p.

statement: the S.E.C. had always taken adequate precautions to prevent 'subversive influences' from sabotaging power stations.⁵²

WHAT can be said about the real character of the man behind this barrage of accusation and counter-accusation? A tentative attempt to define Sharpley's psychological make-up is worthwhile not only because of its intrinsic interest, but particularly because the case against the Communist Party pursued in the Royal Commission came to rely so heavily upon his capabilities as a witness. Sharpley's autobiographical work, The Great Delusion, published by Heinemann in 1952 after he had returned to England, is the most revealing source of information about him. Even more pronouncedly than his newspaper articles, it displays at many points a neurotic and paranoid mentality typical of the ex-Communist public informant.

Studies by Richard Hofstadter and H.L. Packer of the ex-Communist witness have noted their tendency to substitute one set of moral absolutes for another, a process by which the old gods are converted into demons while losing none of their original potency.⁵³ Sharpley's new God was shown at the close of The Great Delusion to be the Christian God, and thus his career had enscribed a full circle from the time when, at the age of 19, he abandoned an intention to take Holy Orders.⁵⁴ In his newspaper articles and in evidence at the Royal Commission, Sharpley's reunion with religion was not made explicit. Rather, he expressed a generalised moral fervour, his period in the Communist Party being represented as an error - an 'evil' in fact - from which he had finally escaped to embrace the virtues of Democracy and Humanity as the guiding lights of his new life.

52. *Argus*, 22 April 1949.

53. R. Hofstadter, The Paranoid Style in American Politics, and Other Essays (London, 1966) p. 35; H.L. Packer, Ex-Communist Witnesses, (California 1962) p. 216.

54. Sharpley, The Great Delusion, p. 147. Sharpley's closing sentence reads 'There remains only the return to God', curiously similar to the last line in Heinemann's earlier publication of the autobiography of British ex-Communist Douglas Hyde: 'But one thing is certain: my God has not failed'. D. Hyde, I Believed, (London, 1950) p. 285.



Cecil Herbert Sharpley, 1949.

Sharpley's picture of the Communist Party showed it as the very antithesis of such ideals. He claimed that his disenchantment with the organisation followed a gradual, painful realisation that the leaders in whom he had put his faith sought nothing better than the negation of human rights, the disruption of the Australian labor movement, and a 'victorious Russian war'; in short, the Party rejected by Sharpley was 'evil, undemocratic, and conspicuously un-Australian'.⁵⁵ The most immediate cause of his decision to leave the Party, Sharpley told the Royal Commission, was the approbation by its officials - in particular, Ted Hill - of tactics of violence, intimidation and ballot rigging in trade union affairs, with which Sharpley claimed he disagreed.⁵⁶

His writings exhibited a further characteristic common to the ex-Communist witness, that of attributing to himself a prominent part in Party malpractices. In portraying an all-powerful and malevolent leadership, he took care to place himself at the centre of its operations. The anti-Communist mentality tends to reason that the statements of an ex-Communist must surely be candid if he is willing to thereby blacken his own name; and yet the subtle psychological benefits which accrue to him from this style of confession ought not to be overlooked. The more 'evil' he admits to having practised in the past, the better enhanced is his present virtue. Once having opted for the straight and narrow path of Christian morality, then the fact that he is unafraid to confess openly to heinous misdeeds makes him all the more admirable a figure. At the same time, the image of himself as one of the centre-pieces in a potent revolutionary plot gives added glory. Finally, there is the undeniable fact that the blacker he makes his story, the more valuable it becomes to his market, the anti-Communist Press. It is difficult to avoid the suspicion that these factors were operative at least to some degree in Sharpley's confessions. In The Great Delusion, he explained his motives for testifying

55. Sharpley, I Was a Communist Leader, pp. 3, 6.

56. R.C.T. 762, (Sharpley to R.R. Sholl in examination-in-chief).

publicly about the Communist Party as a 'duty to make amends' for past misdeeds, and a desire to protect mankind from the disaster which could be wrought by the Party if unchecked.⁵⁷ To have remained silent would have been 'the easy and selfish way', he declared. Instead, 'I have chosen to lose friendships, invite enmity, and socially cut myself adrift', all of which indeed occurred as a result of Sharpley's exposure of Communism;⁵⁸ but one suspects that his constant emphasis on such hardships was intended as a means of evoking sympathy, and to prove that his motives were disinterested.

The *Guardian's* version of Sharpley's character was certainly highly exaggerated. Its attack was in any case considerably weakened by the fact that the Party had appointed him to a leading position on the State Executive, maintaining him in charge of their most important area of activity for many months after the occurrence of some of the 'unseemly incidents' in which he had allegedly been involved. There can be little doubt that their charges were distorted by an effort to discredit a man who knew a great deal about the Party, and who thus stood in a position to do it considerable harm. On the other hand, there is much to suggest that Sharpley, if not guilty of the criminal acts (such as theft of Party funds) alleged by the Communists, was nevertheless a weak and insecure person, with paranoid tendencies perhaps nurtured by his experience in the Party. These were indicated in his story by a compulsive self-inflation, an obsession with the personal danger to his life posed by his ex-comrades, and an intense pre-occupation with having returned to the path of moral righteousness by outwitting the machinations of the Communists and surviving to expose them. The *Herald* journalist Robert Gilmore, who worked on Sharpley's articles, and who is described by Sharpley as an anti-Communist, confirms the weakness in his personality. 'Sharpley was pleasant to work with, and very orderly in memory and in committing his memories to writing. But he was an inadequate

57. Sharpley, The Great Delusion, pp. 122-23.

58. *Ibid.*, p. 24.

person and, without uncharity I hope, I wondered at the State Committee having room for a person so limited'.⁵⁹

One suspects that Sharpley's justification for leaving the Party - his disillusionment with its bureaucratic, undemocratic and dishonest practices - bears little relation to his real motives. The *Guardian* at times implied that he sold himself to the *Herald* because he could not withstand personal poverty, but Sharpley had suffered this condition for a term of membership of 14 years, so it seems unlikely that it was a pressing factor. A more plausible explanation has been provided by former Communist Party members R. Mortimer and E.A.H. Laurie. They suggest that Sharpley was an intensely ambitious man who came to resent his lack of continuing advancement and recognition in the Party. Shortly before his defection, it had become apparent to Sharpley that his Party standing was slipping, reflected in the fact that he was being overtaken in the hierarchy by Communists who were his junior both in age and experience. Ted Hill, for instance, an original recruit of Sharpley's, was appointed to the position of Victorian State Secretary very soon after Sharpley defected. According to both Mortimer and Laurie, there was a good deal of veiled animosity between these two Communists during the latter stages of Sharpley's association with the Party, and Sharpley had shown some jealousy of Hill's rapid success.⁶⁰ Once again, Robert Gilmore's comments add to the picture:

... I did not form a clear conclusion on why C.H.S. quit the Party. I do not think it was political change of heart. I had the impression he felt he was undervalued by his mates and that he wanted to punish them by exposure, especially in the matter of union ballot rigging.⁶¹

Brian Fitzpatrick, who as Director of the Australian Council for Civil Liberties had had considerable personal contact with Sharpley, gives a somewhat kinder interpretation of his

59. R. Gilmore to V. Rastrick, 24 June 1971.

60. Interview, R. Mortimer, Sydney 19 December 1971; E.A.H. Laurie, 1 June 1971, Melbourne.

61. R. Gilmore to V. Rastrick, 24 June 1971.

psychological motivations. In a Civil Liberties pamphlet of 1955 on the Petrov Commission, Fitzpatrick wrote,

Sharpley ... was a person who at most times suffered from a basic want of self-confidence. He fell readily into personal difficulties, incidents perhaps of the waywardness of a nervous, maladjusted man whose party comrades may have loaded more on him, in work and responsibility, than his backbone could bear. When his alienation from his party left him unfriended and, economically, cast upon his own resources, he sold ... his most vendible wares.⁶²

III

POLITICS OF THE APPOINTMENT

Premier Hollway did not wait to fathom the direction of the public reaction to the events of the Easter weekend before he announced his intention to appoint a Royal Commission, and thus it cannot be known whether a demand for such an inquiry would have featured in it. As it was, public comment geared itself to the expectation that an inquiry would be appointed, and not all of it applauded Mr. Hollway's action. On 18 May, at the first sitting of the House of Representatives after Easter, the Federal Opposition reiterated its request for the institution of an Australia-wide Royal Commission on Communism, but it is difficult to believe that this was anything more substantial than an attempt to embarrass Labour by pressing home the point that the first State Government to take a positive stand on the Communist issue was a Liberal one.⁶³ In fact the immediate reaction to the proposed inquiry as evidenced by the comments of Press and politicians was little more than lukewarm, and Mr. Chifley was not the only one to suggest that it would be 'futile'.⁶⁴ At one point

62. Brian Fitzpatrick, The Royal Commission on Espionage, (Melbourne 1955) p. 8.

63. The official A.L.P. attitude on this matter was that a Royal Commission on a Federal basis would only hamper work already being done by the Security Service. See C.P.D., vol. 202, 18 May 1949, p. 2 ff.

64. C.P.D., vol. 202, 18 May 1949, p. 3. Premier Hollway was apparently annoyed by Chifley's remark. 'I cannot imagine anything more futile where Communism is concerned than Mr. Chifley', he responded to the Press. (*Sun*, 20 May 1949).

even the *Herald* suggested that a Royal Commission was the 'wrong model' to use in dealing with Communists: 'We have at least two bodies of Federal agents ... who, if they are efficient, presumably already have far more information about the Communist Party than is likely to be elicited from hostile witnesses before a Commission. The testimony of willing witnesses can be obtained without this machinery'.⁶⁵ A section of back-benchers in Hollway's own Party expressed a similar view about the value of testimony obtained from unwilling witnesses. They urged the Government to by-pass an inquiry in favour of the introduction of anti-Communist legislation prepared in 1948, arguing that there was a risk the Commission would drag on indefinitely without reaching any conclusions. 'By the time its findings were announced, Communism might have ceased to be a white-hot public issue and the Federal Elections would probably be imminent'.⁶⁶

The Communist Press was eager to picture the Royal Commission as the brain-child of Sir Keith Murdoch, who, it alleged, 'suggested' the idea to the Hollway Government through the agency of E.R. Reynolds, M.L.A.⁶⁷ It was an interpretation implied at several points during the course of the Commission itself by Communist Party Counsel and some 'accused' witnesses. The *Herald* certainly did indicate its interest in the proceedings: Mr. Reynolds applied to the Commissioner for leave to appear in his capacity as a barrister to represent the *Herald* and *Weekly Times Ltd.* and Cecil Sharpley;⁶⁸ and *Herald* solicitor B.K. Donaldson attended a large part of the sittings. Moreover, on at least two

65. *Herald*, 23 April 1949.

66. *Herald*, 26 April 1949.

67. *Guardian*, 24 June 1949. When the Commission's first witness (Malcolm Ellis) had given evidence, the *Guardian* went off on another tack, declaring that the plot for the Royal Commission was 'hatched' by Hollway in the Sydney *Bulletin* Office. (*Guardian*, 2 July 1949).

68. See following chapter, p. 63. In August 1949 in the Victorian Legislative Assembly, the Deputy Leader of the Opposition (Mr. Dodgshun) described Reynold's behaviour in asking the Premier for a Royal Commission and then acting as Counsel in it, as 'unethical'. (*Age*, 1 September 1949).

occasions Sharpley mentioned the idea of a Commission. As already noted, in his articles he expressed willingness to give 'names and details' to a Royal Commission or similar body, and in a commercial radio broadcast on 24 April, while discussions on the appointment of an inquiry were taking place in Government circles, he pledged to make his information fully available, should one be set up.⁶⁹ But there is no reason to suppose that Sharpley was acting under orders from the *Herald*. In the months preceding the release of Sharpley's articles, its editorials did not exhibit any pre-occupation with a public inquiry as a method of approaching the problem of Communism; comments on the import of the articles, like those of the rest of the daily Press, turned on their demonstration of the need for action to oust Communists from the unions. The value of the proposed Royal Commission appeared to be judged almost solely on its probable efficacy in achieving such an aim. Several newspapers, including the *Herald*, pointed out that since most of the key Communist-led unions were organised under Federal jurisdiction, the use of an inquiry within the boundaries of one State was minimal.⁷⁰

Generally speaking, the response to the Commission was governed by the idea that in the absence of any legislative action against the Communists by the Federal Government, the institution of an inquiry was a necessary, if limited step. Any action to curb Communism was better than nothing, and the inquiry was welcomed as a means of forcing the Party 'into the light of day'. Some sections of the Press tempered their approval with the hope that it would manage to avoid the witch-hunting excesses of the un-American Activities Committee.⁷¹ But as with the response to the Sharpley articles,

69. *Sun*, 25 April 1949.

70. *Herald*, 21 April 1949.

71. The *Age* declared: 'What should be avoided is anything in the nature of a witch-hunt, or of such stultifying excesses as brought the Committee of un-American Activities into disrepute among level-headed observers anxious to preserve civil liberties'. (22 April 1949). The *Herald* said 'If the Commission were to become a local equivalent of the Committee on un-American Activities, dealing in hearsay, gossip, or the personal malice of persons who ... hope to "smear" their opponents by wild statements, then we should be better off without such a nine-days' wonder'. (*Herald*, 23 April 1949).

nobody seemed to think that the inquiry would produce information not already known: its value lay in other directions.⁷² At best, it would publicise the reality of the Communist danger and educate, in particular, that section of the public who stood in a position to challenge unionists. *News Weekly*, which claimed to be an authority on Communism in the unions, agreed with the daily Press in seeing this as the possible achievement of the Commission.⁷³ *News Weekly* was one spokesman of anti-Communism which at this stage did not favour a ban on the Communist Party, but even those who did, felt obliged to give grudging approbation of the proposal for an inquiry. Country Party leader Arthur Fadden said in measured tones that he welcomed 'any action to expose and curb' the Party,⁷⁴ and the *Sydney Morning Herald*, after initial hesitation, concluded that whereas the proscribing of Communism in a single State would obviously be ineffective, 'an official investigation, even though confined to Victoria, can turn a searching light on the Party's nation-wide activities and aims'. The Commission's Report, it hoped, would force the hand of the Federal Government, and provide a basis for action with strengthened public support.⁷⁵

Initially, opposition from the Communist Party and the leaders of some left-wing unions was clamorous. The Combined Unions Committee (a group of militant unions at war with the leaders of the Trades Hall Council) declared in a Press statement: 'We will not tolerate the questioning by a Royal Commission of the political beliefs and affiliations of

72. A striking aspect of the many remarks made about the Commission was in fact the utter certainty with which they assumed that its findings would vindicate the anti-Communist standpoint. Archbishop Mannix at a breakfast Mass for Catholic tramways employees in St. Patrick's Cathedral, Melbourne, declared that the inquiry would be of some benefit as a preliminary to direct action against the Communists. 'For myself, I don't want any inquiry. I know all I want to know.' (*Advocate*, 19 May 1949.)

73. *News Weekly*, 27 April 1949.

74. *Argus*, 21 April 1949.

75. *Sydney Morning Herald*, 13 May 1949.

our members, of their workmates, or of other citizens'. This was reinforced with the threat of industrial reprisals.⁷⁶ The *Guardian*, more doctrinaire, described the Commission as a tool in the hands of the employing class, to be used against the workers and all progressive interests. The Government had copied the idea of a 'smear Commission' from its 'Yankee Imperialist masters', and it would use as witnesses 'not only the professional Labour-haters in the Liberal Party, but also the dregs of the working class - the renegades, the cowards, the corrupt Right-wing officials'.⁷⁷ Ted Hill, in his new capacity of Victorian Party Secretary, concluded in a speech at the Yarra Bank that the inquiry should not even be allowed to open.⁷⁸ To meet the threat, propaganda was stepped up: factory gate meetings protested, pamphlets were scattered wide, and for several months an extra issue of the *Guardian* appeared weekly.

Communist opposition delighted the anti-Communist Press, and probably helped to convince it of the propriety of the Hollway Government's action. Several newspapers quoted the Party's comments as fresh confirmation of the need for an investigation. *News Weekly*, for instance, considered that 'if properly handled', the Commission would do a lot of good, and the 'best proof of that is the terror of local Communist leaders at the prospect of being questioned on oath'.⁷⁹ The *Herald* produced another angle when it declared that since 'no honest political philosophy' had anything to fear from a Royal Commission, 'any protests which now come against the fact-finding drive in Victoria will not be Australian in origin'.⁸⁰ But the Communist Party did not continue to present its opponents with ammunition of this kind. When the Government's determination to go ahead with the inquiry became obvious, the Party finally realised that its abuse was merely prejudicing

76. *Tribune*, 11 May 1949.

77. *Guardian*, 29 April 1949.

78. *Argus*, 2 May 1949.

79. *News Weekly*, 18 May 1949.

80. *Herald*, 3 May 1949.

its position vis-à-vis the Royal Commission before proceedings had even opened. Failure of their efforts to obstruct the setting up of the inquiry forced the Communists to accept the unpalatable fact that their activities were to be subjected to full public scrutiny. Thereafter, the tone of the *Guardian's* comments altered appreciably. By the time the Bill for the Commission had passed the Legislative Assembly, the *Guardian* was telling the world that 'unlike other political parties, the Communists disdain to conceal their aims'; it called upon its readers to make the Commission a 'triumph for the working class'.⁸¹

AN examination of the Victorian political situation would seem to suggest that Mr. Hollway's hasty appointment of a Royal Commission on Communism was the product of his own political insecurity more than his anticipation of public demand. In December 1948 the Essential Services dispute had precipitated the collapse of the 12-month-old Liberal-Country Party Coalition Government, C.P. leader J.B. McDonald objecting to Hollway's solution of the strike negotiations on the basis of terms proposed by the Trades Hall Council. McDonald represented it as a defeatist settlement in the face of blackmail from the Communist transport unions.⁸² The Party vacated the Government benches, leaving Hollway to form a single-party Cabinet with only a bare Liberal majority in the Legislative Assembly. The ensuing months saw the development of open warfare between the two parties, punctuated at intervals by Hollway's overtures for the healing of the rift.

81. *Guardian*, 13 May 1949; 3 June 1949.

82. The Essential Services Act was a drastic law (to operate only by proclamation) governing the procedure to be undertaken in the event of a Victorian strike disrupting services considered by the Government to be essential to the life of the Community. It was proclaimed by McDonald (then Acting Premier) in response to a strike of Gas Company workers in November 1948. Hollway returned from an absence overseas to take over the strike negotiations; after a threat of a blockade of the Port of Melbourne by the Seamen's Union, and sympathy stoppages by militant transport unions, the Premier agreed to withdraw the proclamation. Negotiations were settled on the basis (put forward by T.H.C. leaders) that if the seamen lifted the Port blockade and the transport unions promised to submit future disputes to the Trades Hall Council, the Government would adjourn the cases pending as a result of prosecutions launched against militant union leaders at

in the form of a merger, and the Country Party's increasingly determined stand in opposition. Eventually, several Country Party dissidents were attracted into Liberal ranks to permit the formation in March 1949 of a new Liberal and Country Party. The old Country Party in conjunction with Labour became Hollway's parliamentary Opposition under the leadership of McDonald. The tenure of the Hollway Government remained unstable, however; so much so that until the State Election of May 1950, it was kept in power by two Country Party members who absented themselves from crucial parliamentary decisions.⁸³

Hollway's insecurity was exacerbated by a savage stream of criticism from the Country Party designed to convince Victorian electors that he was 'soft' on the Communists. In the State version of the controversy over Communist Party power in the trade unions, Hollway was plagued by charges that he had allowed himself to suffer a defeat at the hands of Communist-controlled unions during the Essential Services crisis. Cecil Sharpley himself confirmed the Country Party's viewpoint in his *Herald* articles, where he described the Victorian Government as having 'yielded' to the Communist Party's show of force.⁸⁴ Hollway stoutly denied these allegations, but found a further source of discomfort in McDonald's revelation to the 1949 Victorian Country Party Conference that he (Hollway) had been responsible for the shelving of legislation prepared in 1948 by the composite Liberal-Country Party Government to outlaw Communists in the State. McDonald told Conference and the Press that under the provisions of legislation devised in April 1948, it would have

82. cont.
the height of the dispute.

83. Katherine West, *op. cit.*, p. 12. According to West, 'During this period the parliamentary balance was so precarious that the Liberal Premier was reluctant to expel from his Parliamentary Party ... F.L. Edmunds and ... J.S. Lechte, both of whom, in the course of 1949, were becoming more and more outspoken about the defects of the Government'.

84. Sharpley, I Was a Communist Leader, p. 14.

been a criminal offence for a Communist to hold office in any organisation in Victoria, and he issued a challenge to the Premier to reintroduce it.⁸⁵ According to one Country Party member of the former Government, speaking in a subsequent parliamentary debate, Mr. Hollway had considered the proposed law to be 'too drastic'.⁸⁶ Hollway was considerably embarrassed by what he described as McDonald's 'untimely' divulgence of the nature of legislation which until that time had been 'on the highly secret and confidential list'. He declared that McDonald had thus done a great disservice to the cause of industrial peace, and had jeopardised the Government's position in dealing with any future disruption.⁸⁷

But in reality there was some substance to the Country Party's claim that the Government lacked the inclination to tackle the Communist Party, at least in terms of a legislative curb on their activities. A conventional politician in the sense that like most of his fellow-Parliamentarians he made full use of the Communist bogey in his speech-making, Hollway was not, however, a conventional Liberal.⁸⁸ It seems that he did not share the Federal Liberal leader's commitment to the 'ultimate' solution to the problem of Communism. In fact, judging from his public statements, his viewpoint stood much closer to that of the Labour Party: that the real problem lay in the unions, and the only way it could be dealt with was by moderate, 'decent' trade unionists taking the initiative in

85. *Age*, 17 March 1949. The legislation provided that a Communist, or any person practicing subversive actions, would be debarred from holding any office in any organisation (political, business or sporting). It would also make it an offence for any organisation to elect a Communist or person engaged in subversive activities to an executive position.

86. *Age*, 19 May 1949.

87. *Age*, 19 March 1949.

88. Described by Katherine West as a 'bon-viveur', Hollway had a reputation among his critics as one whose primary concern as Premier was government office rather than government policy. He tended to view the Country Party as his main political opponent, and made no secret of a strong personal friendship with Labour Party leader John Cain. See West, Power in the Liberal Party, pps. 18, 38; P. Blazey, Bolte (Brisbane 1972) pp. 49-53.

voting Communist officials out of office. Hollway made it quite plain on a number of occasions that his Government would not initiate legislation to ban the Party within Victorian boundaries or to eliminate Communist control of key unions, because he believed such action on a State basis alone could not be effective. Outlawed Communists would migrate to other States; and in the industrial sphere, most of the important Communist-led unions were Federally-organised and hence not subject to the jurisdiction of the State Government.⁸⁹ After January 1949, when Mr. Menzies declared a ban on the Communist Party to be a major plank in his Federal Election platform, Hollway could have added to this argument a further one. State action was no longer a significant consideration until the outcome of the Election was decided, for if the Liberal Party formed the next Federal Government, any State law against Communists would probably be rendered superfluous.

Hollway's attitude against drastic action by his own Government, at least after 1948, may have been dictated by considerations of self-preservation. In the very fluid political situation existing between the two non-Labour parties and threatening the actual survival of the Government, he might understandably have baulked at the prospect of introducing legislation which would be productive of serious public controversy. Trade union reaction to the Essential Services Act had been more than the Victorian Cabinet could handle; and Hollway's political security had been considerably undermined since that time.

THE alternative of a Royal Commission was a logical one. The year of 1949 was a most appropriate time for the appointment of a public inquiry by a State Liberal Government anxious to disprove claims that it lacked the inclination or courage to tackle the Communists. A Royal Commission could be presented as the *only* sensible approach to the problem which in the circumstances could be adopted by a single State. It might be

89. See the *Age*, 19 January 1949; 23 February 1949; 17 March 1949.

an added cost to the Government in financial terms, but it was unlikely to produce any embarrassing public opposition. And while Mr. Menzies continued to make the problem of dealing with Communism a Federal issue, there was little danger that the Government would be forced to act upon the Commission's findings. The appointment of a Commission of Inquiry, while inevitably open to criticism by hard-line opponents of Communism on the grounds that it did not really come to grips with the problem, was a step ultimately beyond reproach from the genuine anti-Communist. There could be no legitimate objection to the gathering of facts by an independent inquiry, despite the oft-repeated assertion that enough was already known about the Communist Party to justify any governmental measures against it. A Royal Commission in 1949 could, from the point of view of the Victorian Government, have additional political advantages. It might be expected to focus public attention squarely on the danger presented by Communist activities, and highlight the Federal Labour Government's failure to act decisively in this area at a time when its past record was under public review. It could thus give a real boost to the electoral chances of Federal Liberal and Country Parties campaigning strongly on the Communist issue, and perhaps provide a new L.C.P. Government with un-challengeable information with which to justify its anti-Communist legislative programme.

Whether the political value of a Royal Commission beyond its effect upon the standing of his own Government, was a factor in Hollway's decision to appoint such an inquiry is a debatable question. But it can be assumed that these wider implications did not escape him. In fact he drew attention to some of them in statements to the Press, and later during his Second Reading Speech on the Parliamentary Bill for the Commission. The disclosures of Communist activity to be made to the Royal Commission should provide the Commonwealth Government with ample incentive to take action for secret union ballots, the *Age* reported him as saying.⁹⁰ And again: 'With unquestioned authority and a suitable charter

90. *Age*, 22 April 1949.

[the inquiry] will produce material which will be essential to any further treatment of the problem, and which will be of great value to any Commonwealth Administration which proposed strenuous action against Communism'.⁹¹

It was left to others to draw the conclusion that the Commission was set up purely as a Liberal Party electoral device to help Menzies into power. Though the daily Press in general chose not to see the inquiry in these terms, the Melbourne *Argus* predicted that its findings would probably be used as strong Liberal and Country Party propaganda against the A.L.P. if the Federal Government failed to take heed of them.⁹² Hollway's parliamentary Opposition, too, made the most of the Commission's political aspects, finding a useful launching point for attack in the fact that the Government's knowledge of the Sharpley disclosures and its decision to appoint an inquiry had apparently pre-dated the actual public release of the articles. Labour Party leader John Cain asserted that the *Herald* newspaper in reality ran the Victorian Government, and that Hollway's announcement of the forthcoming inquiry had been in accordance with a pre-arranged plan in which the *Herald* had been involved.⁹³ W.P. Barry (Labour, Carlton) summed up his Party's viewpoint when he declared that the Royal Commission had been set up as 'a political inquiry into the activities of the Communist Party in an attempt to prove that its continued existence lies at the feet of the Federal Government. It is an effort to use the Communist Party to political advantage in an election'.⁹⁴

The anti-Labour side of the Opposition naturally

91. *V.P.D.*, vol. 229, 10 May 1949, p. 837.

92. *Argus*, 26 April 1949. *News Weekly* agreed with this interpretation. It had a 'strong suspicion' that the Government's move for a Royal Commission was largely inspired by the hope that it might thereby discredit Labour. (4 May 1949).

93. *V.P.D.*, vol. 229, 11 May 1949, p. 922.

94. *Ibid.*, p. 941.

enough did not utilise the same interpretation. But the Country Party was in complete agreement with Labour speakers that the appointment of the Commission did not represent a genuine attempt on the part of the Victorian Liberals to deal with the Communists; that it was nothing more than a political manoeuvre, by a Government under pressure from its erst-while colleagues, to permit further procrastination. It echoed the usual charge that the Commission would be a futile investigation of a subject, the facts of which were already well known.⁹⁵ That the Government had no intention of acting upon its findings was clearly shown by its deliberate omission from the Act of appointment of any request for recommendations to be made by the Royal Commissioner. The Country Party also appeared to be concerned that Communist witnesses would use the Commission as a forum for their own purposes. 'Before the Commission [Communists] could say anything about any decent citizen or anyone else. [They] will be in a very strong position', said the Leader of the Opposition.⁹⁶

The Premier's own explanation of why his Government wanted the Commission was not elaborate. He told Parliament that he considered the appointment was 'justified' by the Sharpley articles, disclosures about Communist ballot-rigging in the unions made at the A.L.P. Easter Conference, and a pamphlet issued by the Melbourne Trades Hall Council in March 1949 setting out the 'true facts' of attacks made upon it by several Communist-led unions.⁹⁷ The role he envisaged for the Commission was that of an instrument for public education in the dangers which threatened. 'It is idle for honourable members opposite to say they know all about Communism and ballot-rigging ... they cannot fight Communism

95. The Opposition could not press these and other objections (see later) to their full extent because of the danger of appearing to hinder action against Communism. Its subsequent agreement to pass the Bill weakened the impact of many of its complaints.

96. *Ibid.*, p. 918. Sir Albert Dunstan, leader of the Country Party in Victoria, even suggested that the Communist Party favoured the idea of the Royal Commission. 'Because they are saying that they do not want [the Commission], I am led to believe that they do. If the Communists did not desire the appointment of the Royal Commission they would say nothing.' (p. 935).

97. The pamphlet represented the T.H.C. version of the Essential Services dispute.

without an educated public behind them.'⁹⁸ Speakers on the Government side of the House resented Opposition charges that they had no intention of acting upon the findings, and Mr. Hollway went so far as to promise that 'if [the Commission] leads to the ascertainment of facts which render it desirable that the strongest action be taken, even by one State acting alone, the Government will not hesitate to take such action'.⁹⁹ But it is difficult to understand what he meant, when he had already made plain his antipathy to the idea of banning the Party. And the Attorney-General re-affirmed to Mr. Keon (Labour, Richmond) later in the debate the impracticability of any attempt by the State Government to legislate for compulsory secret ballots in the unions as a measure against the Communist Party.¹⁰⁰

The appearance of the Sharpley story provided the Government with an opportunity to appoint a Royal Commission which, if we are to believe Hollway, it had been 'contemplating' for some time. The Premier explained to Parliament why it was that in the past he had not acceded to requests for a public inquiry into Communist activities: '... on those occasions only vague allegations were made which could not have been sustained in a court of law'.¹⁰¹ Sharpley had radically altered the situation. His articles created a favourable public climate, a pretext for action, and demonstrated the existence of an authoritative source of evidence upon which to base a Commission. Unfortunately for Mr. Hollway, the process of setting it up proved to be a more protracted affair than he could have desired if he was to

98. V.P.D. vol. 229, 10 May 1949, p. 838. One of Hollway's Press statements is perhaps revealing of his idea of the purpose of the Royal Commission. Referring to the inquiry into trade union ballot-rigging set up by the Melbourne T.H.C. after the publication of Sharpley's articles, Hollway remarked, 'If this alertness had been shown 10 years ago, there would have been no need for the Government's Commission'. (*Argus*, 30 April 1949).

99. V.P.D., vol. 229, 10 May 1949, p. 840.

100. V.P.D., vol. 229, 11 May 1949, p. 954.

101. V.P.D., vol. 229, 10 May 1949, p. 840.

make the most of the crisis engendered by the articles. It took a full two weeks of Cabinet and intra-Party discussion, with the Press daily predicting the imminence of a new and contradictory decision on the matter, before it was finally announced that the Commission would be appointed by Act of Parliament. Not only did the Government have to face the difficulties of getting a Judge to act as Commissioner, and of framing the terms of reference when Supreme Court writs threatened to make a full-scale inquiry *sub judice*; but the Parliamentary Opposition was determined to make political capital from the unusual and controversial features of the appointment represented in the Bill. Hollway appealed to the Legislative Assembly for an approach 'above' party-politics, but he was not to be let off so easily.

The debate on the Bill (occupying 10 and 11 May) provoked considerable outside interest. The Leader of the Opposition noted that 'the Press [was] in full array in the galleries, with cameras clicking, and everyone anticipating that some disclosures of a far-reaching nature would be made'.¹⁰² Newspapers described the session as 'stormy', and most congratulated Mr. Hollway upon his courageous effort in bringing in the Bill in the face of 'abuse, criticism and objection'. But at least one paper was unimpressed with the Government's performance. Its handling of the business, said *News Weekly*, 'gave the impression of uncertainty and weakness, and by no means pleased its own supporters'. The determination of all parties to play politics 'resulted in an unholy Parliamentary row ... with nearly everybody ... trying to use the Bill as a club to belt the other side ... and [Communism] forgotten'.¹⁰³

THE Royal Commission was set up under the provisions of two

102. *V.P.D.*, vol. 229, 11 May 1949, p. 931. McDonald finished his statement in characteristic fashion with the charge that, contrary to these expectations, the Government had 'laboured and brought forth a miserable little mouse in the shape of this measure'.

103. *News Weekly*, 18 May 1949.

separate Acts of Parliament: the Royal Commission (Communist Party) Act, passed on 19 May 1949; and the Royal Commission (Communist Party) Amendment Act, passed on 27 September 1949 to amend certain procedural aspects of the principal Act.

The principal Act set down that a single Commissioner should be appointed and that he be a Victorian Supreme Court Judge. It defined his powers and (by outlining the terms of reference) the scope of his inquiry. The Commissioner was to exercise all the powers and privileges that are vested in the Victorian Supreme Court 'or any Judge thereof, in, or in relation to, any action or trial', particularly, it was stated, in relation to compulsion or punishment. In effect this did not amount to a substantial modification of the provisions of the 1928 Evidence Act governing inquiries appointed directly by the Executive. The Commissioner's power was extended only in his capacity to deal with contempt. Instead of the normal, indirect method of punishing this offence - whereby the Commissioner refers it to an officer of the law, and it is then dealt with by another Judge - the Act stipulated that the Commissioner should be able to deal with contempt summarily himself. In presenting the Bill for the Commission to Parliament, the Premier explained the section concerning this new procedure for punishment of contempt as a simple corollary of the status of the Commissioner. 'As the Commissioner under the Bill will be a Supreme Court Judge, it seems sensible to allow him to enforce his own orders directly.'¹⁰⁴ But it became apparent from the subsequent comments of Government speakers that the procedure had been devised because of their anticipation that the Commission would have to cope with truculent witnesses. As one Liberal member pointed out, 'You will be dealing with a different type of person in this inquiry'.¹⁰⁵

In August, after the Commission had been sitting for 3 months, an Amendment Bill was introduced into Parliament allowing for contempt cases to be heard by a Supreme Court

104. V.P.D., vol. 229, 9 August 1949, p. 1487.

105. V.P.D., vol. 229, 11 May 1949, p. 915.

Judge other than the Commissioner, and thus effecting a reversion back to standard Royal Commission practice. Its purpose was probably to relieve the Commissioner of responsibility for dealing with contempt in cases which might be personally embarrassing to him (such as contempt which questioned his impartiality in the conduct of the inquiry) or cases which might interrupt seriously the continuity of the proceedings. The Act was made retrospective to the date of passage of the Principle Act, but only in a procedural sense: it did not create any new offence or alter the rules of contempt, but merely changed the method for dealing with an offence. It would seem certain that the new provisions were formulated to facilitate prosecution for a specific offence.¹⁰⁶ Immediately after Parliament had approved the Bill, contempt charges were laid against the *Guardian* with regard to several articles, dating back to July 1949, which allegedly cast aspersions upon the Commissioner and chief witness Cecil Sharpley.¹⁰⁷

The Commission's terms of reference were extraordinarily broad, limited only by the territorial considerations imposed by the State boundaries of Victoria. They comprised two main sections. The first was a general clause which asked the Commissioner to investigate the 'origins, aims, objects

106. During the debate on the Bill, Hollway told the Opposition that the request for the new legislation had been sent to the Department of Law by Counsel assisting the Commission. Mr. Cain suggested that the request must have originated with the Commissioner himself, but Hollway gave his 'personal assurance' that it did not. (V.P.D., vol. 229, 9 August 1949, pp. 1486-1488.)

107. The case was heard in October 1949. Mr. Justice Dean found that articles in four separate issues of the *Guardian* constituted contempt - they involved statements imputing to Mr. Justice Lowe improper motives and unfairness in the conduct of his Commission and criticising Sharpley's character as witness. (*Guardian*, July 1, 2, 12 and 19). The Judge ordered that the publishers file a formal apology, withdrawing their imputations and undertaking that no further such imputations would be made - the apology was duly made.

In February 1950 while the Royal Commission was still in progress, a further article in the *Guardian*, 'Mr. Justice Sholl, Diehard Tory' (27 January 1950), was the subject of a contempt charge. It concerned the former leading Counsel assisting the Commissioner (R.R. Sholl) who in January 1950 departed the Commission to take up the position of Victorian Supreme Court Judge. Mr. Justice Barry dismissed the charge.

and funds,¹⁰⁸ of the Victorian Communist Party, its activities and operations, and the persons and organisations associated with it. The second section asked him to determine whether the Party engaged in particular subversive activities, which it listed.¹⁰⁹ There was no reason why the terms of reference should have formed part of the Bill setting up the Commission, but the Government may have felt that with Parliamentary sanction for its very wide scope, the inquiry would be in a stronger position if any legal proceedings eventuated with regard to the Communist Party's libel writs. Mr. Hollway told the Press before the Bill was presented to Parliament that the inclusion of the terms would enable members to express their opinion on them.¹¹⁰ But in fact discussion of this section of the Bill was negligible. W.P. Barry (Labour, Carlton) wanted to know why the Commission was not directed to investigate the source of Communist Party funds. 'Has that point been deliberately omitted because the Government is afraid to discover that some of its supporters are the largest contributors to the Communist Party?'¹¹¹ G. Reid (Liberal, Box Hill) subsequently moved an amendment to remedy the omission, and it was incorporated in the Bill in its final form. An Opposition amendment to remove the stipulation that the Commissioner should be a Supreme Court Judge failed.

There was no real quibble with the provision for strengthened powers to deal with contempt, but the Government had to meet solid criticism of what the Opposition described as the political 'conscription' of the Judiciary affected by the Bill. The attack was based on two counts: that the

108. In the original Bill before amendments were added, 'funds' were not included.

109. The whole Act is reproduced in the Appendices of this thesis. It is interesting to note that espionage activities were not included in the terms of reference, and no politician expressed a wish to have the subject investigated.

110. *Age*, 6 May 1949.

111. V.P.D., vol. 229, 11 May 1949, p. 940.

Supreme Court was being asked to involve itself in the arena of party politics,¹¹² and that it was being compelled to do so against its own express wish. The sole *raison d'être* of the Bill, alleged the Opposition, was an attempt to resort to Parliament as a means of overcoming the difficulties presented by the Judiciary's traditional reluctance to participate in political inquiries. A display of concern lest the prestige of the Supreme Court should suffer through being dragged into the 'mire' of politics lent some moral elevation to the Opposition's standard game of embarrassing the Government.¹¹³ But the defensive attitude of some of the apologists for the Bill perhaps indicated that the Opposition's charges were well-founded.

Attorney-General Oldham explained his Government's wish to have Parliamentary sanction for the Royal Commission in terms of the 'supreme national importance' of the matter to be investigated. In cases of this kind, he said, it was undesirable that action should be taken directly under Executive authority.¹¹⁴ Considering the controversial nature of the Communist issue, as well as the fact that an inquiry

112. Much of the debate concerned argument as to whether the subject of the inquiry was political, and predictably, it seemed to reduce itself to the standard question of whether or not the Communist Party was a political party. One Liberal argued that it was not, because 'it consists of revolutionaries'. The Country and Labour Parties for the purposes of their argument held that it was, although the Country Party on most other occasions took the opposite view. The Government's stand in the debate was that the problem was 'not political in the party-political sense [because] it involves the safety of the State and the continuance of its democratic institutions'. (V.P.D., vol. 229, 11 May 1949, p. 928).

113. S. Keon (Labour, Richmond) had a practical reason for his concern. The Government, he said, was handing the Communist Party a weapon with which to attack the Commission. 'The outcome of this grave departure from the normal protection that Supreme Court Judges have always enjoyed from being involved in political inquiries will be that Communist propoganda will damn the findings of the Commission as ... biased.' (V.P.D., vol. 229, 11 May 1949, p. 952).

114. *Ibid.*, p. 937.

into the activities of a perfectly legal political party created somewhat of a precedent,¹¹⁵ it is indeed probable that Mr. Hollway's Cabinet saw a distinct advantage in placing the responsibility for the setting up of the Commission in the hands of Parliament. It may have seen an additional benefit in the extra publicity which would accrue to the inquiry if its features were to be the subject of a Parliamentary debate. But while these factors may have recommended an Act of Parliament, all the evidence suggests that the chief reason which induced the Government to break with the established practice of appointing a Royal Commission under Executive authority was its difficulties in procuring a Supreme Court Judge to act as investigator.

PRESS speculation during the fortnight following the release of Sharpley's articles indicates that until it became clear that a Judge was not forthcoming, Hollway had every intention of setting up the Commission in the normal way. Under pressure from the Opposition benches during the debate on the Commission, the Attorney-General revealed the nature of his negotiations with the Victorian Chief Justice. Apparently Sir Edmund Herring had drawn attention to the Irvine memorandum when asked by Mr. Oldham 'whether it would be possible to make available the services of a senior Supreme Court Judge'. Said Oldham in Parliament:

It was then put to him that the matters seem to go to the root of representative government and democratic institutions, and even to threaten the security and existence of the State itself, and were not a mere matter of politics. It was suggested that the national importance of the matter could best be made clear by Parliament itself intervening and providing for the setting up of a Royal Commission to be presided over by a Supreme Court Judge ... the very fact that in this special case a Bill has been

115. Sir Albert Dunstan complained that it was a precedent of an undesirable and dangerous kind 'which could be used by Governments for the purpose of dealing with anyone with whom it [sic] had a political quarrel'. *Ibid.*, p. 932.

introduced indicates that this Government does not challenge the principles laid down by the Irvine memorandum of 1923, which are designed to safeguard the Judges from being drawn into political controversy at the behest of the Executive.

Oldham 'refused to be cross-examined' as to whether the suggestion to introduce the Bill came initially from the Government or the Chief Justice.¹¹⁶

It seems evident from the foregoing that the Supreme Court did regard the Royal Commission on Communism as politically 'coloured', and that it was not anxious to participate in it. Moreover, it would have been impossible for the Bench to have refused to comply with the Government's request after the Act had made special provision for it. In a letter to the present writer, Sir Edmund Herring said: 'The intervention of the Legislative ... introduced an entirely different element [to that of conventional practice in the appointment of a Commission] which left the Supreme Court Judges with no alternative but to make a Judge available'.¹¹⁷ But the Victorian Opposition's phrase 'conscriptio[n] of the Judiciary' is probably an inappropriately emotive one. Sir Edmund Herring is unlikely to have had a strong personal objection to the appointment of a Royal Commission on Communism,¹¹⁸ and it is probable that the introduction of a Parliamentary Bill represented a convenient way out for both sides. The Courts could not ignore a command from the people's own representative institution. Thus the Bill would enable the Judiciary to avoid the appearance that it was voluntarily betraying its own principles and the Government to avoid the appearance of being dictatorial.

116. *Ibid.*, pp. 937-9.

117. Sir Edmund Herring to V. Rastrick, 13 October 1970.

118. Herring was strongly, and publicly, anti-Communist. For instance, in July 1949 he addressed the annual conference of the Victorian R.S.L. on the subject of the Coal Strike, which, he said, was 'playing a real part in unmasking the Communist conspiracy to the man in the street, who was now beginning to realise its worldwide implications ... As soldiers we dealt with a foreign foe in the war. We will have to do the same thing again by dealing with this foreign theory in peace'. *Herald*, 28 July 1949.

None of major daily newspapers shared the Opposition's concern about the possibility that a Judge might be forced against his better judgement to become the Commissioner. The *Argus* thought that a Judge was the ideal choice, as he would bring 'so many controversial questions ... out of the ideological labyrinth into the calm judicial atmosphere of the Supreme Court'.¹¹⁹ When it was announced on 19 May that Mr. Justice Lowe had 'after some serious consideration' agreed to act as the Commissioner,¹²⁰ enthusiasm was even more marked, and it came not only from the Press. The *Argus* spoke for almost all the non-Communist Press when it declared that Sir Charles Lowe 'brings to the inquiry the advantage of his outstanding qualifications as one of our most eminent jurists'.¹²¹ Brian Fitzpatrick (Secretary of the Australian Council for Civil Liberties) was bitterly critical of the Act which set up the Commission, but on this point he agreed with the *Argus*: '... one of the few re-assuring features of the whole sorry business is the high standing and twenty-two years judicial experience of Sir Charles Lowe, the Royal Commissioner'.¹²² Support for Charles Lowe's acceptance of the Commission came also from powerful quarters. The Chief Justice of Australia, Sir John Latham, wrote personally to Lowe congratulating him on his decision, and indicating his concurrence with the view

119. *Argus*, 11 May 1949. See also the *Age*, 11 May 1949; *Sydney Morning Herald*, 13 May 1949.

120. Joint statement issued by the Chief Secretary, Premier and Attorney-General of Victoria, 19 May 1949, quoted in the *Age*, 20 May 1949.

121. *Argus*, 20 May 1949.

122. B.C. Fitzpatrick, Constitutional Aspects of the Royal Commission on the Communist Party, Australian Council for Civil Liberties, Melbourne 1949, p. 13. In the pamphlet Fitzpatrick described the Royal Commission Act as 'a grave abuse of the powers of Parliament at the expense of the independence of the Judiciary'. He went on to question the whole concept of a Royal Commission investigation into the subjects defined by the terms of reference. These, he claimed, were either matters for experts such as political scientists and philosophers and thus inappropriate for judicial inquiry, or they were matters capable of being investigated, under existing laws, in the law courts according to ordinary principles of justice'. (p. 6)

that the Commission concerned a matter of vital public interest, for which task of investigation a Judge was eminently suitable.¹²³

The available information does not show whether Lowe was chosen at the specific request of the Victorian Government. The formal procedure for the appointment of a Royal Commissioner if he is to be a Judge is that the Attorney-General issues a general request to the Chief Justice to make one of his fellow Judges available, and the choice is then made by the Bench itself. There is no reason to assume that such a procedure was not carried out in the case of the Royal Commission on Communism. Sir Edmund Herring, in a letter to the present writer, said he 'should have thought' the choice was made by the Hollway Government on the basis of Lowe's past experience on Royal Commissions. 'I feel sure the Government felt that Sir Charles was the best man they could get in the circumstances', Herring concluded.¹²⁴ But in a later interview he was unable to give any definite information on the matter, beyond making the suggestion that Lowe was the obvious, if not 'the only' Judge on the Victorian Supreme Court Bench at that time suited to undertake the task. As he pointed out, Lowe was not only experienced in the conduct of Royal Commissions (and the ones he had dealt with had concerned delicate and controversial war-time matters);¹²⁵ but he was also 'qualified' in terms of the Government's request by his seniority on the Bench.¹²⁶

123. Sir John Latham to Sir Charles Lowe, 19 May 1949, quoted by N. Rosenthal, Sir Charles Lowe, (Melbourne 1968), p. 92.

124. Sir Edmund Herring to V. Rastrick, 13 October 1970.

125. Lowe had presided over 3 Commonwealth-appointed Royal Commissions. In 1940 he was asked by the Menzies-Fadden Government to investigate the circumstances of an RAAF plane crash which killed a number of high-ranking army officers and members of Cabinet. He subsequently conducted 2 inquiries for the Federal Labour Government: in 1942 into the effects upon Darwin of the Japanese air-raid, and the following year into the 'Brisbane-line' controversy. Rosenthal, *op. cit.*, pp. 95-6.

126. Interview with Sir Edmund Herring, Melbourne, 28 December 1971. The senior puisne Judge in 1949 (Sir James Macfarlan) was ill and shortly to retire. Lowe was next in line of seniority. The only other information which adds anything to the picture is that provided by Sir Reginald Sholl in an interview in Melbourne, 23 December 1971. Sholl, who was senior Counsel assisting the Commission, claimed that the Hollway Government knew Lowe

Another aspect of Lowe's appointment has been revealed by Mr. E.W. Lawn, who was Lowe's legal associate in 1949. Lawn recalls that in the discussion within judicial circles about who was to be Royal Commissioner, Mr. Justice Dean, a recent appointment to the Bench, was mentioned as a probable choice. But apparently Lowe considered that the Communist Party inquiry would have been an unfair imposition on a Judge of such inexperience, and in the circumstances felt obliged to offer to the Chief Justice to undertake the Commission himself.¹²⁷ There is at least partial confirmation of Lawn's recollection in the fact that the Press mentioned by name only two Supreme Court Judges as possible Royal Commissioners during the weeks preceding the appointment: they were Mr. Justice Lowe and Mr. Justice Dean.¹²⁸

The Hollway Government sought the services of a Judge for the prestige and authority he could impart to the Commission. In the Supreme Court contempt proceedings which arose out of the Royal Commission in November 1949, Mr. Justice Dean (presiding) stated that the Government had conferred upon its inquiry by Act of Parliament all the rights, powers and privileges of the Court, because of its desire 'that the report of the Commission shall command all the respect of the community and all the authority commonly attributed to decisions of this court'.¹²⁹ Mr. Hollway had put it to the Press much earlier that 'this Commission is of tremendous importance. It must be placed on the highest and very best judicial plane'.¹³⁰

126. cont.

was to be the Commissioner before the Royal Commission Bill was presented to Parliament, but he had nothing definite to offer as to who made the choice. Mr. T.D. Oldham (then Attorney-General) is no longer alive.

127. Interview with E. Lawn, Melbourne, 21 June 1971.

128. See *Argus*, 26 April 1949; *Inside Canberra*, vol. 2 no. 17, 5 May 1949.

129. *Rex v. Arrowsmith and others* [1950] V.L.R. p. 92.

130. *Argus*, 21 April 1949.

By vesting it with the aura of a judicial proceeding, he was ensuring that the public would not doubt its importance.

And whatever motives lay behind the setting up of the Commission, the Government's purpose could not fail to be enhanced by bringing the weight of the Judiciary behind it. If the Government wanted, as it claimed, some unchallengeable facts about Communism with which to 'educate the public' and arm a future Federal Liberal Government, then it also wanted a Report with the credentials of judicial 'objectivity' and a Judge's experience in the weighing of evidence. If the Commission was to be merely an instrument to publicise the Communist issue for the advantage of the non-Labour forces in the coming elections, then again there was obvious value in the prestige that a high-ranking Judge could lend to the proceedings. Even if the Government did not intend to use the emerging facts as a basis for legislative action, it wanted them to carry weight. Their value would be negligible if they could be dismissed by opponents as the work of a politically-biassed Royal Commission.

If the members of Hollway's Cabinet gave any consideration to the nature of the Report which the Commission would produce, they must have realised that it would be determined chiefly by the attitudes of the Commissioner himself, as would be the 'tone' of the proceedings. Did the Government hope for strongly anti-Communist findings with which to embarrass the A.L.P. at election time? Or would it have preferred a moderate, non-committal Report, enabling it to avoid the responsibility of translating the findings into anti-Communist legislation, and even to vindicate its own record of non-activity in the field? Speculation about the political considerations which might have influenced the choice of the Commissioner would take on a greater significance if it could be ascertained whether Sir Charles Lowe was the Government's own appointment.

Lowe was conservative in his ideas, but he was a Judge whose respect for the law and the judicial process would always be weighted against any personal political inclination. If he was a 'political' choice by the Government, then the latter could not seriously have hoped for an American-style Communist witch-hunt, and a Report to match. Lowe's most

outstanding qualifications for acting in the inquiry were his long experience and high reputation on the Supreme Court Bench, and his earlier conduct of three important Royal Commissions.¹³¹ If the Government knew Lowe's reputation in the courts, they would have known him as a strict man of the law, who would be guided in making his findings not by his anticipation of the kind of Report the Government might want, but by a careful evaluation of the facts presented to him. There can be little doubt that if he was the Government's choice, he was wanted simply because he was a highly respected Judge.¹³²

Shortly after Lowe's formal acceptance of the Commission, the Government appointed three Melbourne barristers to assist him in the proceedings. They comprised two King's Counsel (R.R. Sholl and S. Lewis) and a junior Counsel (M.V. McInerney).¹³³ Preparation for the case against the Communist

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131. Lowe's prestige did not derive exclusively from his judicial standing, however. He was also Chancellor of Melbourne University at the time of the Commission, and was involved in a leading capacity in a number of other public organisations. See following chapter, p. 65.
132. Public statements made by the Premier and other members of his Cabinet at the time of the Commission's appointment clearly indicate that they entertained no doubts that the inquiry would make findings confirming the general anti-Communist viewpoint. They probably believed that any Judge could not fail to turn out a report unfavourable to the Communist Party.
133. R.R. Sholl, K.C., former Victorian Rhodes Scholar (1924), was at the peak of a highly successful career as a barrister, and shortly to be promoted to the Supreme Court Bench. During the 1940's he had conducted a considerable amount of legal work for the Attorney-General's Department, and according to Mr. Justice McInerney (interview, Melbourne, 15 October 1971) he was an 'automatic' choice for the position of leading Counsel assisting the Commission. S. Lewis, K.C. was 71 years old in 1949, which made him Lowe's senior by 2 years, and one of the oldest practising barristers in Melbourne. According to the *Age*, he had specialised for a number of years in Arbitration Court work, and he was probably selected for this reason. (*Age*, 5 March 1949). M.V. McInerney was the only Catholic in the team, and a close friend of B.A. Santamaria. As a founding member of the *Campion Society* in the 1930's he had made a detailed documentary study of Communism. He was probably a useful acquisition for Sholl and Lewis, having sufficient expertise to provide the guidelines for the structure of their case. (Interview, Mr. Justice McInerney). All three barristers were strongly anti-Communist.

Party began: assisting Counsel went into conference with Cecil Sharpley and officials of the Crown Law Department;¹³⁴ Press notices advertised for witnesses; and Mr. Hollway wrote to Prime Minister Chifley requesting the Federal Government to make officers of A.S.I.O. available to testify at the Commission. Chifley told the House of Representatives that he was personally against the proposal, because if these officers became known to the public, the value of their work would be jeopardised.¹³⁵ No security witnesses appeared at the inquiry. Meanwhile, charges of Communist malpractice featured with increasing prominence in the speeches of Federal politicians and of campaigners for the imminent Victorian Legislative Council Election. L.G. Norman, M.L.A., (Liberal, Glen Iris) predicted to a meeting of Melbourne University students with remarkable foresight that the Royal Commission would probably be 'the prelude to Australian spy trials'.¹³⁶ The Leader of the Federal Opposition, touring Victoria for the commencement of his own election campaign, congratulated his Victorian Liberal colleagues on making the right choice between a limited State ban on the Communist Party and the appointment of a Commission of inquiry, because 'the findings would be of great value to any Government that wanted to tackle the menace of Communism'.¹³⁷ Not one commentator appeared to doubt that the Commission would damn the Party. The Royal Commissioner-elect could scarcely have been blamed if he did not relish the prospect of the task ahead of him.

134. Sharpley, The Great Delusion, p. 133.

135. C.P.D., vol. 203, 22 June 1949, p. 1299.

136. *Sun*, 13 July 1949.

137. *Age*, 24 May 1949.

CHAPTER TWO : SIR CHARLES LOWE, ROYAL COMMISSIONER

As the year 1949 slipped into its first month of winter, the Federal Elections loomed closer, and the politicians' debate on the fate of the Australian Communist Party gathered an inevitable momentum. But in Melbourne's First Civil Court, the Royal Commission on Communism opened for its preliminary hearing on June 6 with disappointingly little drama. The Victorian constabulary were conspicuous in their numbers, but the hostile Communist demonstration expected by the Press did not eventuate, and most of the crowd which collected in the precincts of the court were ordinary Melbourne citizens probably hoping to glimpse the arrival of the Communist Party's 'bosses'.¹ For most of them, the interest of the moment did not extend to proceedings inside the court, and there were few present other than men of the law when Sir Charles Lowe took his seat for the first time as the Victorian Government's appointed investigator of Communism.

The business of the preliminary hearing was not in fact the stuff of public sensation. It was concerned largely with matters of legal representation, and Reginald Sholl K.C., leading the team of Counsel Assisting the Commission, gave only an intimation of the 'revelations' which the inquiry would bring when it opened in earnest on June 20. The Commissioner rejected the Communists' request for an adjournment of at least one month to enable them to prepare their defence. The terms of the Commission indicated that he should proceed as soon as possible, said Lowe. 'There are some limits to this inquiry, and I can assure you that I am going to keep within [them] if I can.' (RCT 4). But he did grant the Communist Party leave to appear by Counsel, 'as a matter of course', and he thereupon accepted the appearances of four Communist barristers: Fred Paterson, member of the Queensland Legislative Assembly and the senior member of the

1. *Herald*, 6 June 1949.

group; E.F. Hill, Secretary of the Victorian Communist Party; E.A.H. Laurie, a practising barrister at the Victorian Bar; and Max Julius, of the Queensland Bar.

Another barrister, E.R. Reynolds K.C., who sought leave to represent Cecil Sharpley and the Melbourne *Herald*, discovered that Lowe was not dispensing his favours easily.

Mr. Reynolds: ... I suggest that we have a real interest in supporting the allegations which have been made. Sharpley and the *Herald* practically stand in the role of accusers.
The Commissioner: They do not stand in the role of accusers before me. My authority comes from my Commission.

With these words Lowe deferred his decision upon appearance for Sharpley until such time as he might be called as a witness. As for the *Herald*, Lowe saw 'no more reason for allowing them to be represented by Counsel than any other individual or corporation in the community', and the application was refused. (RCT 7-8).

On the whole, it was a subdued beginning to what was later to be described by the Press as an event 'unique in Australian legal history.'² Those present at the preliminary hearing could not have anticipated that before it reached an end nine months later, the Commission would have heard the testimony of 159 witnesses, examined 1083 documents and other exhibits, and produced a transcribed record of proceedings which covered almost 10,000 pages.³ The Victorian Government was ultimately compelled to find £35,000 to meet the cost of its 'creation', a sum more than three times in excess of its original estimate.⁴ And those Press-men responsible for the blaze of sensationalism which marked the early stages of the inquiry were not to know that there was to come a time when they would find more cause for comment in its extraordinary longevity than in its revelations.

2. *Argus*, 7 March 1950.

3. Report, p. 6.

4. See *VPD*, Vol. 230 (11 October 1949) p. 2672; *VPD*, Vol. 232 (28 June 1950) p. 142.

From 'one of the places to look in at' in July 1949,⁵ the courtroom which housed the Commission eventually became the preserve of only the lawyers and the hardy 'stayers'. Like a visiting relative, said the *Herald*, it had 'outstayed its welcome'.⁶

PART (i) SIR CHARLES LOWE

In appearance Sir Charles Lowe was almost a caricature of the austere, stern-faced Judge, able to strike fear in the heart of an accused person before him, and a sense of futility in a barrister seeking to impress. But in many ways that 'granite countenance'⁷ belied the wit and real humanity of the personality beneath it. In the Supreme Court Lowe carried an air of immense authority and legal wisdom, and when certain of the guilt of those whom he was called upon to judge, he did not balk at calling for the full punishment that the law demanded. On the other hand, he observed scrupulously the maxim that in a court of law an accused person should be given the benefit of the doubt until proven guilty, gaining the reputation not merely for a strict impartiality, but for being a good defendants' Judge because of his unwillingness to convict on the basis of 'reasonable suspicion' of guilt.⁸ Neither was he a slave to precedent. As his biographer Newman Rosenthal writes, '... where the prior authority seemed to operate harshly or unjustly in relation to the facts with which he was dealing, he was astute to look for differentiating features which enabled him to say it really furnished no precedent'.⁹

Nevertheless, Lowe held a deep conviction in the sanctity of the law and constituted authority, which probably weighed more strongly with him than any political persuasion, including anti-Communism. His political outlook could perhaps be best described as liberal-conservative in the

5. *Sun*, 12 July 1949.

6. *Herald*, 6 March 1950.

7. *Australian*, 22 March 1969.

8. Based on information given to me by E.W. Lawn in an interview in Melbourne, 4 August 1971.

9. N. Rosenthal, Sir Charles Lowe (Melbourne, 1968), p. 33.



Mr. Justice Lowe, as Supreme Court Judge.

nineteenth-century tradition. He avoided any personal identification with a political party, and indeed, exhibited a positive distaste for the 'intrusion' of politics into activities outside the parliamentary sphere. A University, he believed, should be a place for objective discussion, a 'forum in which all views can be discussed, but never a machine for propoganda.'¹⁰ It should avoid any appearance of being partisan in connection with controversial political issues, Chancellor Lowe told the Melbourne University Council at the time of the 1951 Communist Party Referendum; in a political debate all sides of the issue should be represented. This viewpoint prompted him to express disapproval of the action of three professors during the Referendum campaign when they spoke publicly in favour of a 'No' vote.¹¹ According to Rosenthal, Lowe was also personally opposed to the active participation of students in political movements, and to the setting up of University clubs with external political affiliations. And yet he would firmly defend the students' right to have these clubs, if they wanted them.¹²

As President of the English-Speaking Union from 1939 until 1946, and of the Australian-Asian Association after 1956, Lowe was adamant that both these organisations should divorce themselves from involvement in current political questions, and exist simply as 'good-will associations'. 'We know nothing of politics, religion does not concern us, and we are indifferent to the "isms" of members', Lowe said of the English-Speaking Union.¹³ Likewise, he would have nothing to do with agitation by a section of the Australian-Asian Association against the White-Australia policy, even when, as his biographer points out, it was having a detrimental effect upon Australian-Asian relations.¹⁴ He was prepared to do his utmost to soften the effect of the law where he saw that it might lead

10. Sir Charles Lowe, Statement to Melbourne University Council, 12 November 1951; quoted in Rosenthal, op. cit., p.168.

11. See Rosenthal, op.cit., pp.161-9.

12. Ibid., p.171.

13. Ibid., p.194.

14. Ibid., p.183.

to unwarranted hardship. But if the law was faulty it must be altered by Parliament, not challenged by the individual.

In the light of these attitudes, one is bound to assume that the methods and aims of Communism would have been repugnant to Lowe. How well informed he was about the Communist Party before he undertook the Royal Commission, and to what extent he had absorbed current notions concerning the nature of Communism, can only be conjectured; but a Party which chose to work outside the parliamentary democratic system for the overthrow of lawfully-constituted government must surely have been an anathema to him. Equally, one suspects he would have been repelled by Communist invective and written propoganda against the higher echelons of the government and business worlds, the rights of private property, and the 'Capitalist' laws. In Communist eyes Lowe was part of a judicial system set up to operate the law on behalf of, and in the interests of, the capitalist bureaucracy. Lowe would have found this idea distasteful: not only did he strive to ensure that his work in the Supreme Court was kept detached from politics and from his non-judicial activities, but he also possessed a profound faith in the objective reality of justice, and confidence in his own ability to see it done. If he was aware of any bias against Communism, he would have made every effort to see that it did not affect his decisions when he was asked to deal with Communists in the courts.

There is no doubt that Lowe's conduct of the war-time Royal Commissions had contributed significantly to his high standing as a Judge. When writing of him in later years, the Australian Press always made special mention of his work as a Royal Commissioner. 'His sense of the liberty of the subject is keen', said the *Age* in 1959, 'and he discharged these tasks with firmness and justice. His reports were models of temperance and wisdom.'¹⁵ Melbourne University's *Farrago* in his obituary opined that Lowe had emerged from the Royal Commissions 'with an enhanced reputation for sagacity

15. *Age*, 24 January 1959.

and fair-mindedness'.¹⁶

Lowe had accepted the Commissions despite the Victorian Supreme Court's traditional opposition to allowing its Judges to participate in Executive inquiries of a political nature. According to E.W. Lawn¹⁷, and as evidenced by Lowe's own record, he had no objection in principle to conducting a Royal Commission, even one investigating a subject with the obvious political overtones of the 'Brisbane Line' controversy. He believed that Commissions of Inquiry had a very positive value, both in the education of the public and in the informing of the Executive. Essentially he belonged to the school of thought which held that the advantage of having a Royal Commission on a controversial topic conducted by a person who possessed both a large measure of public respect and considerable experience in the sifting and evaluation of evidence, far outweighed any possible detrimental effects upon the prestige of the Judiciary as a result of one of its members 'stepping into the political arena'.¹⁸ His single criticism of such inquiries is a significant one: Lowe's biographer implies that he regarded the propensity of governments to avoid acting upon the findings of their Royal Commissions with a displeasure all the more sharp because it derived from his personal experience.¹⁹

The Victorian Government's carefully-worded statement informing the public that their appointee to the inquiry into Communism had accepted his Commission after 'serious consideration' was no doubt in part motivated by a desire to protect Lowe's judicial reputation. Nevertheless, there is independent evidence to suggest that in this particular case he did undertake the task with some reservations, and that his impulse derived from a sense of

16. *Farrago* 1969 (From *Herald* cuttings file).

17. Interviews with E.W. Lawn, Melbourne, 21 June 1971, 4 August 1971.

18. Lawn's information on this point was confirmed by Newman Rosenthal in an interview in Melbourne, 22 June 1971.

19. Rosenthal, *op.cit.*, pp.101-2.

duty rather than any more positive inclination.²⁰ The impression is borne out by a number of remarks Lowe made during the proceedings, and particularly, by his response to the requests of Communist Counsel for his resignation from the Commission.

On the first day of formal hearings, E.F. Hill suggested that Lowe should refuse to act as Royal Commissioner because he was a shareholder in the Herald and Weekly Times Ltd., a company which, he alleged, had direct interests in the proceedings. Moreover, the terms of reference were such that the Commission would necessarily traverse the same subjects as the libel proceedings initiated in the Supreme Court by the Communist Party. 'It is submitted', said Hill, 'that Your Honour should return the Commission in this matter on the ground, to use the words of Lord Chief Justice Hewitt, that "it is not merely of some importance, but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly seem to be done"' (RCT 8) Hill claimed that the allegations made by Sharpley and the *Herald* were 'notorious facts' in the setting up of the Commission. 'No facts will be notorious facts except when they are proved before me', was Lowe's sharp rejoinder.

... The Herald and Weekly Times is no party to the proceedings before this Commission. My duty is to inquire in accordance with the Commission which has been issued to me and in accordance with the evidence which is brought before me. I see no embarrassment whatever in doing that, and I think that the application which is made has no ground to support it. (RCT 9)

Two days later F. Paterson made his first appearance at the hearings after conducting Lawrence Sharkey's criminal defence in Sydney. He repeated Hill's objection, to which Lowe replied at length and with obvious annoyance:

Nothing would please me better than to be free of the almost infinite labour which this Commission involves. But it is not a question of my personal pleasure, it is a question of the duty which has been imposed upon me to carry out this Commission.

20. See Chapter 1, p. 58.

... If I thought there was the slightest ground upon which suspicion might rest that justice was not being done or not being seen to be done, I should be prepared to accede to the application which has been made before me ... I do not think any fair-minded person in the community could, for one instant, think that the holding of these shares in any way affected my decision in matters which are committed to me ... I cannot see the slightest ground for the suggestion which is made, and I do not accede to it, although as I said at the beginning I very willingly would be free of the duties which have been imposed upon me.

(RCT 687)

In the event, Lowe conducted the Commission with a patience and interest which contradicted the antipathy expressed in these words; one wonders if they were more a product of irritation at the Communists' implication that he was biased in his attitude to the proceedings, than a true indication of his feelings. But there were two aspects of the Commission which undoubtedly gave him cause for misgivings - its highly charged political atmosphere, and the size of the investigations dictated by the terms of reference. On several occasions he expressed displeasure at the amount of outside publicity being given to the evidence, and by implication, at the way it was being utilised in the current political controversy over the Communist issue. He recognised, too, the transference of this same controversy into the hearings of the Commission, and made every effort to exclude it where he could.²¹

The extraordinary breadth of the terms of reference affected Lowe in a more personal way. He was probably anticipating the size of the task ahead when he determined from the beginning to hold sittings on every available Court day. As the inquiry extended from weeks into months, and the transcribed record into thousands of pages, he must have felt increasingly apprehensive about the vast amount of work which was to face him at the end in collating and analysing the evidence for the purposes of his Report. His constant

21. These matters of publicity and propaganda are dealt with at a later point in this Chapter.

aim was to keep the investigation within limits commensurate with the self-imposed requirement that he form just conclusions about its subject matter and provide accused persons with scope for an adequate defence. Thus he was willing to admit only so much evidence as he considered necessary to enable him to fulfil that requirement. 'I do not want to spread the net any wider than I am bound to spread it', commented Lowe on one occasion during proceedings. (RCT 3522). The same sentiment lay behind many of his procedural rulings and personal attitudes.

PART (ii) PROCEDURE

Lowe never hesitated to point out to Counsel that as Royal Commissioner he had wide discretionary powers in deciding upon procedure and the kinds of evidence he would accept. And while he afforded assisting Counsel considerable freedom to determine the nature and presentation of their case, he made it plain from the outset that control of proceedings was to remain firmly in his own hands.²² To all intents and purposes, the inquiry was conducted in the manner of a litigation between parties in a court of law, and Lowe usually adhered to the normal rules of evidence. But he reserved the right to vary this approach where he considered it necessary, and Counsel who questioned his tendency to discard legal precedent were sharply over-ruled. Such was the case when Stanley Lewis objected to the request of an independent lawyer²³ (J. Lazarus) for leave to appear on behalf of the Federated Clerks' Union to refute a

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22. Lowe was adamant in his enforcement of the Royal Commission procedure that persons could appear before him by his leave only, and not by right. When one Counsel inadvertently overlooked that fact and opened his remarks with the words, 'If Your Honour pleases, ... I appear with my learned friend Mr. ---.', he was at once corrected by Lowe: 'I do not think you do'. Counsel thereupon rephrased them: 'I beg Your Honour's pardon. I appear here with my learned friend Mr. ---. to ask Your Honour for leave to appear before Your Honour' Lowe then granted leave, as he did in almost every other case. (RCT 939)
23. I shall hereafter refer to all Counsel appearing at the Commission other than Communist and assisting Counsel as independent Counsel.

particular section of evidence, when that same union was being represented on other matters at the Commission by another lawyer. Lewis submitted that the application of Mr. Lazarus was a misrepresentation of the proper legal rules.

The Commissioner: What you say, Mr. Lewis, is unchallengeable if I were dealing in a Court of law. But I am dealing in a proceeding in which I can mould the procedure in the way I think best calculated to deal justice.

Mr. Lewis: I submit to Your Honour that what has been put to you is to do something that has never been heard of before.

The Commissioner: It may be heard of after this case.

(RCT 5931)²⁴

In the same vein, Lowe dispensed with the normal practice of having Counsel make their final submissions at the end of the investigation in verbal form. He required instead that they should present them in writing, a novelty which had its origins in Lowe's desire to shorten the length of the Commission as far as possible, and to enforce a greater degree of conciseness than was the general rule in oral submissions. But it was symptomatic of his whole attitude to the investigation. Whilst never for a moment abandoning an air of strict authority, his conduct of the proceedings was characterised by a very marked flexibility of approach, which, in conjunction with his efforts to remain impartial in the treatment of both 'sides', resulted in a Commission

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24. Lowe considered the application overnight, and refused it. On another occasion, Lewis objected to Lowe's decision in allowing Communist Counsel Ted Laurie to postpone his cross-examination of a witness whom assisting Counsel had put into the box without notice.
- Mr. Lewis: I think this idea that you must be given a chance to rehearse for some time before you can cross-examine a witness who is suddenly put into the box is quite foreign to all the procedure of the Court.
- The Commissioner: It may be, but I am trying to get at the truth of the various matters which are alleged before me, and if, by Mr. Laurie cross-examining at the moment, some matters are over-looked which would be cross-examined about if he were given a little further time, then I may be handicapped in getting at what the truth is. (RCT 5748).

of Inquiry which was in a real sense 'objective'.

Representation and rights of parties

In a court of law the presentation of evidence is accomplished by contending parties through an adversary process, but in a Royal Commission it is the usual practice (because there are no formally defined charges) for all evidence which has any relevance to its subject to be gathered and presented by Counsel assisting the Commission. Any individual or group with information which could be of use to the Commission customarily provides that information to assisting Counsel, who then decide if and how it will be made available to the inquiry.

Lowe's decision to grant separate representation to the Communist Party was, as he pointed out, a departure from this practice, for it sanctioned a proceeding which was in effect a litigation *inter partes*. But he did place certain limitations on the Communist Counsel's rights to operate as ordinary defence Counsel. Lowe explained his purpose thus: '[The Communists] are, in some sense, in the position of an accused party, and naturally, as a matter of fairness, I have given them leave to appear, but that leave ... does not put them in any sense in a parallel position to those assisting the Commission'. He went on to define the role he was allowing the Communist Counsel to play. In general the scope of the evidence to be placed before him would be determined by Counsel assisting him, 'but if the evidence adduced ... is in any way an imperfect picture or in any way a false picture, then those who have been given leave to appear may show, either by cross-examination or by evidence, that it is a false or an incomplete picture.' (RCT 617). In other words, the Communists were able to cross-examine any witness called by assisting Counsel, and to adduce evidence themselves by producing witnesses and submitting documentary material as exhibits, but in the coverage of subject matter they were restricted to only that evidence which rebutted, amplified or varied evidence adduced by assisting Counsel. Thus the Communist Party's

case was to be determined essentially by the kinds of evidence upon which assisting Counsel chose to concentrate in the presentation of their own case.

On several occasions Lowe saw fit to remind the Communist Counsel of the limitations on their leave to appear, but within the framework he had set down he generally treated them on an equitable basis with assisting Counsel, and allowed them to operate in a fashion akin to that of defence Counsel in a court litigation *inter partes*. At the commencement of the Party's case he assured Ted Laurie: 'I shall give you the fullest opportunity of meeting anything which has been said against you. You need have no fear about that'. (RCT 6296) And he was true to his word.

Assisting Counsel's privilege to direct the course of the inquiry was enhanced by Lowe's evident wish to keep his own interference in proceedings to a minimum. He often expressed the view that he must have confidence in assisting Counsel's judgement as to what material would be useful to him, and that he did not feel inclined to shut out a particular matter until he had heard the whole of the evidence and could see for himself where it was leading.²⁵ That assisting Counsel fully appreciated the strength of their position was apparent when McInerney expressed his view of an objection by J.M. Cullity²⁶ to the political nature of the evidence given by one of assisting Counsel's witnesses. 'I consider Mr. Cullity's objections most improper. Counsel assisting Your Honour in this inquiry is determining what evidence to place before you', protested McInerney. (RCT 4553)

Strictly speaking, there are no accused parties before an Executive inquiry, and there is no formal prosecution, but in granting the Communist Party the right to conduct their own case, Lowe in effect left assisting

25. This attitude was in conflict with his desire to keep the length of the inquiry within practical limits, but at times it prevailed.

26. Independent Counsel appearing for a group of Communist-dominated trade unions.

Counsel free to present the evidence against the Party in the form of a 'case for the Crown'. He reprimanded one barrister who referred to assisting Counsel as 'Counsel assisting the prosecution'²⁷, and Mr. Sholl, too, was very loathe to allow himself to be described thus. 'I intend to conduct this examination as Counsel assisting Your Honour for the purpose of getting information to place before the Commission and without any intention of conducting it as a prosecution', he said. (RCT 940). But Sholl had already indicated that his case would 'concern itself rather naturally more with those activities which transcend the proper bounds and are directed by improper means towards the achievement of those objectives'. (RCT 104). And while the Communist Party would probably have regarded a great deal of the Communist literature read at the Commission and submitted as exhibits by assisting Counsel as demonstrating its advocacy of worthy causes, it can be doubted that Sholl's intention was to portray the Party in such a light.

At an early stage in the proceedings it became evident that in a further and important respect the rights of assisting Counsel were to be more extensive than those of the Communists. Fred Paterson complained about assisting Counsel's tendency to 'lead' the evidence of their witnesses - in other words, that in their questions they were leading the witness about subject matter which was challenged by the Communist Party, instead of restricting themselves to introductory or undisputed evidence, as is the rule in litigation in the courts. On this point, Lowe ruled in favour of assisting Counsel. The terms of the Commission indicated that it was inquisitorial in nature, he said, and he saw no reason why assisting Counsel should not present the evidence 'in any convenient way to elicit the truth'. (RCT 69).

Somewhat later, argument again developed between counsel on the same issue, and Sholl was prompted to make

27. 'Perhaps truth comes out even by inadvertence', remarked the barrister in withdrawing his words.

a lengthy submission to Lowe. He emphasised that the Commission was not bound to operate in the same fashion as a litigation between parties, since there were 'no issues defined by pleadings and ... no parties as such'. He submitted that the duty of assisting Counsel was to enable 'the correct ascertainment of the facts into which the Commissioner is directed to inquire', and that they should be entitled to proceed in any manner which would best achieve that result. (RCT 691). In expressing agreement, Lowe drew attention to the powers of compulsion granted to him by the Royal Commission Act, powers which indicated the likelihood that he would have to deal with hostile witnesses. In those circumstances, he declared, it would be 'absurd' to restrict assisting Counsel to only those questions which could legitimately be asked if he were calling a witness in court litigation. (RCT 692).

Appearances other than those of the Communist Party and Counsel assisting the Commission were on the basis of very limited rights. Numerous individuals and organisations who considered themselves implicated by the evidence sought leave to appear in an effort to clear their reputations. For the most part they were people who wished to deny that they had connections with the Communist Party, or Communist trade union officials who wished to deny allegations of ballot rigging and other misdeeds. Lowe showed the same concern for their welfare as 'accused' persons as he had for the Communist Party itself, although naturally he did not give them the same freedom of operation in the proceedings. Where the allegation against them had been made under oath, he required their own testimony to be given under oath. They were able to cross-examine their accuser on matters which affected themselves, but they could not duplicate by cross-examination evidence already given; nor were they given leave to call other witnesses to support their defence. And in general they were not permitted to address the Commissioner at the end of inquiry. (RCT 684).

These limitations had their source partly in Lowe's attempt to curtail the length of proceedings, and

partly in the fact that he considered he was not called upon to make any findings on what he regarded as matters 'incidental' to his main inquiry. In the Report he pointed out that Press attention to the proceedings had ensured publicity for both accusation and denial.²⁸ Consequently he felt it was not incumbent upon him to do more than provide an opportunity for the denial to be made. 'Any other course would, I think, have rendered the inquiry well-nigh interminable.'²⁹ Lowe made an exception in a few instances where he saw that the evidence was liable to damage the accused person in a public or professional capacity; and about these he gave specific findings in his Report.

Two barristers became important protagonists in the inquiry as a result of the interests they represented. The first, E.R. Reynolds K.C., was given leave to appear for Cecil Sharpley after he had convinced Lowe that an attack on Sharpley's credit and character was likely to be made by persons implicated by his evidence. (RCT 684). Reynolds accordingly cross-examined all those who came forward to deny Sharpley's allegations, but he did so within the rules laid down by Lowe, and he was not permitted to make a final address on Sharpley's behalf. The other was J.M. Cullity,³⁰ for whom Lowe eventually bent the rules, allowing him a role in the proceedings scarcely less prominent than that of assisting and Communist Counsel. Cullity represented a number of trade unions and individual officers within them who were implicated in Sharpley's ballot-rigging allegations. Since the allegations were in substance part of the general case against the Communist

28. Perhaps this was a case of wishful thinking on Lowe's part. In practice, while the daily Press usually gave prominence to allegations made at the Commission, the denials were frequently neglected altogether.

29. Report, p.6.

30. J.M. Cullity was (according to Mr. Justice McInerney, interview, Melbourne, 15 October 1971) one of the most brilliant cross-examiners at the Victorian Bar at that time. His 'brilliance' was amply demonstrated during the course of his participation in the proceedings; and he had a quick wit which matched Lowe's own.

Party, Cullity stood in a rather different position to that of other 'interveners'. Lowe allowed him to call his own witnesses, and, after some hesitation, to make a final submission.³¹

Interpretation of the terms of reference

Apart from the rulings determining the Communist Counsel's rights to appear, those which most crucially affected their legal position at the Commission were concerned with Lowe's definition of how the terms of reference should be interpreted. Argument on this matter was extensive, involving several related points: to what extent the investigation should be a general one, as distinct from an examination of the subversive actions particularised in the terms of reference; how far it could range in territorial terms and in time span; and how those 'persons and organisations associated' with the Party should be defined. In following the course of the argument through the proceedings it becomes apparent that Lowe's decisions were the product of a very real sense of dilemma. Time and again he found that an attempt to limit the length of the inquiry conflicted with other considerations such as his desire to hear the 'whole truth' of the matters before him, and to give 'accused' persons an opportunity to reply to the evidence which affected them. Usually his rulings on the scope of evidence he was willing to admit were a compromise solution. In the Report Lowe writes:

Much but not all of this mass of evidence is attributable to the extreme width of the investigation committed to me. A good deal of it, however, is due to my desire not to shut out any relevant evidence which the Communist Party or its members or any person affected by the evidence desired to submit. And the record will show, I think, that wherever I have checked the giving of evidence it has been because the ground had already been covered or the evidence only affected the credit of the witness - of which I was the sole judge - or I thought that a fact had been sufficiently tested.³²

31. Report, p.6.

32. Ibid.

Within the boundaries Lowe laid down in his interpretation of the terms of reference, this is an accurate description of the basis of his rulings.

Assisting Counsel's stated preoccupation with the evidence of Communist 'misdeeds' called forth much opposition from the Party's Counsel. They consistently pressed upon the Commission their view that a correct reading of the inquiry's terms demanded that the aims and activities of the Communist Party be looked at in their totality; the particular charges against it could not be understood as circumscribing the general clause which asked for an investigation of 'origins, aims, objects and funds'. 'I cannot see how you can limit it and prevent us from going into the whole of our activities - otherwise we might as well be put on trial, and then at least we would have the right to trial by jury', argued Paterson. (RCT 253-4).

During the course of his first ruling on the matter Lowe admitted that the general clause was not necessarily limited by the allegations which followed. (RCT 256). But an appreciation of the enormity of the task involved in an exhaustive investigation of the Party meant that in practice he was disinclined to apply a broad interpretation, and as the proceedings wore on he made increasingly clear his concurrence with the view of Mr. Sholl. The general words in the terms of reference, Lowe declared at one point, had been included so as to enable the Commission to look at matters outside Victoria and thus to place State Communist activities in their proper setting. 'Beyond that, in my view, those general words do not enable this Commission to go' (RCT 616). In accepting assisting Counsel's decision to concentrate on subversive aspects of the Party he stressed that the Communists would have a full opportunity to answer the evidence against them; but '... I do not concede this Commission to be a roving Commission on every aspect of political activity in this Party', he told Paterson. (RCT 247).

The Communists did not lightly abandon their argument for a full-scale inquiry since their freedom to demonstrate the Party's 'good works' was at stake. Paterson

quoted the High Court judgement of Evatt J. in the 1932 Devanny Case³³ to illustrate the extent of subject matter necessarily involved in a determination of whether the Communist Party worked towards the forceful overthrow of established government. He claimed that in order to comply with its terms of reference the Commission would have to refer to the writings of socialist thinkers as far back in history as Engels. The whole inquiry, he thought, would (and should) last for at least twelve months. (RCT 389).

Ted Hill took up the same point during his cross-examination of Sharpley, when he complained to Lowe that if the Party was only able to meet the picture presented by Counsel assisting the Commission, the result would necessarily be one-sided.

Mr. Hill: We can only present a clear picture of our position by referring not only to the conditions in every part of the world, but also to the whole of history; and that is precisely the point which Mr. Paterson had in mind when he was referring to Devanny's case.

The Commissioner: It is a point of view that I am not going to allow to be developed.

(RCT 1205)

At the beginning of the Party's own case, Lowe re-affirmed his attitude. '... It may be that the Communist Party has many benevolent activities, if I may put it that way, but I do not think I am called upon in this Commission to investigate them.' (RCT 6616).

Lowe's rulings on the reading of documents was another cause for disputation. It first became an issue when Paterson wanted to read the Communist Manifesto in full, as part of his attempt to counter what he considered to be an anti-Communist witness's biased selection of Party literature.³⁴ Lowe objected that he would be there 'until the crack of doom' if he allowed full reading of historical documents. 'I don't propose to listen to it', he said. 'I will read it myself as I will all documents put in.'

33. The King v. Hush; ex parte Devanny, Vol. 48 CLR 516 ff.

34. The witness was M.H. Ellis; see Chapter 3, p. 128 ff.

Subsequently Lowe elaborated the point. Counsel could submit as exhibits relevant documents in their entirety, but in their reading they should operate selectively. Communist Counsel should refer to those parts of the document that modified the evidence already given, where they considered that the picture suggested by that evidence was insufficient or inaccurate. (RCT 549-50).³⁵

The Communists were obliged to abide by this ruling, but they continued periodically to voice their dissatisfaction with the way it disadvantaged them. They drew attention to the fact that because assisting Counsel were using Communist literature to prove a case against the Party, the public were receiving a distorted image of its true nature. Documents ought to be read in full for a proper appreciation of their meaning, and they should never be regarded in isolation from the historical events which produced them. (RCT 550). To be fair, Lowe's limitation on the reading of documents appeared to be based purely on his wish to control the length of the inquiry. He was not unsympathetic to the point of view of Communist Counsel, and on a number of occasions during the proceedings he did, upon their request, direct assisting Counsel to give a more extensive reading of material than they had intended. (RCT 3163; 3225).

The Communist Party Counsel wanted to be able to range widely in their efforts to explain the origin and meanings of their ideology; but with regard to the particular subversive acts of which the Party was allegedly guilty, they tended to press for a narrow interpretation of the inquiry's territorial limits and time span. The evidence of several ex-Communist witnesses called in support of assisting Counsel's case concerned allegations about the Party's activities in New South Wales and South Australia, and often about events which had taken place in the 1930's. As Ted Laurie pointed out to the Commission, Communist Counsel

35. Lowe's ruling on selectivity was quite acceptable to assisting Counsel, since by choice they used only those parts of Communist texts which they thought evidenced subversive aims.

faced great difficulties in meeting charges of this kind, because the defence was forced to rely on what records there were available to them from a past decade of the Party's existence, and from other State branches of the Party. Objecting to a section of evidence from an interstate witness, Laurie complained that if he restricted himself to calling evidence to show that what happened in New South Wales did not happen in Victoria, the position still remained that a particular charge against the Party had gone unanswered. (RCT 3118).

Lowe, as we have seen, considered it necessary to accept evidence from outside the territorial bounds of Victoria in a limited way where such evidence could throw some light on 'the real situation of the body in Victoria and the purpose of its activities'. (RCT 616). But he was consistent throughout in only allowing testimony of events in other States if it related to Constitutional and organisational matters, and where assisting Counsel could give a reasonable indication that the same rules were likely to have applied also in the Victorian branch.

The most revealing argument on this question arose while J.N. Rawling was in the witness box.³⁶ Rawling was an ex-Communist who had been a Party-member in New South Wales until 1939, and virtually all of his evidence related to the Communist activities in that State. From the beginning of his evidence-in-chief, Communist Counsel had made intermittent objections to the far-ranging nature of his material, which, they claimed, carried no proof of connection with Victorian activities, and sometimes these had been upheld by Lowe. (RCT 2600; 2813). At one particular stage in the evidence, Laurie protested that the internal practices of the New South Wales Communist Party could have no relevance to the way the Party's Constitution was carried out in practice by Victorian Communist organisations. McInerney, who was conducting the questioning of Rawling, justified his approach by drawing attention to the fact that

36. See Chapter 3, p. 144 ff.

a great deal of the evidence which had been placed before the Commission clearly showed that the Constitution was uniform throughout Australia. The ruling with which Lowe concluded argument on the matter represents very well his attitude to an interpretative problem which obviously presented him with difficulties:

I propose to admit this evidence, but I am not at all sure that in the final analysis of the evidence upon which I have to report I will pay any attention to it. From the very nature of the inquiry which I have to conduct, I think that at times I must take evidence that is submitted by those assisting the Commission as helping me in some aspect of the matters upon which I have to report, but as to which at the moment I cannot see a clear connection, and if it turns out ultimately that I am still in the position that I cannot see a clear connection with the evidence when I come to my report, then I shall disregard it

(RCT 3110)

The Commission's terms of reference asked Lowe to make findings as to whether the Party's activities 'are or have been' directed at the ends listed, and he was unwilling to impose a precise definition on the extent to which he considered the inquiry would range in time. In response to Ted Hill's objections, he said 'I do not see any limitation I can put upon it, Mr. Hill, except a reasonable time before the issue of the Commission, and "reasonable" of course must depend on what the circumstances are.'

(RCT 1639).³⁷

The inclusion within the terms of reference of the phrase 'organisations and persons associated' with the Communist Party was the source of protracted debate between Counsel and Commissioner, turning not only upon the meaning of 'association', but also on problems of evidence. For it was within this context that Lowe was called upon to make most of his decisions as to the admissibility of extra-legal forms of evidence. The Communist lawyers objected a great

37. Evidence given at the Commission, even apart from that relating to the origins and history of the Party, covered the two decades before 1949. On no occasion did Lowe refuse to admit evidence on the grounds that it concerned past events.

many times during the course of assisting Counsel's case on the grounds that matters relating to 'associated' organisations and persons were being introduced into the inquiry in an irresponsible fashion. They claimed that anti-Communist witnesses were being encouraged to make accusations that certain persons were Communists or 'fellow travellers' on the basis of the most meagre circumstantial evidence or even pure hearsay; and they claimed that the alleged 'association' was often of such a tenuous nature as to make its admissibility very dubious. (see RCT 1634-7).

Some independent lawyers appearing at the Commission to represent accused individuals, held a similar view. Australia-Soviet House was an allegedly 'associated' organisation which attracted a considerable amount of interest from assisting Counsel, and it was during their investigation of this body that the Commission's right to concern itself with matters lying outside the Communist Party's proven field of operations was most strongly challenged. Counsel for John Rodgers (the director of A.S.H.) protested to Lowe that the allegations against his organisation (which formed the basis of assisting Counsel's probe)³⁸ were of such a nebulous kind that they did not justify an investigation at all. Counsel did not dispute Lowe's jurisdiction to permit such an inquiry, but they submitted that he had a discretion in the matter, and that if only for the purpose of curtailing the length of proceedings, he should exercise it in order to prevent a 'fishing' expedition into an organisation which had no proven connection with the Communist Party. They agreed with Lowe's reminder that his inquiry was legitimately inquisitorial in nature; but 'there are still some factors which circumscribe the limits to which a Royal Commission should infringe the normal privacy of the affairs of individuals and

38. Sharpley charged that A.S.H. was controlled by Rodgers in conjunction with the Communist Party, and that it functioned as a propoganda organisation in the Party's interests. See Chapter 3, p. 163 ff.

institutions'. (RCT 3640).

Lowe rejected their application on the grounds that he had some 'definite' evidence of a connection between A.S.H. and the Communist Party,³⁹ and that he was obliged by the terms of his Commission to pursue it.⁴⁰ He had in some earlier comments made clear that his view of the meaning of 'association' in the context of the inquiry into Communism was not without its boundaries. 'It must mean association which indicates a willingness to help or a co-operation with [the Party] ... otherwise the inquiry will be limitless and it may do infinite harm to a number of people who have no real Communist sympathies at all'. (RCT 1638). And again: '... where the [Royal Commission] Act refers to persons associated with the Communist Party, it is not referring to casual associations ... [but] to something much more substantial and permanent in its nature.' (RCT 392). In practice, though, Lowe rarely checked the tendency of assisting Counsel's witnesses to indulge in the 'naming of names' even when the basis of their allegations of Communist association was apparently flimsy. He usually justified this in terms of his right as Royal Commissioner to accept evidence of a kind which was strictly non-admissible in ordinary court proceedings, while taking care to stress that if the allegations ultimately were not

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39. In the course of his contribution to the argument, Mr. Sholl asserted that the suspicious circumstances surrounding certain financial dealings of A.S.H. in themselves warranted the investigation. 'If people like to have secret funds and go to some pains to conceal them, even to the extent of creating and putting about false documents, then they can hardly complain if other people apply to them the old maxim that secrecy is the badge of fraud.' (RCT 3642).
40. Lowe's hearing of their application was by no means cursory. His patient treatment of their objections to a procedure that he was fully authorised to undertake is very typical of his whole approach to the conduct of the Commission.

supported by any more substantial evidence, he would disregard them as a basis for his findings. (RCT 2890).⁴¹

PART (iii) LOWE'S PERSONAL ATTITUDES

Publicity and Propaganda

It became evident quite early that Lowe regarded with distaste the public controversy about Communism which provided the setting for his inquiry. 'The attitude that has been taken at several stages of this inquiry has been to assume that the people who would judge of this matter would be the outside public. That, of course, is completely wrong. I am the person appointed to inquire into this, and ... I am the person to be convinced.' (RCT 1994). But his efforts to ignore the amount of publicity accorded to proceedings could not be entirely successful while his attention was constantly being drawn to the daily Press reports of the evidence given at the Commission. One of the over-riding concerns of the Communist barristers was the fact that the evidence adduced by assisting Counsel in making their case against the Party was prominently displayed by the news media, usually through the filter of its own anti-Communist bias. As a result, they alleged, the community necessarily absorbed a distorted view of the nature of Communism. (RCT 1699, 2961). Mr. Sholl also pointed out faulty newspaper reporting of proceedings, but he was concerned with mis-statements of fact rather than general bias; in any case, the latter almost invariably operated in support of his own standpoint.

Lowe was in fact fully aware of the propensity of the public to utilise the evidence in the current political debate. 'It is one of the great embarrassments of this

41. Lowe showed the same sense of dilemma in his rulings on hearsay evidence as he did in his interpretation of the scope of the inquiry. Due to the extraordinary breadth of his Commission, he seemed unwilling to shut out any testimony even where he could not see its direct relevance, because of the possibility that it might connect with evidence at a later stage. Ted Laurie was not in agreement with this procedure: 'The difficulty about that', he said, 'is that you have all sorts of things put in in this way that may come to nothing or may come to something, and it goes out to the public ... [and] all sorts of people get ideas in their minds which in fact are completely erroneous'. (RCT 2961).

trial', he observed, 'that ... the evidence is getting wide publicity indeed, and people are drawing their own inferences'. (RCT 2503). He recognised, too, the damage which personal careers and reputations were liable to suffer where publicity was given to individuals implicated by the evidence, and it was this recognition which lay behind his provision for accused persons to come before the Commission and clear their names if they could. He was in accord with the application of one Counsel that denials of allegations should be made speedily, since the public tended to accept as factual, Press reports of what was mere accusation. On this occasion, as on others, Lowe directed Mr. Sholl to arrange an opportunity for the individual concerned to give evidence at the earliest convenient moment. (RCT 939-40).

His concern to protect people from the ill effects of publicity prompted Lowe to encourage assisting Counsel to obtain 'names' from their witnesses in written form rather than oral testimony. It led him also to conduct a hearing *in camera* during the investigation of the financial affairs of Australia-Soviet House. (see RCT 3648 ff.). But he refused to take any action in relation to the numerous instances of misreporting or biased reporting in the newspapers brought to his notice by Counsel; what the Press stated was not his responsibility, he said. (RCT 3890)⁴²

Propaganda in the Press did not concern Lowe; propaganda within the bounds of his court-room very clearly did, and he made every effort to eliminate it. There were numerous allegations made during the course of the Commission that it was being used for political purposes. Some Communist witnesses and other accused persons declared it had been set up to discredit 'progressive' elements in the community; Counsel assisting the Commission thought it

42. At a later point, Lowe declared: 'I have made no comments on the Press's action during the course of this inquiry, and I do not intend to. If the Press over-steps the permissible limits, those assisting the Commission will no doubt take action before an appropriate tribunal, and then I shall have to deal with the matter in a judicial capacity, or some other Judge will.' (RCT 4047).

might be used as a forum for Communist propaganda. Counsel on both sides did not hesitate to lay charges that politics were colouring the slant of questioning pursued by their 'learned friends' at the opposite end of the bar table, or that certain witnesses called by opposing counsel were digressing from factual statements into the realm of political propaganda. When Ted Hill gave evidence as a witness for the Communist Party, he was particularly volatile in his remarks about the political nature of the Commission. He told Mr. Sholl that he continued to stand by his public description of the proceedings as a Communist witch hunt. 'I do not think this Commission can possibly be impartial', he declared. 'You might as well ask [the Commissioner] to investigate the existence of capitalism.' (RCT 7368).⁴³

There was inevitably a considerable amount of Communist political propaganda in the documentary material read at the Commission by Counsel in the cases both for and against the Party, to which Lowe made no objection: he was of course compelled to examine it in fulfilling the terms of his Commission. His task of excluding propaganda of other kinds must have been difficult in an inquiry dealing with a subject so intrinsically political. Lowe was committed to examine among other things the ideas advocated by the Communist Party, and the disputes between Communists and their opponents in the trade unions; here the line to be drawn between matters which came legitimately within the terms of the inquiry, and those which were mere expressions of a current political controversy, was an arbitrary one. For the most part Lowe's anti-propaganda rulings were directed at politically-motivated criticism of individuals and organisations unrelated to the subject of the inquiry.

43. Lowe made no comment upon Hill's statement, but his retort at an earlier stage in the proceedings to Counsel for John Rodgers, who seemed by implication to be criticising Lowe's conduct of the Commission, is perhaps indicative of his attitude. 'If you think there are grounds for that recognition of fairness not having characterised this inquiry', he said, 'I should like to see the evidence of it.' (RCT 3639).

He did, for instance, show real antagonism towards the efforts of Communist and independent Counsel to introduce into their cross-examination of assisting Counsel's witnesses the idea that the Commission had been set up for political purposes - that it was linked with the Melbourne *Herald's* anti-Communist campaign, and that witnesses brought forward by assisting Counsel were giving evidence in a conscious effort to further that campaign. Ted Laurie was quickly curtailed by Lowe when he began asking an anti-Communist witness if he agreed with Mr. Chifley's comment that the Commission was a 'Liberal Party stunt' (RCT 3007); and several witnesses who came forward to refute Sharpley's allegations were given little opportunity to elaborate upon their theories that they were the victims of a *Herald*-Liberal Party plot to discredit the Left Wing. (RCT 1736; 3623). Lowe showed a particular aversion to the naming of prominent politicians in the course of the evidence,⁴⁴ and when Laurie questioned a witness about the nature of an anti-Communist organisation to which he belonged, he was cautioned against any attempt to plunge into 'this maelstrom of current politics.'⁴⁵ (RCT 5247).

With a tone of anger and embarrassment, Lowe checked the witness John Rodgers from reading a list of the original patrons of Australia-Soviet House headed by Lowe's own name, in an effort to prove the 'respectability' of the organisation. 'I am not going to allow this', Lowe ruled. '... when the war was finished my patronage was withdrawn ...

44. The witness was T.C. McGillick, a member of the People's Union in Sydney. See Chapter 3, p. 151 ff.

45. When Ted Hill, during cross-examination of Sharpley, mentioned A.A. Calwell, M.H.R. as a moderate Labour man who was attacked in *Herald* editorials, Lowe warned him against the introduction of names which could be construed in a damaging way, unless the matter had a substantial connection with one of the heads of the inquiry. (RCT 1973). Later, he directed that a witness's allegations about the Communist sympathies of E.J. Ward, M.H.R. be struck from the record. (RCT 5058).

any attempt to suggest that I ever had any sympathy with any Communist aspirations is something entirely devoid of foundation, and I am not going to sit here and hear such nonsense'. (RCT 2363).

Charges from assisting Counsel that the Communist Party Counsel were allowing their questions to become 'a vehicle for political propoganda' (RCT 1213) were usually accorded a receptive hearing. As he saw occasion to remind Ted Hill during cross-examination of Sharpley, Lowe was fully aware of the emphasis in Communist teaching upon the importance of utilising the capitalist courts as a platform from which to promulgate the Party's views. (RCT 1276). Nevertheless, he adopted an equally stern demeanour towards Counsel assisting him when they encouraged their witnesses to 'politicise' their testimony. During the investigation of the affairs of Actors' Equity, for example, J.M. Cullity (representing certain officials of that union) took objection to the style of McInerney's examination of several anti-Communist Equity members. 'I suspect very strongly that certain gentlemen in the Actors' Equity have found a public forum to repeat arguments and disputes which seem to have not the slightest or remotest connection with this inquiry.' Lowe agreed that the matter upon which McInerney was questioning was of no use to him. 'I have done my utmost to prevent anyone from making this a forum for the dissemination of views, and I shall still try, with I hope some success, to prevent it.' (RCT 4543-4).⁴⁶

The subject

Ralph Gibson's claim in his autobiography that Lowe

46. In the Report, Lowe comments that this effort was *not* always met with success. He draws attention to a Communist pamphlet setting out tactics for political propoganda in the courts. 'Nor was the attempt to use the proceedings for purposes of propoganda limited to the Communist Party'. (Report, p.6).

'displayed a certain genuine interest in Communist theory and a certain respect for the evidence'⁴⁷ is supported by E.W. Lawn, who suggests that Lowe's wide-ranging intellectual interests would have prompted him to welcome the opportunity, provided by the Commission, to become an 'expert' on Communism.⁴⁸ During the proceedings Lowe did not display this interest in a very positive fashion, but his apt comments and questions, even when progress was at its most laborious and tedious, perhaps indicate that he felt some natural curiosity about the subject. Certainly at no stage did he reveal a serious antipathy towards the ideas and activities of the Communist Party; and usually the only attitude of a personal kind to which he permitted himself to give expression was one of light-hearted and ironic humour. 'I suppose somebody will explain to me sometime how a thing which is inevitable is subject to the human will', Lowe remarked after Sholl had read a document concerned with the role of human endeavour in the Communist theory of revolutions. (RCT 3240). And after a particularly lengthy session of documents, 'I am beginning to realise what Disraeli had in mind in his reference to one becoming intoxicated with the exuberance of his own verbosity'. (RCT 3284).

Lowe's outward neutrality was emphasised by his 'common-sense' approach to a number of contentious issues which arose in the evidence. He showed readiness on occasion to deflate the sinister aura in which assisting Counsel attempted to cloak some of the Communist Party's activities, and equally well he would check Communist Counsel when their efforts to contradict all the implications of assisting

47. R. Gibson, My Years in the Communist Party (Melbourne 1966) p.156. Gibson in 1949 was a member of the Victorian Communist Party Executive, and was called as the first witness for the Party's case at the Commission. See Chapter 3, p. 184.

48. E.W. Lawn, interview, Melbourne, 21 June 1971.

Counsel's case led them to try to explain away even the most innocuous of the Party's pursuits.⁴⁹

Lowe undertook a considerable amount of the questioning of the Communist Party's two major theoretical witnesses,⁵⁰ his participation at this stage of the inquiry contrasting markedly with his usual reserved demeanour.⁵¹ During the testimony of Gibson particularly, Laurie must have felt that he was losing control over the direction of his own case. It is not possible to judge how far Lowe's participation reflected a personal interest in these theoretical matters, and to what extent it was simply an effort to gain some insight into a complex section of the Commission's subject from the people who were in the best position to understand it. Lowe certainly made it plain that he took the Party's aims and objectives (as distinct from their activities) sufficiently seriously that he wanted to be sure in his own mind of the Communist's view of them. But his lively discussion and astute grasp of the theory makes one suspect that he possessed a very real intellectual curiosity, and that it considerably modified the natural repugnance towards Communism that could be expected of a politically-conservative gentleman.

It would be a mistake to terminate a discussion of Lowe's attitude to the subject matter, and indeed whole conduct of the proceedings, without referring to his dry sense of humour, which did so much to relieve the charged atmosphere of the inquiry. The Australian Press has often

49. Lowe's reaction to Laurie's attempt to lead the witness Gibson in an explanation of the Communist's campaign for free speech is typical. 'I am wondering why you are making this', he said to Laurie. 'It seems to me elementary that if you are going to advance the doctrines of the Party, you must have an opportunity to approach the minds of the people ... and I should have thought, with that necessity, it was obvious that the aims of your Party must be to remove any existing restrictions and to prevent the imposition of restrictions which would debar or fetter your approach.' (RCT 6462).

50. Ralph Gibson and Ted Hill.

51. It may be that during the investigations of Communist actions, where the import of the allegations was more serious, Lowe considered it wise to maintain a degree of judicial 'distance'.

drawn attention to his talent for the witty remark, contrasting it with his habitually serious facial expression. As the *Melbourne Age* observed, 'His quips are in a mood of pure fun, wrapped up with a dry gravity'.⁵² Newman Rosenthal has described the effect of his humour in court. 'Lowe possessed the essence of real wit in that it was spontaneous, or appeared to be so. It was not used for the purpose of evoking admiration for himself. It lightened the proceedings, ... relieved a tension, and even, at times, illustrated an argument.'⁵³

At the Commission Lowe's wit showed itself at unexpected moments; and after a long period in which he had made no remarks, it was a reminder that he had not lost concentration on the proceedings. Most often it was a studiously neutral style of humour, and it is difficult to find in it an expression of any personal attitude to a witness. If there was something behind his 'mood of pure fun' he disguised it well. One of the rare occasions when his witticisms carried an implied comment upon the value of the evidence was when he made an 'aside' about the capabilities of an hysterically anti-Communist witness for 'fast-talking'.⁵⁴ But they could also be directed at himself. During the investigation of ballot rigging charges against the Builders' Workers' Industrial Union, an Industrial Grouper (for assisting Counsel's case) gave evidence of his dispute with the Union's Returning Officer for the 1948 election, one George Morris. Mr. Cullity cross-examined on behalf of Morris.

Mr. Cullity: And Mr. Morris, you will agree, is a mild old gentleman? - A: Oh, he's a decent old chap.

Q: Yes, a decent old man? - A: As far as old chaps go he is a decent chap.

The Commissioner: There are none of them very good? - A: Oh yes, you can easily find them.

(RCT 3938)

52. *Age*, 24 January 1959.

53. Rosenthal, *op.cit.*, p.35.

54. The witness was C. Moss. See Chapter 3, p. 154 ff.

Counsel

The Victorian Communist Party's later approbation of the conduct of the Commission is testimony to one of the most conspicuous and important features of the proceedings: Lowe's scrupulously fair treatment of all who appeared before him. In Newman Rosenthal's biography of Lowe, it is recorded that at the time of Lowe's retirement from the Supreme Court Bench (in 1962) Ted Hill personally thanked him for his fairness at the Commission.⁵⁵ In a political pamphlet written in 1963 Hill referred again to the Commission. 'Royal Commissions with their arbitrary powers ... are weapons of the monopolists. [Such was] the Royal Commission on Communism in Victoria in 1949-50, where however the monopolists made, from their point of view, the mistake of appointing as Commissioner a man with an objective outlook'.⁵⁶ Coming from Hill, a tough and doctrinaire Communist, this was praise indeed.⁵⁷

Assisting Counsel were on the whole in a privileged position at the Commission, but within the framework of the rules Lowe laid down at the beginning, both parties were treated equitably. The transcript of proceedings can be thoroughly scrutinised, and it will reveal no evidence of a bias on Lowe's part for or against any particular set of Counsel. If his rulings more often favoured the position of those assisting him, it was a result of the nature of the inquiry and of the Communist Counsel's defensive role in it, rather than an expression of any personal antagonism which he may have felt towards the latter. In their objections, the Communists attempted to force the inquiry to proceed as closely along judicial lines as possible, as a means of reducing the opportunities for assisting Counsel to

55. Rosenthal, *op.cit.*, p. 135.

56. E.F. Hill, Towards the Police State: Some Analyses of Repressive Laws in Australia (Melbourne 1963), p.27.

57. Ted Laurie confirmed the Party's satisfaction with the Commission in an interview, Melbourne, 1 June 1971. In an interview with me in Melbourne, 25 May 1970, Ted Hill qualified his praise of Lowe: he thought Lowe had as objective an outlook as could be hoped for in a Judge conditioned by the capitalist legal system.

introduce evidence which implied subversive action by their Party. Where Lowe ruled against them (and as we have seen, he did not always do so), he was well within his rights as Royal Commissioner.

To Reginald Sholl, the senior barrister assisting the Commission and shortly to be elevated to status of Judge himself, Lowe accorded a certain degree of deference, and he rarely saw occasion to object to his approach to witnesses. Far fewer rulings went against assisting Counsel when Sholl was conducting the questioning, than was the case with Lewis or McInerney. The latter did not share Sholl's subtle techniques of interrogation, and Lewis especially showed a tendency to initiate hostile interchanges with the Communist Party Counsel, and with Mr. Cullity. Lowe's relations with both of them were somewhat less smooth. He never reprimanded Counsel when they bickered among themselves over the implications of a particular question, but he invariably cut them short by pointing out that their argument would have no effect upon his own view of the matter. (RCT 4573).⁵⁸

After a bad start when Communist Counsel demanded that Lowe should resign his Commission, they went on to establish themselves quite favourably in Lowe's estimation. It seems that he was impressed by the intellectual calibre of the Party's team, and particularly by the 'gentlemanly' qualities of Fred Paterson and Ted Laurie, who, perhaps to his surprise, accorded him apparently genuine courtesy and respect.⁵⁹ Hill, who was responsible for the presentation of

58. Both Ted Laurie and Rex Mortimer (who instructed the Communist Party Counsel in the Commission) have taken the view that McInerney (now Mr. Justice McInerney of the Victorian Supreme Court) was the least strongly anti-Communist of assisting Counsel, and that he was willing to treat the Communist Counsel in a friendly fashion on the personal level. According to Mortimer, Sholl had a deep-seated aversion to Communism and Communists which he made plain throughout the proceedings. Lewis' hostility, he said, was as much a result of his view of the barrister's combative role in the court as of his attitude to Communism.

59. This interpretation of Lowe's attitude to Communist Counsel rests not only on the opinion of Communists I have interviewed, but on that of E.W. Lawn (interview, 4 August 1971) and Mr. Justice McInerney (15 October 1971). According to Rex Mortimer: 'So far as Paterson

the Party's case, adopted a rather belligerent and more obviously 'political' approach to the proceedings, which must have pleased Lowe less.⁶⁰ After the opening weeks of the hearings, Paterson returned to Queensland and took no further part in the Commission; somewhat later Julius also departed. Hill completed his cross-examination of Sharpley in August and after this time he ceased to appear at the Commission in the role of Counsel;⁶¹ Laurie carried on the defence unaided until the end. After the first few weeks, too, the Communist Counsel discarded their efforts to obstruct proceedings. Their opposition to the inquiry was plainly jeopardising their cause by antagonising the man whom they sought to convince of the Party's integrity. Moreover, they suspected that Lowe had gained an unfavourable view of Sharpley's reliability as a witness, and this suspicion led them to adopt a more optimistic attitude to the value of attempting to meet the challenge of the Commission within its own terms.⁶²

59. Contd.

was concerned, [Lowe's] attitude ultimately amounted to affection - he recognised in him a man not only highly intelligent, but also genuinely selfless and humble' (letter, R. Mortimer to V. Rastrick, 12 January 1972).

60. An interesting angle on the difference between the demeanour of Hill and Laurie was provided by Sharpley. At one point in his evidence he claimed that there had been a discussion at a Communist Party Executive meeting upon the value of the Party's barristers, and that Laurie had been 'passed over' in favour of Hill. It had been agreed, he said, that Laurie tended to show subservience to the Judges, and did not have Hill's contempt for the capitalist legal system. (RCT 1140).
61. The Party had originally intended that Laurie and Hill in partnership would conduct the defence, but Hill was so deeply implicated by Sharpley's evidence that he had no option but to go into the witness box himself (Laurie, interview, Melbourne, 11 October 1971).
62. According to Laurie (interview, 11 October 1971), when the inquiry opened, the Party's Counsel had not decided whether they would go ahead and conduct the defence. It was only their recognition that Lowe was going to treat them with reasonable fairness which caused them to stay. The alternative would have been to boycott the proceedings, and brand the Commission as a biased (because one-sided) Communist witch-hunt.

The 'softening' of their approach was accentuated when Laurie was left as the sole spokesman for the Party's interests. He was not reticent in voicing protest, but - whether deliberately or not - he managed to avoid incurring Lowe's antagonism by keeping his political attitudes as a Communist out of his objections, and by restricting himself to matters of procedure and evidence. Lowe's own attitude to the Communist Counsel's position showed a corresponding softening as the proceedings wore on. At times he indicated some appreciation of Laurie's difficulties in attempting to conduct what was virtually the role of Counsel for the defence in an inquiry where the normal legal rules did not apply.

The witnesses

The careful neutrality of Lowe's conduct of the proceedings forces any conclusions as to the direction of his personal sympathies to rely very largely on conjecture. Nevertheless, it is possible to detect a definite contrast in the manner he adopted towards the two broad groups of witnesses: the accused and their accusers. In general he seemed inclined to offer those witnesses whose presence at the Commission was a result of allegations against themselves a gentler treatment than those who were there for the purpose of making the allegations. It seems to have been essentially a response to their *role* within the framework of an inquisitorial proceeding, and to be quite distinct from an evaluation of their personal integrity or the reliability of their evidence.

With the accused in the face of hostile questioning Lowe tended to be helpful, summing up their position for them when they were in difficulties. This was most obvious in the cases of those voluntary witnesses who came forward to deny allegations that they had Communist Party associations - for he was usually not concerned to test their evidence. But even with the Party witnesses there were many instances of the same basically sympathetic treatment. The experience of Samuel Merrifield, a Labour member in the

Victorian Parliament, well illustrates Lowe's protective impulse. On his third appearance at the inquiry to answer allegations that he was a secret Communist, Merrifield was asked a series of questions by Stanley Lewis designed to reveal whether he had ever adopted a 'Communist line' at Labour Party meetings.

Mr. Lewis: Did you take part in any of those debates or discussions dealing with the Essential Services? - A: I am not too sure whether there were any in our branch.

Q: Was there any discussion you remember at all dealing with the Liberal Government's attitude in regard to Essential Services? - A: There were some in our Parliamentary caucus.

The Commissioner: Well, Mr. Lewis, do you think this is going to help me? Before it can be of any help at all, I must make up my mind, on the particular matter of the discussions, that there is a Communist line and an anti-Communist line.

Mr. Lewis: Of course Your Honour has had a great deal of evidence.

The Commissioner: Oh, I know that well.

Mr. Lewis: And there are many things apart from controversy in it.

The Commissioner: As I understand the witness's attitude, he says that he did vote on questions in accordance with what he thought was right. And if the Communists happened to vote for it, so much the better for the Communists. [To the witness]:

That is your attitude is it not? - A: Yes, and I think that those who know me know that to be so.

(RCT 6163)

When Mr. Sholl complained during his cross-examination of Ralph Gibson that the latter was refusing to give a direct answer to his questions, Lowe observed: 'I suppose public controversy does not dispose one to the categorical answering of questions, does it Mr. Gibson?' (RCT 6788). And when the witness Ted Hill, in cross-examination to Sholl, had difficulty in putting over his reasons as to why the Party did not keep written records of its affairs, Lowe came to his aid thus: 'Does the answer come to this, that in itself you do not think such correspondence could do any harm, but that you think it might be distorted and that the distortion might do you harm?' (RCT 7343).

During the testimony of witnesses called by assisting Counsel against the Communist Party, Lowe intervened

less often, and usually only when he wanted the evidence upon which their allegations rested to be clarified. Under hostile cross-examination he was largely inclined to leave these witnesses to their own devices, as long as the scope of the questions put came within his rulings on the legitimate role of Counsel.

The sympathy Lowe apparently felt for the accused had its source in neither his political outlook, nor in his 'legal' attitudes as Royal Commissioner and judge of the evidence. To the extent that he allowed his own politics to sway him, (and he scrupulously avoided giving the appearance of doing so), he must have identified with the anti-Communists. Moreover, there was no *prima facie* reason why the testimony of witnesses called by assisting Counsel should have been any less reliable than that of the Communist witnesses and others.

But a consideration of Lowe's personal traits does suggest why his tolerance might have extended further towards those who appeared before him to answer charges. As a man of law, Lowe had a natural inclination to give an accused person the benefit of the doubt until proven guilty. Normally this would not demand preferential treatment for that witness. But Lowe was fully aware of the differences between a court of law and a Royal Commission, and he must to some extent have felt the invidious nature of the position (from a strictly judicial point of view) where persons, although not formally accused, were still obliged to come forward and answer charges in an environment which to all intents and purposes equated with that of a court.

The inquiry into Communism, especially, was far removed from the kind of proceeding in which Lowe was accustomed to act as adjudicator, since the 'offences' it dealt with were for the most part not illegal. Essentially, all of the witnesses who appeared to answer charges were there because of the nature, or suspected nature, of their political affiliations. Lowe's comments on more than one occasion showed that he appreciated the political significance for the 'outside world' of the task assigned to him, as well as the damage which could be wrought upon persons brought

before the inquiry if a full-scale inquisition was allowed to develop. In the political context in which the inquiry took place, it was only the Communists, and those who were suspected of fellow-travelling, who stood to lose, and they could lose even when the Commission officially declared them innocent. An awareness of this situation perhaps caused Lowe even unconsciously to give accused persons more protection from hostile interrogation than he gave to the anti-Communists. It is true that this protection did not usually extend to the cautioning of assisting Counsel in their questioning of the accused, but he did give the impression that he wanted to ensure, by his own intervention if necessary, that these witnesses had a reasonable opportunity to present their defence to their own satisfaction.

There is another reason why Lowe might have felt more sympathy for the defendants, and it concerns the general type of witness called by the respective sides. With few exceptions, Counsel assisting the Commission relied for their evidence against the Communist Party upon witnesses who could only be described as political 'extremists'. Almost all of them, before appearing at the Commission, and indeed during its proceedings, were engaged in a public anti-Communist crusade of one kind or another. Whatever the explanation for this preponderance of extreme anti-Communists,⁶³ the result was inevitably to cast a certain aura of doubt upon their capabilities for a reasoned and 'objective' approach to the subject of the inquiry. This was especially true of several witnesses who were unable to conceal from their evidence an element of hysteria in their reaction to Communism and Communists.

Assisting Counsel's principal witnesses on the general nature of the Communist Party were four ex-Communists, whose evidence invited another kind of scepticism. They had

63. Assisting Counsel probably did not have a great deal of choice in the matter, having decided to present a case against the Party. Only those people publicly known as anti-Communists, or those whose anti-Communist convictions were strong enough to lead them to approach the Commission on their own initiative, were likely to come to Counsel's notice as prospective witnesses.

apparently moved rapidly from one side of the political spectrum to the other, and their outspoken denunciation of an ideology and a Party they had once embraced and worked for must have easily called forth questions about the stability of their political mind and about their ability to discern clearly the nature of Communism. Yet another psychological factor operated to disadvantage these anti-Communist witnesses: their role as informers. The ex-Communists in particular were open targets for common prejudice against the turncoat. But even in the evidence of others, a similar element of 'betrayal of their fellows' prevailed. In their public denunciation of their work-mates, the Industrial Groupers might have been seen as traitors to the old trade-union ethos of loyalty and solidarity among working men.

It is not possible to know how far Lowe himself would have been influenced by attitudes of this kind. Perhaps it would not be entirely futile conjecture to say that he would have shared the liberal English gentleman's traditional distaste for someone who was willing to play the role of public informer upon past friends and associates. His comments in the Report on the witness Sharpley indicate that at least he considered the reliability of such a person's testimony to be 'heavily suspect'.⁶⁴ Moreover, his statements during the proceedings expressing a desire to exclude political propaganda from the evidence would suggest that where he recognised hysteria, irrationality or malice in the testimony of an anti-Communist witness (and there were many instances of it) he would be bound to regard their contribution as being of only limited acceptability for the purpose of making findings against the Party.

64. Referring to the fact that in cross-examination many of Sharpley's statements were shown to be unreliable, Lowe said in the Report that Sharpley's 'role was akin to that of an informer on those he had for years associated with, and for his disclosures to the Press he had been paid at a rate which must have seemed to him munificent'. (Report, p. 7).

In a section on 'Credibility of Witnesses' in the Report, Lowe has this to say on the matter:

The determination of many of the questions raised before me has been more than usually difficult because of the nature of the evidence on such questions. Communism presents a view of history and an outlook on life which evokes from its adherents a fanatical devotion, and provokes in its opponents a fanatical hatred. Each of these responses is very apt to distort the testimony of a witness so affected, and both are likely to cause the witness to relate for fact what is really no more than suspicion. There were, in my judgement, a number of examples of this tendency, and it has resulted in my not accepting the evidence of two witnesses called by those assisting the Commission.⁶⁴

It is apparent from these words alone that Lowe's evaluation of the evidence given by the Communist witnesses was based on an attitude no less critical than that he adopted towards the anti-Communists. As we have seen, both in the course of the proceedings and in the Report he drew attention to the Party's teachings on the use of the Courts for propaganda purposes, and on the necessity for Communists to dissemble in order to protect the Party's interests. (RCT 1276; Report, pp. 6-7). And his single comment in the Report about the general quality of the testimony of the Communist witnesses is not entirely complimentary: '... I was left with the impression that many of the Communist witnesses who gave evidence contradicting Sharpley told me only so much of the truth as they could not succeed in withholding'.⁶⁵ There can be little doubt that on both 'sides' there were witnesses whose approach to the giving of evidence Lowe found objectionable; and where he had serious doubts about a defendant's integrity, he is unlikely to have felt a great deal of sympathy for his plight as politically-accused person. Still, it is note-worthy that the only evidence Lowe specifically mentions as being unacceptable to him was given by witnesses

64. Report, p. 7. Lowe does not name the two witnesses, but they were almost certainly Miss Chorkles Moss and Mr. Noble Kerby, to whose evidence he makes no reference whatever in the Report as a basis for his findings. (See Chapter 3, pp 154-158). In an interview (Canberra, 12 March 1971) Rex Mortimer told me that Lowe was so annoyed by the style of their testimony that he made a private request to Sholl to undertake that assisting Counsel would refrain from calling any more witnesses of their calibre.

65. Report, p. 7.

called *against* the Communist Party.

Irrespective of the value of their evidence, the Communist witnesses were perhaps in a position of psychological advantage from the point of view of gaining Lowe's favour. They were, of course, as equally committed politically as were those who testified against them. And the Report shows that Lowe expected and found fanaticism in their approach to the subject, as he did with their opponents. But due in part to a sharper appreciation of their own interests, and in part to the nature of the role they played in the Commission, the Communists were successful in minimising the extremism of their political convictions.

The Party must have had far greater scope than did assisting Counsel to control the quality and content of its witnesses' testimony. Furthermore, by the time they came to present their case, it must have been clear to the Party's Counsel that they would make a better impression on Lowe if they toned down any tendency in their witnesses to adopt a belligerent or hysterical political 'line'. Those responsible for the working-out of the case accordingly took considerable care in the choosing and schooling of their witnesses, as far as possible calling those who were capable of appearing to be 'reasonable' men. Leading Party officials were selected not only for their knowledge of the Party's operations, but for their ability to give a calm, rational explanation of the Communist ideology and aims.⁶⁶ Like the Communist Counsel themselves, the witnesses on the whole were of a fairly high intellectual calibre. Ralph Gibson was chosen to open the Communist case because it was hoped his 'credentials' would appeal to Lowe: he had a well-educated and respectable family background, was University-educated himself, and possessed an articulate and intelligent approach to Communist theory.⁶⁷

The Party's efforts towards moderation were to some extent facilitated by its defensive position in the inquiry.

66. This is based on information given in interviews by Ted Laurie and Rex Mortimer.

67. Gibson's father and grandfather were both Professors of Philosophy at Melbourne University. His brother was also an academic.

It was called upon to show that the 'unsavoury' activities alleged by anti-Communist witnesses were in reality quite harmless and proper. Essentially the task of the Communist witnesses was to offer to the Commissioner an explanation and justification of their political convictions and the actions they inspired. It was not an aggressive role, and therefore less liable than that of the case against the Party to provide an opportunity for the passionate invective associated with an attack on political enemies.

Lowe expected a hostile reaction from the Communists in response to assisting Counsel's questioning, and its marked absence must have agreeably surprised him. To the extent that he was able to divorce himself from his own political conservatism, it is probable that the Communists' role as upholders of their principles in the face of attack had more appeal to him than that of the anti-Communists as their impeachers. He may also have found himself able to respond to the enthusiasm for their cause which some Communist witnesses - notably Gibson - made apparent. According to E.W. Lawn, he considered that the lively conviction of some of the Communist trade union officials contrasted favourably with that of the Industrial Groupers who testified against them.⁶⁸

Lowe's attitudes to the witnesses who appeared before him are gleaned with difficulty from beneath the personal restraint and 'judicial' decorum which he consistently observed. And yet despite the fact that Lowe strove for neutrality in his conduct of the inquiry, and that his own participation (apart from in matters of procedure) was both limited in extent and reserved in manner, one is left with the impression that the Commission was essentially moulded by his personality. Indeed, one suspects that his personal attitudes, just as much as his procedural rulings, were the factors which determined the 'tone' and whole nature of the proceedings. He rarely interfered directly in the presentation of assisting Counsel's case, but there can be little doubt that any inclinations on the part of the latter towards a form of investigation along the lines of a 'witch-hunt' must have been modified by Lowe's light-hearted and interested

68. Interview, E.W. Lawn, Melbourne, 4 August 1971.

approach to Communist ideas, his courtesy to Communist Counsel, and his very evident desire to allow all accused persons the rights of defence. Moreover, his considerate treatment of the Communist Party's position encouraged its Counsel to undertake a serious attempt to meet the charges laid against it by assisting Counsel, thus ensuring that the inquiry proceeded within the quasi-judicial framework provided for in Lowe's rulings. At virtually every point during the presentation of the cases for and against the Communist Party, Lowe seemed to exercise a controlling influence. One can only conclude that his omnipresence was of considerable benefit to the Royal Commission.



"How Sun artist saw Royal Commission on Reds".

CHAPTER THREE : THE EVIDENCE

Sir Charles Lowe followed customary Royal Commission procedure by taking no part in the discovery, assembling or presentation of evidence.¹ The nature of the material submitted to his scrutiny was determined initially by assisting Counsel and the Victorian Crown Law Office, and much later in the proceedings, by the Communist Party. But whereas Commissioner and Counsel operated in different ways to mould the actual character of the inquiry, the influence of both was over-shadowed by the Press where the public view of proceedings was concerned. The Commission held open hearings, but the public gallery was small in size,² and in any case, few Melbourne citizens possessed either sufficient interest or the opportunity to attend in person. Thus the effectiveness of the Commission as an instrument for public 'education' about Communism depended more upon the manner in which the Press chose to interpret the evidence, than upon the internal conduct of the inquiry. And in attempting to establish the innocence and worth of their Party in the public eye, Communist Counsel were disadvantaged vis-à-vis assisting Counsel by Press antagonism to their cause as much as by the limitations imposed upon their legal status at the Commission.

Assisting Counsel's case was assured of considerable prominence in the Melbourne daily newspapers by a happy combination of circumstances: the evidence against the Communist Party was to be presented first, while public interest was at its peak. Perhaps inevitably, in the first few weeks Press reports coated the proceedings with a patina of sensationalism which bore little relation to the substance of the inquiry itself, achieving the effect by headlining the

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1. Lowe drew attention to this custom at an early stage in the proceedings. (RCT. 617). In an interview (Melbourne, 23 December 1971) Sir Reginald Sholl stated that he had frequent private discussions with Lowe during the course of assisting Counsel's case, but he indicated that these were concerned with matters of organisation - such as the order in which subjects would be led - rather than with the evidence directly.
 2. Melbourne's No. 1 High Court, which accommodated the Commission for the greater part of its sittings, had a public gallery with a capacity for 200 people.

most dramatic allegations of anti-Communist witnesses as if they were statements of fact, and ignoring the points scored against these witnesses by Communist Counsel in cross-examination. All of the Melbourne dailies were guilty of this style of reporting, although assisting Counsel apparently considered that none had over-stepped the 'permissible limits' referred to by Lowe. (RCT.4047). But as the inquiry extended into its second month, a disparity in the Press's approach could be discerned. Only the *Herald* sustained the drama and scale of its initial reports, while other newspapers relegated the proceedings to a minor position in their news coverage, and at times neglected them altogether. Moreover, when the *Age* and the *Argus* did carry reports on the Commission, the increased attention given to material cited in reply to allegations reflected their adoption of a more scrupulous attitude.³ In October 1949 the Editor of the *Argus* went so far as to make the rather pointed comment that 'in future' his newspaper would not publish the names of any persons about whom allegations were made by a witness whose own name was withheld from the public.⁴

Large-scale reporting of assisting Counsel's case became the monopoly of the *Herald*, vied with only by the *Guardian*, a diminutive and plaintive voice struggling to put the 'correct' interpretation to its readers. The *Herald* resolutely refused to give any attention to the Communist view-point at the Commission; on the whole it ignored the cross-examination of assisting Counsel's witnesses and the evidence of witnesses who appeared to deny allegations, except

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3. The improvement was in relative terms only, for the limited coverage of proceedings in itself meant that many denials could not be dealt with. Nevertheless, both newspapers showed more care in making clear that statements made by assisting Counsel's witnesses were allegations only, and that they were being replied to by other witnesses.
 4. *Argus*, 20 October 1949. This policy was adopted in response to a female witness against the A.C.P., an ex-Communist known throughout the proceedings as Mrs. 'X'. Lowe had agreed to assisting Counsel's request that she remain anonymous in view of her fear of Communist intimidation. The comment by the *Argus* was made when a reader's letter suggested that the names of several Melbourne journalists accused by Mrs. 'X' of being Communists had not been published by the *Argus* because

where this produced additional information against the Communist Party. Photographs were used extensively to ensure that *Herald* readers were 'educated' about the faces as well as the names of persons accused of harbouring Communist sympathies. The undue prominence accorded to allegations made against several members of the Labour Party strongly suggests that the *Herald* was intent to utilise the evidence to further its own political inclinations in the Federal Election campaign. Its attention to the proceedings, lagging temporarily after Cecil Sharpley withdrew from the witness box, saw a spectacular revival when 'Former Red Tells of 1940 Mission to Ward' (the Federal Minister for Transport),⁵ and when another ex-Communist witness claimed that a 'Labour M.P. "Worked With Red Fraction"'.⁶ And one of the few points in Ted Hill's five-day testimony that the *Herald* considered news-worthy, was indicated in an article headlined 'Claims Many Labour Men Accept Marx'.⁷

When Mr. Laurie opened for the Communist Party in November, other Melbourne newspapers maintained the same limited and desultory interest that had characterised their treatment of all but the first weeks of the inquiry. But the event did not pass uncelebrated in the *Herald*. Its reports on the Commission slipped from their customary pride of place on the second page, and where they appeared at all, were small and obscure. Ralph Gibson records in his autobiography that the *Age* and the *Sun* 'faithfully reported' the Party's witnesses; the *Herald* on the other hand 'ignored us except where it could slam us'.⁸

Public attendance at the Commission seemed to

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4. (cont.) members of its own staff were among them. The Editor denied the suggestion.
 5. *Herald*, 10 October 1949. The witness was T.C. McGillick, see this Chapter, pp. 151 ff.
 6. *Herald*, 13 October 1949. The witness was Mrs. 'X', see this Chapter, pp. 146 ff.
 7. *Herald*, 29 November 1949.
 8. R. Gibson, My Years in the Communist Party (Melbourne 1966), p. 155.

respond directly to fluctuations in the *Herald's* interest. People queued for a seat in the public gallery while Sharpley testified, but no witness could rival him as a crowd-pleaser except 'Mrs X', whose evidence was blazoned across the pages of the *Herald* under the words "Widow Alleges Reds Victimise Her' and 'Death Threat Story at Red Inquiry'.⁹ The numbers attending the hearings gradually diminished as Assisting Counsel's case lengthened. There were only a half-dozen people present in the courtroom when Mr. Laurie rose to make his opening address for the Communist Party, a startling contrast to the tension and expectant interest of the atmosphere which had set the scene for the first weeks of Mr. Sholl's case, some four months earlier.

PART (A): ASSISTING COUNSELS CASE

Members of the public with a thirst for the sensational were in fact better served by the Press reports of proceedings than by the substance of the case against the Party as presented to the Royal Commissioner. The newspapers made no attempt to capture one of its most striking features: namely, the 'low key' performance of assisting Counsel in the presentation of their evidence. And though the testimony of several anti-Communist witnesses did furnish the Press with some snippets of dramatic headline material, in the course of the actual proceedings, the effect of these touches of sensation and of the tendency of witnesses to 'politicise' their evidence was dissipated by the sheer volume and detail of the information produced, as well as by the formalities of an adversary procedure.

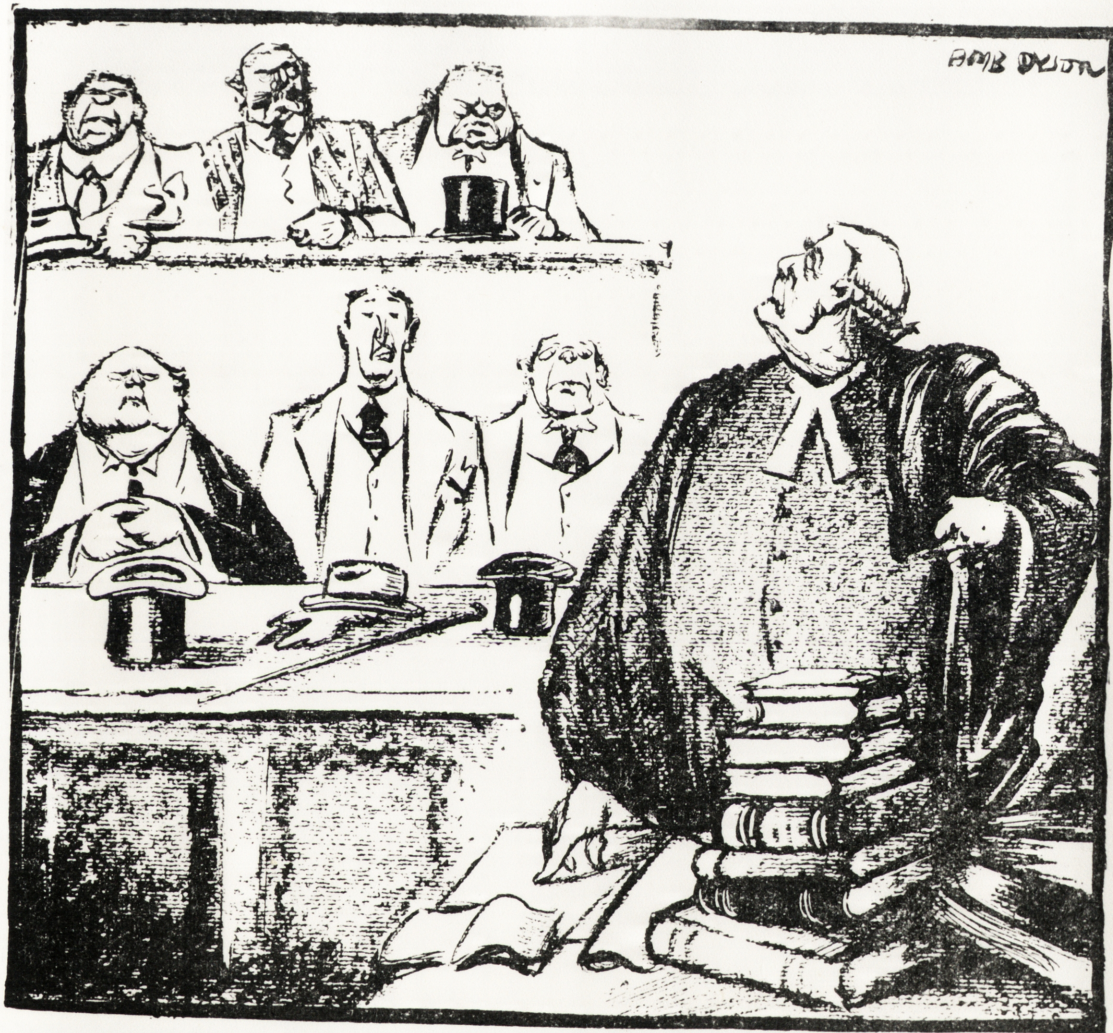
Assisting Counsel shared the *Herald's* pre-occupation with the subversive aspects of Communist operations and its strongly anti-Communist point of view; but Mr. Sholl was too deeply imbued with the rituals of legal propriety, and too mindful of the Commissioner's own caste of mind, to permit his case to be damaged by any over-indulgence in colourful histrionics. In general he seemed content to allow the style of the case to be guided by the essentially legalistic

9. *Herald*, 11 October 1949; 14 October 1949.

atmosphere which Lowe imparted to the proceedings. 'Hostile' witnesses sometimes faced aggressive interrogation, but they were not unduly harrassed. Relations between assisting Counsel and the Communist Party Counsel, while retaining an underlying brittleness, observed the traditional etiquette of the Bar. The only real weakness in the conduct of assisting Counsel's case rested in their failure to instil into some of their 'friendly' witnesses a corresponding degree of restraint.

Observance of court-room decorum in no way deflected Counsel from their intention to level a full-scale attack on the Communist Party. Mr. Sholl did not disguise his determination to concentrate solely upon that evidence which was indicative of improper activities on the part of Communists (RCT.104), a narrow interpretation of the terms of reference which he probably considered to be amply justifiable. In view of the size of the investigation, it was a realistic approach, and it met with the Commissioner's approval. The Communist Party's leave to enjoy separate representation meant that an imbalance in the picture presented by assisting Counsel could in any case be corrected by the Communists themselves. In these circumstances Sholl could argue that it was not incumbent upon him to deal with matters other than those activities about which the Party's Counsel were unlikely to adduce evidence.

If he was looking for additional support for his position, Sholl could have pointed out that it could be assumed that the real concern of the Government was to uncover evidence concerning the Party as a subversive organisation. The Sharpley exposures and the industrial troubles which preceded them, far from provoking an 'academic' interest in Communism, had focussed public attention with increasing sharpness upon the possibility that Communists were working to destroy democratic government and society. The Hollway Government was clearly very little interested in those activities of the Communist Party which were characteristic of any 'respectable' political party content to work within the framework of the parliamentary system. It bore the expense and political controversy engendered by the appointment of the



Counsel: " And, of course, gentlemen, you will give your verdict as if the accused were just an ordinary citizen and not a Communist."

himself with a substantial role in the selection of documents for Counsel's 'theoretical introduction', allegedly because of his knowledge of Communist literature gathered during Campion Society days. He has also said that his personal friendship with B.A. Santamaria was utilised as a means of obtaining members of the Movement and A.L.P. Industrial Groups as anti-Communist witnesses. Apparently McInerney advised Santamaria as to which trade unions were to be investigated, and invited him to bring forward some of 'his men' to testify at the Commission.¹¹ To the extent that the Victorian Crown Law Department acted upon its own initiative in determining the substance of the case against the Party, there can be little doubt that its 'policy' met with the approval of assisting Counsel.

1. Foundations of the anti-Communist evidence

The actual sources of assisting Counsel's evidence are not always easy to ascertain. Some documents relating to the Party's organisation and financial affairs were obtained by subpoena (from banks and the Registrar-General's Office),¹² as was documentary material from trade union offices. Party literature other than that which was reproduced in photostat form from public libraries, was drawn principally from the private collections of witnesses, or from collections held by anti-Communist organisations such as the Australian

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11. Interview with Mr. Justice McInerney, Melbourne, 15 October 1971. According to McInerney, Santamaria was instrumental in the appearance of a number of witnesses who testified about Communist activities in the Clerks' Union and Actors' Equity.
 12. Assisting Counsel were able to scrutinise lists of shareholders in Federal Press (the Party Press) and the International Bookshop, as well as numerous documents relating to the Party's bank accounts. Some financial documents, en transit by train to Melbourne from the Commonwealth Bank in Bendigo, disappeared from the train along with \$3160 worth of gold on 10 August 1949. According to the *Herald*, postal investigators of the incident 'were not overlooking the theory that the bullion might have been only of secondary interest in the robbery'. (*Herald*, 26 August 1949).

Constitutional League in Melbourne and the Sane Democracy League in Sydney. (RCT. 606-8). Assisting Counsel were eager to obtain the Victorian Communist Party's own records, but numerous requests to Communist Counsel to produce them met with small success. Max Julius tendered some State Conference resolutions in pamphlet form (RCT. 1424), but in response to Sholl's demands for membership lists, Conference minutes and financial statements, the Party's Counsel informed the Commission that such records were no longer in existence. Mr. Reynolds, K.C. seemed particularly agitated by the Party's failure to make their records available, declaring that Ted Hill should be put into the witness box and cross-examined upon the matter. But Lowe pointed out that this could not be done, since Hill had at that time been given no leave to appear at the Commission except in the capacity of Counsel. (RCT. 1351). Lowe said that he could not issue a subpoena for the production of the records unless assisting Counsel provided him with an affidavit deposing to the fact that they existed; but, as he assured Mr. Reynolds, '...if [the Communists] do not produce documents which are in existence, or were in existence at the beginning of the Inquiry, they will have to submit to the inference that may be ordinarily drawn when documents are not produced'. (RCT. 1299).¹³

13. Reynolds told the Commission during debate on this matter that on 11 July 1949 (four days earlier) a large quantity of printed material was observed to be removed by taxi cab from the headquarters of the Victorian C.P. (RCT. 1351). Much later in the proceedings, during cross-examination of Ralph Gibson, Sholl raised the same point, implying that the material had been Party records removed in response to the security raid on the Federal C.P. headquarters in Sydney (7 July 1949). (RCT. 6678). The Communists on both occasions declared that the documents had been material used in the preparation of its case at the Commission. They were consistent in their explanation that all important Party records had been destroyed during 1948 as a precaution against the possibility that the Party would be banned, and that since that time no records had been kept. It is interesting to note that Lowe personally did not accept this explanation of their failure to produce records. In the Report he observes, 'It is difficult to understand how the Party can operate without records, and I am completely sceptical of the statement that they do not exist. I suspect that they do somewhere and in some form'. (Report, p. 43).

It is difficult to ascertain the dimensions of the part played by the Security police in providing information for the case against the Party. According to Brian Fitzpatrick,¹⁴ A.S.I.O. officers helped to prepare assisting Counsel's brief in the Victorian as well as the Petrov Commission; and in his autobiography, Sharpley writes that he had '... frequent interviews with two detectives making investigations and collecting data for the Crown's case'.¹⁵ In the light of these remarks, it is tempting to conjecture that the July raid on the Sydney Party headquarters might have unearthed some material of use to Mr. Sholl. But the only piece of evidence acknowledged by assisting Counsel at the Commission as originating from the industry of A.S.I.O. was some printed matter illustrating Communist 'indoctrination of the young' and the Party's attitude to religion, seized by Security police in a raid on the Western Australian Communist Party in May 1949. (RCT. 6283).¹⁶

Assisting Counsel's source of witnesses was more varied than that of their documentary evidence. The Crown Law Office customarily advertises in the Press for persons who consider they have some information of value to a Royal Commission to come forward and be interviewed with a view to acting as witnesses, and this procedure was followed. But McInerney claims that in actual practice few people who replied to the advertisement were utilised for the case owing to their excessively 'crankish' brand of anti-Communism.¹⁷ His

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14. B.C. Fitzpatrick, The Royal Commission on Espionage, (Australian Council for Civil Liberties, Melbourne 1955) p. 3.
15. C.H. Sharpley, The Great Delusion, p. 134.
16. I could obtain no insight into the role of Security from C.P. Allen, now Registrar of Titles in the Victorian Crown Law Department, in 1949 the officer most directly concerned with assisting Counsel's case. He was unable to offer any suggestions in response to a lengthy letter from myself requesting information on a wide number of matters relating to the formulation of the case, including the influence of assisting Counsel upon it. (C.P. Allen to V. Rastrick, 11 November 1971). Likewise, Sir Reginald Sholl indicated that he had no clear recollection of the sources of evidence for his case.
17. Interview, Mr. Justice McInerney, op. cit. I have used the word 'crank' in this chapter to denote those witnesses who exhibited an extremely irrational attitude to

information suggests that generally the more valuable witnesses were acquired through the exertions of the Crown Law officials or assisting Counsel. Their task was made easier in some instances by the availability of people who had made it publicly known that they possessed some knowledge of Communist 'subversion'. One of assisting Counsel's industrial witnesses, W.T. Lloyd, who testified that the 1945 amalgamation between the Munition Workers' Union and the Federated Ironworkers' Union was engineered by the Communist Party, had made statements to this effect in the Melbourne courts in February 1949. During a courtcase in which he had sued the management of the Ironworkers' Union for £3000 damages for libel, Lloyd had declared that the amalgamation had been 'part of a Communist plot to get control of the munition workers'.¹⁸ (RCT. 4374-4515). An Industrial Grouper in the Victorian Postal Workers' Union, J. Ward, who gave evidence at the Commission concerning the presence of Communists in the Post Office, had addressed both the 1948 A.L.P. Easter Conference and the 1949 annual conference of the Victorian R.S.L. on that subject. (RCT. 2948 ff.) Ward told Mr. Laurie in cross-examination that he had also made a 'public statement' to the effect that he would be willing to give evidence at a public inquiry into Communist activities, and was subsequently contacted by an official of the Crown Law Department and subpoenaed to appear at the Commission. (RCT. 3006). Likewise, one suspects that the attention given in Melbourne newspapers to the clashes in the Victorian State School Committees' Association over the expulsion of Communist Executive members and the formulation of a new anti-Communist Constitution, was the inspiration for assisting Counsel to obtain the Association's Vice President

17. Cont.

Communism, even to the point where some mental imbalance might be suspected. See this chapter, pp. 127; 154 ff. When one considers the irrationality of some of the witnesses who were accepted, the rejects must have been extreme indeed.

18. Age, 18 February 1949.

(who headed moves against the Communists) in support of their case. (RCT. 5645-5729).¹⁹ It is likely that Sharpley proved to be the most effective channel for making contact with anti-Communists, particularly in trade union spheres. Sharpley's description of his aid to assisting Counsel's case is probably generally accurate:

... For many weeks I worked in close association with the lawyers appointed to assist the Commissioner. There was much to do. There was the preparation of my evidence; there was the tracking down of other witnesses who might be called, and I was asked for opinions on their reliability on whether or not they could give useful information. I spent many hours with officials of the Crown Law Department while they considered evidence which could be given by other witnesses. I corrected what appeared to be errors, and I gave information hitherto unknown or which might not be otherwise obtainable ... More than once, as a result of conferences with me, evidence was clarified and straightened out at the last moment.²⁰

No doubt Sharpley's knowledge of potential witnesses was reinforced by the help that these people themselves could offer, having agreed to make their 'services' available to the Commission.

The manner in which one of assisting Counsel's witnesses came to give evidence was revealed during the proceedings. The appearance of Sydney *Bulletin* journalist Malcolm Ellis was prompted, as he explained in cross-examination to Mr. Laurie, by an invitation from the Victorian Premier. According to his testimony, Ellis had on at least one occasion in 1948 conducted a private discussion with Hollway upon the subject of Communism, during the course of which Ellis had

19. A.E. McLean, the witness, had already drawn attention to himself as one committed to waging war on the Communists, when he took part as Chairman of the Association in a deputation (May 1948) to the Victorian Chief Secretary demanding stricter censorship of films for children. The petition he presented claimed that a relaxed censorship was 'politically dangerous because it is by this familiarisation with horrible and ghastly things that the alien-spirited Communist seeks to make people believe that the revolution and slaughter he wishes to effect are normal and proper'. (RCT. 5683).

20. C.H. Sharpley, The Great Delusion, pp. 133-4.

suggested that the 'first step' in dealing with the problem should be the setting up of a judicial inquiry to establish the facts. In May 1949, Ellis had apparently received a letter from Hollway inviting him to gather documentary material on the Communist Party to present to the newly-appointed Royal Commission. (RCT. 600-602).

Assisting Counsel's case relied heavily on the evidence of two kinds of witness: the ex-Communist and the A.L.P. Industrial Grouper. The predominance of the latter was no doubt in part a result of the links between McInerney and Santamaria already noted. Roman Catholics (both Grouper and non-Grouper) were especially prominent among the witnesses on trade union matters, and here Santamaria's influence may well have been consolidated by the large percentage of Catholic employees in the Victorian Crown Law Department. But even without such 'inside' assistance, the position of the Catholic Church in the fore-front of the anti-Communist movement was likely to have ensured a prominent role for witnesses of this persuasion.

The ex-Communists were all 'professional' anti-Communists in varying degrees, and well-known in local political circles as such; but it is not always clear how they were brought to the notice of assisting Counsel. T.C. McGillick, ex-Communist and member of the anti-Communist People's Union in Sydney, claims that he was asked by Malcolm Ellis to give evidence at the inquiry.²¹ The only other interstate witness for assisting Counsel's case was another ex-Communist from Sydney, J.N. Rawling. The circumstances of his appearance are uncertain, but since the Commission had no power to compel the attendance of witnesses from other States,²² it must be assumed that like Ellis and McGillick he came

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21. T.C. McGillick to V. Rastrick, 8 November 1971. In a later letter to me (6 December 1971) McGillick said he had volunteered to give evidence 'in the public interest'.
22. See M.V. McInerney, 'Procedural Aspects of a Royal Commission', Australian Law Journal, vol. 24 (15 March 1951), p. 439.

voluntarily to Melbourne to testify about the Communist Party.

A considerable number of the Victorian witnesses appeared at the inquiry under *subpoena*, and some seemed eager to make this fact publicly known. On the whole the witnesses against the Party conveyed an impression of intense political commitment, and often they were part of an active anti-Communist faction within a trade union or other organisation which saw in the Commission an opportunity to further its aims by obtaining publicity for its cause. The issue of *subpoenas* was important to them chiefly as a means of avoiding the stigma of informer or 'pimp', which Russel Ward nominates as the lowest term of abuse in the vocabulary of his typical Australian.

The ex-Communist 'Mrs X', for instance, suggested that she had agreed to appear with great reluctance because she feared that the consequent publicity would bring a renewal of the Communist intimidation which she claimed had plagued her since leaving the Party. But the fact (revealed in cross-examination) that on numerous occasions since that time she had voluntarily supplied both the Security Police and the Labour Party with information concerning the Communist Party, throws some doubt on her claim that she was an unwilling testifier to Communist misdeeds. (RCT. 5139 ff). It would seem that in her case at least, the issue of a *subpoena* was designed not to ensure that she appeared at the Commission, but to bolster her character as a witness.

Assisting Counsel showed no reticence in requesting the Commissioner to exercise his powers of compulsion in relation to the attendance of witnesses, and yet they did not avail themselves of the opportunity to demand the appearance of persons alleged by their own witnesses to be guilty of Communist fellow-travelling or secret Party membership. The terms of reference of the Commission made explicit provision for the examination of 'persons and organisations associated' with the Communist Party; and assisting Counsel's attention to 'friendly' testimony upon these matters, as well as their probing cross-examination of the people who came forward to deny that testimony, suggests that they were by no means disinterested in the fringe areas of the Party's operations. Nevertheless, they chose not to pursue the abundance of names

which they managed to extract during the course of their case. On only two occasions did they compel the attendance of 'hostile' witnesses, the first being when John Rodgers (Director of Australia-Soviet House), who appeared initially as a voluntary witness, was recalled to the witness-box to explain certain inconsistencies discovered in his evidence-in-chief by assisting Counsel. The affairs of A.S.H. then became the subject of a fully-fledged investigation as an integral part of the case against the Communist Party.²³ At another point in the proceedings, when the 1948 election in the B.W.I.V. was under scrutiny, assisting Counsel *subpoenaed* several militant branch officials of that union to appear before the Commission and to surrender branch membership lists and other documents relating to the election.²⁴ In the case of these union witnesses, as well as in Rodgers' case, the aggressiveness of the interrogation, combined with the fact that their appearance was under circumstances of compulsion, caused them to exhibit the characteristics of genuinely 'hostile' witnesses.

There is no reason to suppose that Lowe would have objected in principle to the *subpoening* of persons named at the Commission in connection with Communist activities, as long as the matters upon which assisting Counsel proposed to question them came within his rulings on the scope of the inquiry. But one wonders whether his insistence that proceedings be kept within practical limits led assisting Counsel to the conclusion that in the time available they would achieve the best results from 'friendly' witnesses, and from cross-examination of the people who came forward of their own accord to answer charges. Perhaps they adopted the view that those names as fellow-travellers who did not seek permission to deny the allegation had, by their very failure to appear, implicitly admitted their guilt. In any case, assisting Counsel would have expected there to be no shortage of Communists for them to cross-examine, since the Party had full rights to call

23. See this Chapter, p. 165.

24. See this Chapter, p. 172.

witnesses in its own defence.²⁵

2. Assisting Counsel's argument

All of the material presented to the Commission by assisting Counsel was chosen to support their contention that the Communist Party in Victoria did engage in the 'subversive' activities particularised in the terms of reference. They did not attempt to present a picture of Communist 'origins, aims, ... activities and operations' in their entirety; if they included any evidence of what Lowe described as 'benign' actions, it was only incidental to their main purpose of illustrating other supposedly sinister aspects of the Party. Some attention was given to the historical development of Communism in Australia, and to the organisational machinery of the Party, which inevitably produced a proportion of strictly 'neutral' evidence. But even here assisting Counsel emphasised those Party declarations and policy statements which were indicative of subservience to the dictates of Moscow, or which related in some way to the 'allegations' of harmful conduct contained in the terms of reference. The evidence on policies and objectives generally gave the impression that these particularised headings were co-extensive with the full intent of Communist aims. In matters of organisation, attention was drawn to those features which, if not legally improper, at least seemed to have an unsavoury air about them: the Party's disciplinary apparatus, which Counsel suggested extended even to control of members' private lives; the decision-making process, which was portrayed as elitist and anti-democratic; and the plans for a continuation of propaganda activities on an underground level in the event of the Party being declared illegal.

In a detailed examination of Party funds, it was material showing substantial donations from wealthy Jewish citizens, or an improper use of trade union facilities, which was accorded the limelight. What Mr. Sholl called 'facade

25. When questioned on this aspect of their case, Sir Reginald Sholl told me that the fact that the Commission was conducted as a court proceeding relieved assisting Counsel of the onus of calling members of the Communist Party.

organisations' were also dealt with, as part of the investigation of the Party's fringe operations, but the nature of the evidence about these bodies suggests that Sholl was concerned to relate it to the section of the terms of reference which asked if Communist activities were designed to effect the 'attainment of social, economic, industrial and political ends by ... fraudulent practices', rather than to examine their workings in a more general fashion.

If, in the event, assisting Counsel's case introduced matters of greater breadth than merely those which placed an unfavourable light on the Communist Party, it was through default rather than design. Partly it was a result of the active presence of the Party's Counsel, whose efforts to force a wider reading of Communist literature were sometimes rewarded, and who managed occasionally in the course of their cross-examination of assisting Counsel's witnesses, to soften the import of the evidence against them. But primarily it was a result of the impossibility of dealing with particular acts of 'subversion' without going into the general aims and activities of the Communist Party; this was especially true in the case of documentary evidence, even though assisting Counsel read very selectively.

Mr. Sholl opened his case on June 20 with a 'theoretical introduction' in which he offered his main contentions about the nature of the Party, supported by quoted extracts from Communist literature. This introduction (occupying the whole of the first day of sittings and half of the following day) in conjunction with the documentary material tendered by the first witness (M.H. Ellis) comprised the bulk of that section of assisting Counsel's case which dealt with the theoretical aims and objectives as distinct from the practical aspects of the Party in Victoria.

The fundamental objective of 'the Communists' was, Sholl advanced, 'the overthrow by violence of the existing State and its organs of government, the seizure of power and the establishment of the Dictatorship of the Proletariat'. By the promotion of civil war between the warring classes in society, or by some other means, this Dictatorship would initiate Socialism, under a State which would ultimately wither away, leaving a classless, stateless society: Communism.

It was Sholl's contention that 'every activity of the Party is designed to achieve this fundamental strategic objective, however much the tactical plan may vary from time to time'. The objective was to be brought about by the proletariat under the leadership of the Communists. The role of the Communist Party was accordingly,

- (a) to rouse the proletariat into class consciousness;
- (b) to teach them the need for the seizure of power through revolution;
- (c) to train them to use violent means for this purpose; and
- (d) to act as their "general staff" in directing the revolution.

The means of achieving this objective, Sholl alleged, were control of the trade unions and the use of strikes and armed demonstrations, 'the production thereby of a revolutionary situation in which the Government can no longer govern, and the masses are perplexed and ready to follow the Communist lead'. Armed insurrection would then occur, and the proletariat would seize power. It would liquidate the State 'as we know it', including the Judiciary, Police and Parliament, and it would engineer the forcible expropriation and suppression of class enemies. (RCT. 30).

Assisting Counsel produced an abundance of appropriate extracts to illustrate these aims, although they were gleaned more often from the writings of Russian Communist theoreticians and early Australian Communist Party documents, than from contemporary material. Literature utilised by Sholl throughout the case was virtually without exception written and published by Communists.²⁶ According to McInerney, material of non-Communist origin was deliberately avoided in the belief that their case would be strengthened if the Party could be incriminated by its own writings.²⁷

26. The only non-Communist document tendered as evidence of Communist aims was the Report of the Canadian Royal Commission on Espionage, which Lowe accepted on a provisional basis only, after some lengthy debate with Sholl. (RCT. 23-25).

27. Interview, Mr. Justice McInerney, 15 October 1971.

The Commission's terms of reference legitimised the use of documentary material relating to past eras of the Party's operations. The justification for the inclusion of writings of Soviet Communists was in most cases the publication or sale of these works by the Australian party, or the fact that they were taught in classes conducted by its training school. And where this was not the case, assisting Counsel could always fall back upon the links between the A.C.P. and the international Communist movement in defence of their approach. The evidence they relied upon to show Soviet direction of the Party would not have been accepted as proof in a court of law: it was based largely on the printing of Comintern declarations in the Australian Communist Press, and periodic visits of A.C.P. officials to Moscow and Eastern European Communist States. But the Commission was not obliged to restrict itself to matters for which strict legal proof could be furnished; there was sufficient evidence to suggest links of some kind with international Communism, and to justify the assumption of common theoretical aims.

The real force of assisting Counsel's opening lay in their ability to 'quote back' at the Party's Counsel by drawing upon extracts from a vast pool of Communist publications. Skillfully used, they made for an impressive start to the case. Communist Counsel were, of course, scarcely in a position to disown the writings of their own Party. Those which showed Communism to disadvantage they attempted to explain in terms of the exigencies of the historical circumstances which produced the documents; but the seemingly incontrovertible quality of the written word made their task a difficult one. Paterson was on unsteady ground in arguing that an early theoretical work had no applicability to the Victorian Communist Party's objectives in 1949 when assisting Counsel could point to its inclusion in the current Marx School syllabus. Ultimately, the Communists had to counter the argument of assisting Counsel's case by asserting that the documentary extracts it utilised were taken out of context, and could not be properly understood unless they were considered as complete documents in the light of the time and place in which they were conceived.

The charge that quotations were being lifted out of

context carried some substance, but like other flaws in assisting Counsel's approach to theoretical matters, it tended to be cloaked beneath their confident and polished presentation of the evidence. Indeed, the sheer volume of material they had on hand to support their argument must have concealed to all but the most perceptive observer the fact of some serious omissions in their treatment of Communist ideology and aims. In its allegations that the Communist Party advocated the violent overthrow of established government, assisting Counsel's case skirted the well-established problem of timing (recognised by other legal investigations into the nature of Communism). Mr. Sholl made no attempt to indicate at what point of time in the future the Communists expected the Capitalist order to collapse. Moreover, he regarded as irrelevant the serious embarrassment posed to his case by the doctrine of historical inevitability, which tended to the view that Capitalism's collapse would be wrought by its own internal contradictions, and not by the Communist Party. 'It does not matter very much', said Sholl, 'whether the people who write this material say that it is violence which they advocate in an offensive sense, or whether they choose to call it defensive violence by ascribing to their alleged enemy the desire for violence. It is all relevant to the attitude that you must have violent scenes in order to bring about the result they want'. (RCT. 476).

The weakness of the theoretical section became most apparent in assisting Counsel's handling of the relation of ideology and aims to the practical aspects of the Communist Party in Victoria. Mr. Sholl in fact carefully avoided raising the question of whether the theoretical aims as taught by the Party coincided with its practice. He substantiated his claim that the Communists believed in violent revolution and in the necessity for arming the workers with voluminous evidence from the theoretical writings of the Russians. From Bukharin's *Communist Programme of the World Revolution* (1920), Sholl quoted to the Commission: '... the best security for freedom is a bayonet in the hands of the workers' and 'every workman and every peasant must be trained and must be taught how to use arms' (RCT. 41); and from the *Foundations of Leninism*, Stalin's claim that 'the dictatorship of the proletariat is the domination of the proletariat over the bourgeoisie,

untrammelled by law and based on violence and enjoying the sympathy and support of the toiling and exploited masses' (RCT. 45). Yet of all the oral evidence given at the Commission, the only detail which had any concrete bearing upon the arming of the masses in Australia was the single word 'arms' written in a book of notes taken by Mrs 'X' when she was a member of the A.C.P., the effect of which was somewhat spoilt by her total inability to account for its significance. (RCT. 5266).

Strictly speaking, the Commission's terms of reference did not oblige assisting Counsel to correlate theory and practice in their investigation of the Victorian Communist Party: the terms made explicit provision for the separate treatment of general matters and specific activities. Moreover, Counsel assisting any Royal Commission are not expected to furnish conclusive proof in support of a particular argument. Their correct role - as Sholl himself recognised at one point in the proceedings (RCT. 940) - is to gather all the available evidence relevant to the matters named in the terms of reference, and to present it to the Commissioner without regard to the kind of conclusions for which it might afford proof. But in the inquiry into the Communist Party, assisting Counsel made it clear from the beginning that they were to take sides in the issue. They chose to make out a case against the Party, presenting a series of contentions about the nature of its objectives (based on documentary evidence), and then seeking to implement the oral testimony of their witnesses on the Party's activities as a means of 'proving' the validity of these contentions in the manner of prosecuting Counsel in a court of law. Sholl's frequent reiteration that every activity of the Party was designed to achieve the fundamental objectives outlined during the course of his theoretical introduction drew unnecessary attention to the failure of his case to bridge the gulf between the theory and practice of Australian Communism.

For evidence of the practical nature of the Party, Assisting Counsel looked to the witness box, and found that it provided a far less predictable and malleable source of information than had their collection of Communist literature. A perusal of the case leaves a strong impression that they

constantly over-stretched the talents and knowledge of 'friendly' witnesses in an effort to furnish a factual basis for their argument against the Party. Time and again, the dramatic revelations of Communist misdeeds made during examination-in-chief were reduced under cross-examination to absurdly inconsequential proportions; and at least some of the 'friendly' testimony proved to be based on such shaky expertise and limited experience that the anti-Communist cause would have been better served if it had never been given.

3. The witnesses against the Communist Party

Assisting Counsel called a total of 80 witnesses, a number far in excess of that called on behalf of the Communist Party. After the theoretical introduction and the testimony of the first witness, M.H. Ellis, the anti-Communist case ceased to be thematic in its presentation: each witness was examined with a view to extracting all the damning information about the Party that he or she possessed; the case meandered its course through an endless variety of subjects, and the evidence as a result was frequently repetitive. The enormous number of witnesses, combined with the controlling influence which they exercised upon the effectiveness of assisting Counsel's argument against Communism, has demanded that they be given a proportionate emphasis in this thesis. An attempt to categorise the types of witnesses, rather than to analyse the themes and objectives of the evidence as a whole, seems to be the only practicable approach to the case.²⁸

The appearance of Cecil Sharpley, the Commission's star witness and public 'draw card',²⁹ was delayed for 8 days while an 'historical expert' on Communism (Ellis) completed the presentation of documentary evidence. In a very concrete way, the nature of Sharpley's evidence determined the subsequent course of assisting Counsel's case. Occupying the

28. See p. 178 ff. of this Chapter for a discussion of the contrasting approach to the Communist Party's case.

29. *Sun*, 7 July 1949.

witness-box for a total of 28 days, he was responsible for the bulk of the allegations against the Party, a number of which were later pursued in detail by other witnesses produced by Assisting Counsel, or by persons who denied his allegations. His evidence ranged so widely that there were few aspects of the case which it did not touch upon in at least cursory fashion; perhaps unfortunately for assisting Counsel, much of their evidence against the Party relied upon Sharpley's word alone. For that substantial section of the case which sought to show the Party's internal operations, the contributions of the three ex-Communists who supplemented Sharpley were severely circumscribed by factors of time and geography. J.N. Rawling and 'Mrs X' both ceased to be members of the Party in 1939; T.C. McGillick told the Commission that his membership terminated in 1942, but it appeared that for several years prior to that date he had played no active role in Communist affairs.³⁰ The evidence of all three was limited to the 1930's, and only 'Mrs X' could contribute to the picture of the Victorian Party branch. Evidence on industrial matters was at times weakened by a similar thinness. The most serious of Sharpley's allegations were those concerned with trade union ballot-rigging, but of the 14 separate unions involved, assisting Counsel managed to produce supporting witnesses in only 3 cases. Thus to a significant extent the effectiveness of their case depended upon Sharpley's credibility.

The most prominent witnesses fell into four categories. The first two were the ex-Communists, and the anti-Communist trade unionists (mainly Industrial Groupers). Thirdly, there was the group of alleged fellow travellers and secret Communists, that is, people who came forward on their own initiative to answer charges of Communist association made against them by Sharpley or other anti-Communists. Assisting Counsel utilised the appearance of these voluntary

30. McGillick admitted to Ted Laurie in cross-examination that his membership fell into abeyance in 1932, but he said that he still considered himself to be a member of the Party even though he did not pay dues or possess a membership card. McGillick joined the Friends of the Soviet Union in 1935, and during the war the N.S.W. State Labour Party; he was expelled from both in 1942 for opposition to the war effort. (RCT. 5239, 5072).

witnesses to expand their evidence of the Communist Party's connections and influence in the community at large, and wherever possible produced minor witnesses in an attempt to substantiate the original allegations. Closely cross-examined by assisting Counsel, and by Mr. Reynolds on behalf of Sharpley, the 'fellow travellers' comprised an important, if unplanned, section of the case, although the contribution of their evidence towards an indictment of the Party was often negligible. A fourth category, that of the anti-Communist 'cranks', is less clearly distinguishable, since a number of trade union witnesses and ex-Communists exhibited in varying degrees that hysterical and paranoid attitude to Communism denoted by the rubric 'crankish'. But there were two witnesses whose extreme paranoia imparted to them an especial prominence at the Commission. Their experience of Communism extended no further than a casual acquaintance with individual Communists, whom they perceived as personifications of the Party's evils. Their motivation in testifying against these individuals apparently derived from private feuds and resentments, and they proved more of an embarrassment than an asset to assisting Counsel's effort to denigrate the Communist Party.³¹

The areas of subject-matter covered by oral evidence naturally did not always coincide with the divisions into witness 'types'. In fact the only subject dealt with as the exclusive expertise of one group was the internal organisation and operations of the Communist Party, about which the ex-Communists alone were in a position to testify. Evidence of other matters was adduced in piecemeal fashion from a variety of witnesses. The ex-Communists elaborated their own versions of the theoretical teachings and aims of the Party first presented to the Commission in documentary form, while all anti-Communist witnesses contributed information on Communist activities in extra-Party spheres. The examination of the

31. There was one relatively significant section of the case dealt with by witnesses who did not come within any of these categories. Assisting Counsel called an Executive member of the Victorian State School Committees' Association, and a minor supporting witness, to testify to the Communist affiliations of certain members of that Association. McLean was strongly anti-Communist, but his style of testimony was too sane and competent to qualify him for inclusion among the 'cranks'.

'fellow travellers' was designed to illustrate the workings of the Party's front organisations, its influence within the Labour Party and its power to dupe liberal Ministers of Religion. But in the mass of repetitive and frequently confusing detail offered to the Commission, it was the types of witnesses rather than the precise content of their evidence which emerged as the more significant: what motives led them to testify? what function did they serve in the broad scheme of the case? and how damaging were they from the Communist point of view? These are the kind of questions upon which any useful evaluation of the oral evidence for the anti-Communist case must be based.

The 'historical expert'

MALCOLM HENRY ELLIS, historian and *Bulletin* journalist, was assisting Counsel's 'expert' witness, his contribution to the case being an extension of the documentary introduction with the professed aim of illustrating the origins and organisational development of the Communist Party in Australia. Ellis's career as a student of the subject had begun in 1918 at the request of the Commonwealth Directorate of War Propaganda (RCT. 111); subsequently, during the course of private research in Australian history, he had published *The Red Road* (1932) and *The Garden Path* (1949), both of which sought to prove the A.C.P.'s connections with Moscow and with sections of the Australian Labour Party. When Ellis died in 1969, Professor C.M.H. Clark observed that his political philosophy had been based on a deep conviction

... that the protestant religion, and British political institutions, were the recipe for men of heroic ingredients and that the Russian Revolution of 1917 was an international conspiracy to degrade and besmirch mankind. Publicly, he seemed anxious, indeed over anxious, to shake Australians out of their complacency and force them to see that the barbarism of world communism was already in their midst.³²

32. C.M.H. Clark, 'R.C. Mills and M.H. Ellis: A Note', *Historical Studies*, vol. 14 no. 53, p. 96. Ellis was perhaps best known to *Bulletin* readers under the pseudonym 'Ek Dum'. His extreme view of Communism has also been noted by D.W. Rawson. In 1919 Ellis

Unlike other witnesses for the case, Ellis did not testify concerning his own experience with the Communist Party, nor did he express directly his personal views on the nature of Communism. Essentially he was employed by assisting Counsel as a vehicle for the presentation of documents which they could have tendered themselves. But Ellis possessed the advantage of being able to act as an 'interpreter' of the evidence, backed by more than 30 years experience in researching the field. He could select those documents of use to the case, link them in logical historical sequence, and place them in context where this was not clear. And he provided an opportunity for assisting Counsel to exploit the conventional image of the detached historian in order to dignify their argument with an aura of objectivity.³³

Ellis told the Commission that he had used his discretion in selecting the evidence, the basis of his choice being that each document should show 'some act in the progress of the Communist Party' or constitute an official declaration by a Party officer; and that each should be capable of 'standing on its own feet' without comment, as a means of avoiding the intrusion of his own political bias. (RCT. 565-6).³⁴

32. Cont.

(then private secretary to the Leader of the Queensland Opposition) observed a march in Brisbane organised by the Qld. Industrial Council in protest against the continued use of the War Precautions Act against Government opponents. Ellis said later under oath that some Russians participating in the march had waved red flags and foamed at the mouth. (See 'Political Violence in Australia', Dissent no. 22 (Autumn 1968) p. 20).

33. The question naturally arises as to why assisting Counsel did not call a University academic to testify for this section of their case. The evidence of an academic like John Anderson would surely have carried more weight and prestige than that of Ellis, whose extreme anti-Communist bias was well-known. Perhaps the hegemony of the Left was too strong in intellectual circles for anyone to risk appearing in the role of a pimp.
34. In cross-examination, Ellis would not agree with Paterson that he was 'insanely' biased against Communism, but he admitted that he had a 'natural' bias against treason and violence. (RCT. 566).

He must have forgotten how interpretative the mere act of selection can be. It was very much apparent that his choice of material had been governed by a wish to make out a case against the Party, and that he had taken the opportunity, in showing its organisational development, to include those documents which placed its aims and policies in the most unattractive light. His chronological grouping of documents betrayed the bent of his pre-occupations, the most conspicuous of which concerned the changes in A.C.P. policy in relation to the Second World War as an example of the Party's subservience to Comintern. Ellis tendered a total of 22 exhibits (mainly articles from the Party's journals) to document the 1939 reversal from initial support of an 'anti-Fascist' war effort to bitter hostility towards 'Imperialist' war-mongering. In marked contrast, the years 1940-42 were represented by only 5 documents; and for the final years of the war during which the Party gave its enthusiastic and whole-hearted support, Ellis produced none at all.

In general the basis of Ellis's selection of documentary evidence would seem to have been his wish to portray the A.C.P. as a Party of violent revolution; which necessarily called for a glossing over of those periods when it sought accommodation with more moderate elements in the Labour movement. His emphasis on the year 1930 was justifiable, since this point marked a radical overhaul of the Party's organisation, the institution of a new leadership and the embarkation upon a revolutionary brand of socialist propaganda. But significantly enough, the concentration of documents extended throughout the period of the early 1930's, when Communists were at their most belligerent and uncompromising in their support for revolutionary tactics, and declined only after the Party adopted a softer approach in favour of co-operation with the 'forces of progress and peace' for the defeat of Fascism.³⁵ Similarly, Ellis showed no interest in the dissipation of Communist revolutionary fervour resultant upon the A.C.P.'s war effort and the influx

35. Ellis tendered 30 documents covering the period 1930-34, and 2 documents for the period 1935-38.

of middle-class intellectuals into its ranks. His neglect of the latter war years carried over into 1946 and 1947, and it was only with the re-adoption of hard-line policies in 1948 that he saw developments in the Party as once more warranting exposition at the Commission.

For the Communist Counsel, cross-examination of Ellis was a testing ground to determine how Lowe would interpret the role he had assigned them during the procedural rulings. At this stage they remained very much on the defensive, approaching the witness with that aggressive spirit which springs from insecurity. Ellis's portrayal of the A.C.P.'s organisational development, like assisting Counsel's introduction, relied solidly upon the Party's own literature, and at no point was its accuracy challenged. The Communists attacked on the grounds that in showing this development, Ellis had chosen documents which gave a biased view of the Party's aims and policies as a means of articulating his extreme personal hatred of Soviet Communism. Ellis seemed to feel some embarrassment at Paterson's use of his *Bulletin* articles to demonstrate his pro-Fascist attitudes in international affairs during the immediate pre-war years; and Paterson enjoyed a degree of success in attempting to show that his war-time reporting of events concerning the Soviet Union was consciously inaccurate and designed to prejudice the Soviets' image in the eyes of the Australian public. But Lowe remained unconvinced by Paterson's assertion that Ellis's political bias had guided his selection of evidence. He was even more disinclined to accept the proposition that the documents submitted to the Commission were so unrepresentative of the true position of the Party that no findings could legitimately be based upon them. Even if there were some serious omissions, Lowe commented, this could in no way affect the validity of that material which *had* been tendered as evidence. (RCT. 608). Nevertheless, it was upon the basis of their claim that Ellis had deliberately conveyed a false impression of Communism that Lowe allowed the Party's Counsel to tender additional documentary evidence. Assisting Counsel were watchful of their opportunities to object to the breadth of this 'supplementary picture', and Lowe agreed with the point made by Stanley Lewis that the Communists should only adduce evidence on matters raised by Ellis in his examination-in-chief. He reminded

Paterson that since the Party was not yet presenting its own case, he should restrict himself to quoting only the 'barest essentials' of the documents. (RCT. 581). In response, Paterson took the opportunity to draw attention to the difficulties of the Communist Counsel's position:

... In an ordinary case we would have been in a position to ask for particulars ... and then we could have based our evidence on the particular charges levelled against us. However, unfortunately we have not the slightest idea of that. We do not know what evidence will be given, and therefore we must take advantage of every occasion in which to get in any evidence at all which can help to explain our teaching or our policy so that it may be interpreted correctly. (RCT. 594).

Having arraigned the Party almost exclusively from Communist literature, Malcolm Ellis was secure from the challenge to credibility normally levelled by cross-examining Counsel at witnesses who give testimony of a personalised kind. The Communists could demonstrate Ellis's strong political antagonism but they were unable to relate this to his evidence except in terms of its selectivity; his picture of Communism was inaccurate only in so far as it was incomplete. Failure to undermine the value of his contribution to the Commission nevertheless did not unduly compromise the Party's position. For whilst this 'impregnability' made him a fairly solid introductory witness, his evidence did not ultimately constitute a serious indictment of Communism. Its capacity to damage was limited by the fact that it merely portrayed the Party as an advocate of unworthy causes, furnishing no actual proof of misdeeds in contravention of law.

The ex-Communists.

As the sole source of information on internal aspects of the Party, and the most authoritative agents for the identification of Communists and 'associated' persons, the former Party members were indispensable to assisting Counsel's case. Each had been actively involved with the Communist Party for a number of years, and it was difficult to dispute the likelihood that from this experience they had gleaned considerable knowledge of its functioning. Their inside experience of a political organisation whose essence, as posited by assisting

Counsel, was secrecy and conspiracy, imparted to their words a more than average persuasiveness. But this effect was diminished by the nature of their political conversion. Exhibiting an intensely hostile reaction to their old allegiances, it was evident that they were far from being disinterested parties in the matters to which they testified; their credibility was thus rendered particularly vulnerable to challenge from opposing Counsel

CECIL SHARPLEY'S testimony illustrated most clearly the co-existent strength and weakness of the ex-Communist witness. During the course of his examination-in-chief, he proffered a wealth of plausible detail about the Communist Party, his confident, unruffled manner impressing the Commissioner as the bearing 'in general' of a good witness.³⁶ And Sharpley was undoubtedly correct in his subsequent claim that 'the Royal Commission could not have proceeded far on its way without my help'.³⁷ His usefulness to assisting Counsel was impaired, however, when he faced Ted Hill in cross-examination. Through an attack on Sharpley's personal credit and a challenge to the factual basis of many of his allegations, Hill managed to convince Lowe that there was 'much to make one doubt parts of his evidence',³⁸ and Sharpley emerged from a lengthy ordeal in the witness-box with his earlier reputation as a 'phenomenal' witness somewhat tarnished.³⁹ Cross examination suggested that at many points he had exaggerated his understanding of, and role in, Communist affairs, and over-reached himself in an effort to prove his worth as chief witness against the Party. That deep-seated insecurity and thwarted ambition which had led Sharpley to desert the Party now operated to flaw his evidence against it.

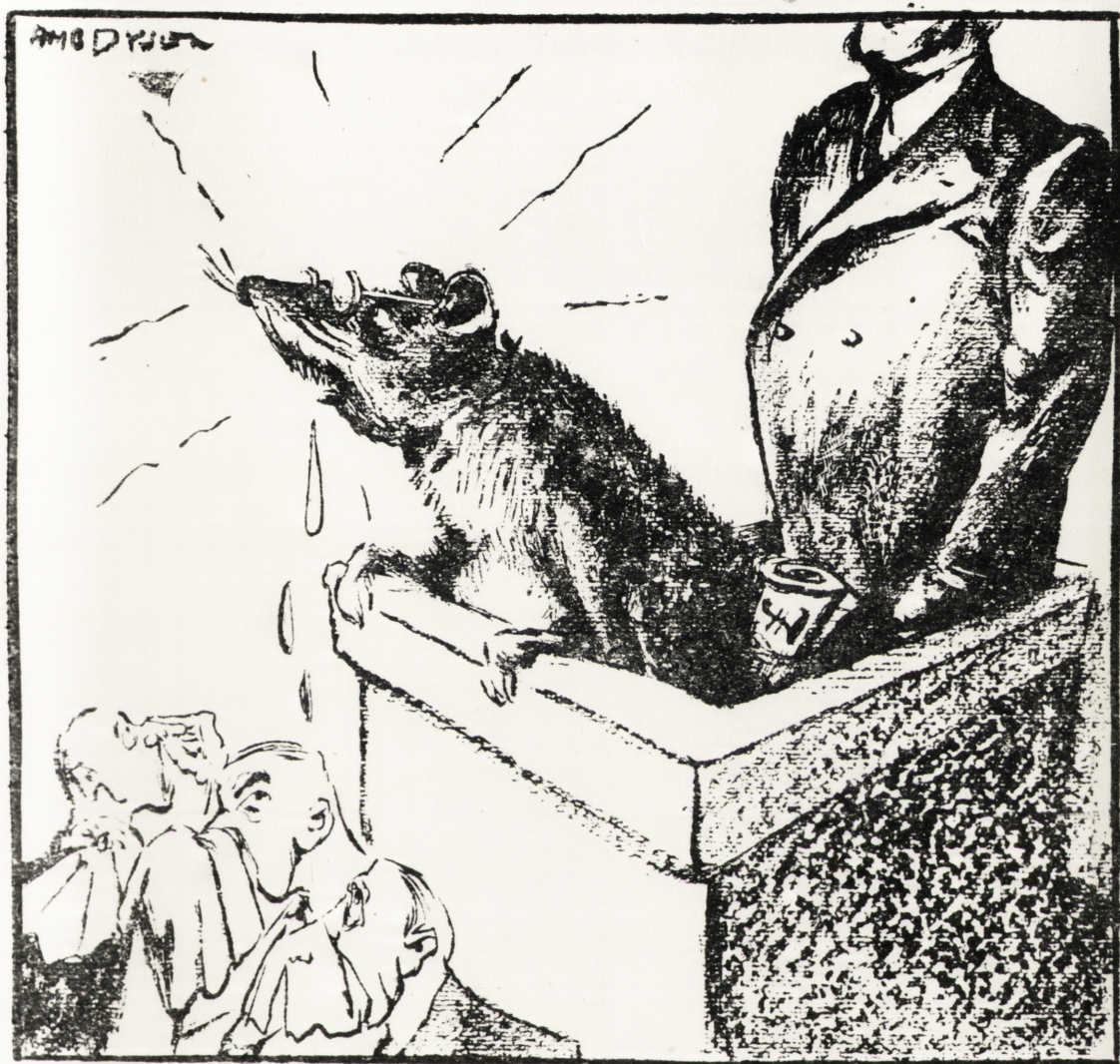
Sharpley's value as an anti-Communist witness derived from his official position in the Party, and the

36. Report, p. 7.

37. Sharpley, The Great Delusion, p. 132.

38. Report, p. 7.

39. The Melbourne *Herald* and *Sun* were lyrical about Sharpley's performance during the first few days of his testimony, and their readers remained unaware of the fact that his success was not sustained under hostile interrogation.



"Hark, the Herald's angel sings!"

length and recent nature of his membership. Yet these same assets made his credit more susceptible to attack from the Party's Counsel, for in cross-examination Sharpley confronted the hostility of the men he had directly 'betrayed'. The Communist barristers knew as much as Sharpley himself about the matters concerned in his allegations; unlike assisting Counsel, they also knew to what extent he had told the truth, and from this vantage point they were well-equipped to produce additional information which would throw his reliability into question. Moreover, their personal knowledge of the witness enabled them to organise their cross-examination in such a way as to exploit to the full the 'cracks' in his personality. In line with the Party's anti-Sharpley propaganda outside the Commission, Hill depicted his former comrade as a moral degenerate, and a weak, ambitious man who turned against the Party because he could not succeed in it. Communist Counsel found it useful to emphasise the element of the turn-coat in the make-up of all the ex-Communist witnesses, but it was a line of attack which proved particularly successful in the case of Sharpley, because his profitable journalistic exposure of the Party conformed to the stereo-type of the professional paid informer.

Sharpley appeared at the Commission in the constant company of his private bodyguard, and according to Press photographs, with dark-ringed eyes and haggard expression. For the Communists the latter was fresh evidence of a degenerate private life, and of the internal erosion caused by the conscience of a man who had betrayed his friends and principles 'for a price'.

Sharpley's mentors, on the other hand, would have accounted for his physical appearance in terms of the strain imposed by the Party's efforts to intimidate him. During re-examination, Mr. Reynolds made much of the fact that his client had been approached and abused by Communists in public places, and he drew attention to 'threatening' articles in the *Guardian*.⁴⁰ (RCT. 2650-1). There was no evidence that

40. Reynolds referred to the following statement in the *Guardian*, 12 July 1949: 'The gentlemen so enamoured of ... Sharpley are not above killing him and fabricating a chain of clues implicating some Party leader. History shows that they have not hesitated to destroy similar

physical violence had been employed against Sharpley, but a vocal 'demonstration' by Communists in the public gallery when he first entered the witness box gave some substance to assisting Counsel's picture of the Party's tendency to victimise its political enemies. Lowe seemed angered by the shouts of 'You rat, Sharpley!' and 'You couldn't tell the truth, Sharpley!'; he ordered the court to be cleared, and he acceded to Mr. Sholl's request that 'in the circumstances', Sharpley's current address should be withheld from the public. (RCT. 688 ff.)⁴¹

In the witness-box, Sharpley enlarged upon the conception of the Communist Party he had given in his *Herald* articles: an organisation dedicated to securing control or influence in all sectors of community life preparatory to its major aim of seizing political power and establishing a Communist dictatorship. He claimed that where its objectives could not be achieved by open persuasion and propaganda, the Party was actively engaged in methods of violence, intimidation and fraud: '... the policy of the Communist Party, as I endeavoured to show in my articles, was completely disruptive and completely destructive and against the fundamental interests of the Australian people and of the nation, and ... [it] is prepared to stoop to any means to advance its policy'. (RCT. 1802). Only under the pressure of cross-examination did he concede that revolution was not considered by the Communists to be a matter of 'immediate and practical politics'. (RCT. 848).

Sharpley's contribution to theoretical matters was

40. Cont.

individuals and then endeavoured to place the blame on working class leaders'. According to the *Melbourne Sun*, Communists present in the court during Sharpley's testimony conducted a 'war of nerves', attempting unsuccessfully to disconcert him with 'a steady damning stare'. (6 July 1949). In confirmation, Sharpley writes that 'Communists were always present in the public gallery, staring and mouthing abuse at me'. (Great Delusion, p. 129).

41. Sharpley describes this outburst as 'rather more horrible than the attack by a shoal of sharks starving for blood ... It was as if one were chained to a spot where a foul sewer had burst'. (Great Delusion, pp. 128-9).

offered in the context of his evidence on Marx School classes and his experience as a Party tutor. He implied that the Party's published material on ideology and aims provided no adequate measure of the real nature of Communism, thus giving expression to the theory (a favourite of ex-Communist witnesses) that the language of Communist texts, even when innocent on its face, was understood by the initiate in a different and sinister sense.⁴² Revolutionary content was deliberately toned down for consumption by the Australian public. Even within the Party itself, Sharpley claimed, rank and file members were fed a 'sugared line' by their leaders and tutors, and were kept in ignorance of the extent of its commitment to violent revolution. (RCT. 949 ff.).⁴³ In the unions, Communist organisers practiced a similar deceit. The Party took advantage of the political gullibility of the ordinary working-man, encouraging him to believe himself activated by his own interests, while in fact manipulating him to serve those of the Communist revolution. (RCT. 863).

If ultimately Sharpley proved to be a damaging witness against the Communist Party, one is struck nevertheless by the basically inconsequential nature of the bulk of his evidence. Of the numerous instances of quasi-criminal

42. See H.L. Packer, Ex-Communist Witnesses, (California, 1962), p. 12.

43. During cross-examination, Sharpley admitted to Hill that his evidence on the Party's teachings was not a comprehensive picture, but was intended to show only 'some aspects' of what was taught. Hill successfully demonstrated that several of the documentary extracts tendered by Sharpley had never in fact been used by the Party's tutors. He also drew attention to what he called the 'tendentious' subheadings under which the extracts had been presented to the Commission: e.g. "Communist technique for actual seizing of power"; "Why the Communist Party forbids free criticism by rank and file". Mr. Sholl told Lowe that the headings should be disregarded. 'They apparently represent some effort on the part of the person who collated them ... to convey a description of the subject matter.' Sharpley denied Hill's suggestion that assisting Counsel had given him the headings and asked him to find quotations from Party literature which accorded with them. (RCT. 1859-66).

conduct he alleged, only a few could be furnished with solid evidence, and more often the information which purported to incriminate the Party failed to rise above the level of the banal. His evidence on the Party's internal operations functioned primarily to create the 'atmospherics' of assisting Counsel's case; the effect was to present an unappealing view of the organisation by emphasising its authoritarian and conspiratorial aspects. Organised upon a rigid bureaucratic structure, the Party's policy decisions emanated from the highest committee and were enforced upon the rank and file. Delegates to the State Conference, while in theory enjoying a free vote, were subject to pressure from Party leaders, and the Executive reserved to itself the power to alter resolutions passed. (RCT. 821; 1285-6). Autonomy of local branches was minimal: the ruling clique could interfere at any time to 'eliminate' an elected official if it considered him unsuitable for the position, Sharpley claimed. (RCT. 1283). He pictured the Party's membership as held within the grip of an iron discipline. A 'Control Commission' enforced conformity with the Party rules and the Communist ideology, and 'deviants' were subject to public censorship, suspension or expulsion from the Party. (RCT. 837-8).

Whether founded upon fact or not, Sharpley's claim that the Party had raised funds by rigging its Melbourne Cup sweep so as to ensure that no prize money would have to be paid out (RCT. 906) possessed that faintly ridiculous quality typical of much of his evidence of Communist misdeeds.⁴⁴ And even the less absurd allegations failed to achieve the damaging effect that was apparently intended. For instance, Sharpley deposed to the fact that a domestic tribunal interfered in the personal relationships of Party members, even to the extent of directing that a married couple should separate and permitting another unmarried couple to co-habit. (RCT. 837; 2631-3). His

44. Sharpley instanced a number of underhand methods employed by the Party to add to its funds, including the employment of members to work the Party's Press at under-award rates of pay. Sharpley claimed that when he became manager of the 'Starlight Press' in 1936 he remedied this situation, although he continued to accept under-award rates himself. This latter information was probably brought out by assisting Counsel to bolster their image of Sharpley as a man of selfless principle, counteracting the Party's attempts to discredit his character.

implication was no doubt that the Party observed unsavoury moral standards, but as Lowe later commented in the Report, Sharpley produced 'no evidence to show that these irregularities ... are any greater than, if indeed as great as, those existing in any other section of the community'.⁴⁵ Likewise, one suspects that Sharpley's picture of an unscrupulous leadership, 'prepared to stoop to any means to advance its policy', did not single out the Communist Party as being especially divergent from its rivals in party politics.⁴⁶

Hoping to clarify the fact that, in their view at least, the A.C.P. was no 'ordinary' political party, assisting Counsel gave a prominent place to evidence of its underground activities, questioning Sharpley closely on the manner in which the Party operated whilst under the constrictions of the 1940-42 ban. The use of false names and secret printing presses suggested an appropriate degree of conspiracy, but the only 'misconduct' alleged by Sharpley (other than defiance of the ban) was the Party's anti-war propaganda before the German invasion of the Soviet Union. Communists infiltrated the factories to slow down war production, and into the Armed Forces to stir up soldier's grievances. (RCT. 718-33). True, Sharpley testified to misconduct of a more serious order in illustrating his contention that deserters of the Party were frequently subject to intimidation and assault by other Communists. He claimed that 'Dinny' Lovegrove had been brutally bashed by several Party members (including Ralph Gibson) after his expulsion in 1933, but the force of the allegation, like many others of a similar kind, was considerably weakened by the fact that it rested entirely

45. Report, p. 71.

46. Dealing with this subject in his Report, Lowe found that 'The Communist Party is prepared to use any means to achieve what it thinks to be a desirable object, so long as it regards the means as fitting and the result as not on the whole disadvantageous'. (p. 105). Brian Fitzpatrick's rather apt comment was that Lowe's finding would be remembered as 'an unimpeachable description of the ethics common to all political parties'. (The Un-necessary Police State Bill, Australian Council for Civil Liberties, Melbourne 1950, p. 8.)

upon hearsay information. (RCT. 765; 1244).⁴⁷

Evidence of the Party's *external* operations (to which a sizeable portion of Sharpley's testimony was devoted) centred upon its 'front' organisations, and Communist penetration of trade unions and a variety of non-Communist voluntary organisations. Confirming a widespread popular belief, Sharpley revealed that the Party promoted its cause through the creation of 'progressive' bodies whose Communist origins remained unapparent to the public. The invited participation of prominent public figures furnished a veneer of respectability, cloaking from general view, and often from the organisations' non-Communist members themselves, the fact that policy was controlled by a few strategically-placed Communist office-bearers.⁴⁸ Party members in organisations like the R.S.L. and the Labour Party carried out another kind of deception, disguising their political affiliations to avoid expulsion under anti-Communist membership rules.⁴⁹ As in the

47. Lovegrove held the position of Organising Secretary in the Victorian branch of the A.L.P. in 1949. Sharpley told the Commission that it was fear of a similar fate for himself which had prompted him to leave the Party secretly. Lowe does not mention the Lovegrove affair in the Report in his section on the Party's use of force, violence and intimidation, indicative perhaps that he did not accept the allegation as proven.

It is interesting that Lovegrove was not called as a witness by assisting Counsel: in many ways he would have been an asset to their case - a strongly anti-Communist ex-Communist, fluent, aggressive and unlikely to be intimidated by Hill's cross-examination techniques. Perhaps the Federal A.L.P.'s opposition to the inquiry, and the need to protect the Federal Government in an election year, deterred Lovegrove from appearing as a witness.

48. Sharpley quoted a number of examples of the Party's front organisations, including Australia-Soviet House, the Eureka Youth League, and the New Housewives' Association. Among the numerous fellow travellers whom he said the Party relied upon for the successful operation of such organisations, Sharpley named 3 Melbourne University professors (Greenwood, Woodruff, and Crawford). These were associated with A.S.H. and could be influenced to favour 'certain aspects' of Communist policy (RCT. 868 ff.)

49. Sharpley's evidence on the infiltration of Communists into non-Party organisations was extensive. Assisting Counsel introduced this section of their case by showing considerable interest in his evidence about the creation of sub-committees within the Party to centralise its activities in particular fields - e.g. industrial affairs,

case of his evidence on Communist fractions in the unions, Sharpley's information for the most part did not amount to more than a description of the tactics of an ordinary pressure group. He claimed that Communist members of these extra-Party organisations sought to influence policy in accordance with A.C.P. objectives and where practicable, to instal themselves in positions of office as a means of facilitating this aim. But there were few instances where he could show that the Party worked towards its ends by methods other than those of persuasion, the use of legitimate voting power, and in trade union affairs, a polished technique in the 'management' of meetings.

With the notable exception of matters concerning Communists in the unions, Sharpley's evidence on these 'fringe' activities suggested a negligible degree of illegal conduct. Its capacity to injure the Party derived principally from its exposure of the presence of Communists in key areas of community life - a phenomenon perhaps intrinsically harmless, but liable to be badly construed by an anti-Communist public convinced of the subversive aims of Communism. Sharpley's success as a witness must be measured by the standards of what his evidence purported to achieve. Assisting Counsel constantly sought to impart an unsavoury atmosphere and a sinister meaning to the information provided by Sharpley - an exercise in which he was only too willing to co-operate - and they made it abundantly clear that they viewed their witness not as a source of general information on the Communist Party but as a vehicle for its indictment. In this respect the

49. Cont.

agriculture, youth, and the medical profession. (RCT. 833 ff.). Subsequently, Sharpley spoke of organised groups of Communists present in a wide range of occupational, educational and cultural bodies, such as a journalists' group, a unit of Communists in the Greek community, and another in the Education Department. (RCT. 844-890).

Lowe showed much curiosity about Sharpley's allegation that there was a Party branch active at Melbourne University (RCT. 893), and questioned him closely on the matter, as he did other witnesses who made the same claim. The number of members Sharpley could name specifically as being members of these groups was usually small. He knew of only 2 teachers who were in the Party's fraction in the Education Department, and he had no idea whether they incorporated Communist doctrine into their teaching. (RCT. 850).

greater part of his testimony was ineffective.

It redeemed itself, however, on industrial matters, where Sharpley's experience as a trade unionist and secretary of the industrial sub-committee of the Party came to the fore. Lowe did not accept all of his allegations about the Party's use of violence and intimidation in trade union affairs,⁵⁰ but there was enough apparently authentic detail to indicate the propensity of Communists to adopt 'bullying' tactics as a means of defeating their political opponents, and to disregard the niceties of the law and democratic procedure where these did not suit the Party's purposes. Taken in conjunction with the most serious evidence against the Party - Sharpley's charges of ballot rigging - it amounted to a damaging accusation of Communist misconduct in the most vital area of the Party's operations.⁵¹

Ted Hill featured consistently in the evidence as a kind of bogey, responsible it seemed for almost all of the misdeeds. Sharpley claimed that a major reason for his own disillusionment with the Party was Hill's frequent direction (as head of the industrial sub-committee) that forceful tactics should be employed at union meetings, and that ballots in which Communist candidates were unlikely to succeed should be rigged. (RCT. 762). And Sharpley projected an image of himself as one who carried out such orders, but with reluctance and distaste. The two 'comrades' had associated closely in their Party work for a number of years; their clash as witness and cross-examiner was consequently pursued on intensely personal level with mutual hostility only thinly veiled.

50. See Report, p. 75.

51. The Party's alleged misdeeds in the industrial sphere were not all of a criminal kind. Sharpley claimed it had instigated several major strikes in Victoria: the 1946 Transport Strike, the 1947-8 Metal Trades Strike, and the 1948 Essential Services dispute. He said that Communist union officials had manipulated union rules to consolidate their position, and in some cases had deliberately precipitated disputes with anti-Communist union members which provided the opportunity for intimidation, black bans and expulsions. The Party maintained a vigilant eye on the affairs of all unions, and where it succeeded in getting its members into office, these officials would seek the advice of Party leaders on all important matters of union policy and strike action.

Sharpley was inclined to frame his answers in such a way as to suggest 'You ought to know, you were there', while his general bearing indicated that he feared Hill as a person who knew him too well, and would use the knowledge ruthlessly to his disadvantage. Hill's own manner exhibited that cold implacability attributed to him in Sharpley's articles.⁵²

Hill concentrated on undermining Sharpley's credit rather than challenging directly the truth of particular allegations. The latter were usually approached with a view to establishing that Sharpley had consciously distorted an ordinary and quite harmless occurrence so as to imbue it with a sinister aspect. Hill pursued a two-fold aim. Firstly, he tried to demonstrate that many of what purported to be factual statements in Sharpley's articles and evidence were simply his personal opinions, or generalisations based upon recollection of a single incident, neither of which were supported by more substantial kinds of evidence. Secondly, he charged that Sharpley's motive both in writing the articles and in testifying at the Commission had been to support the current anti-Communist campaign of the Capitalist Press, and to turn people away from Communism, rather than to present a truthful account of his experience in the Party. Lowe's suspicion of Sharpley's reliability (as recorded in the Report) is in large part a reflection of Hill's success.

It seems indisputable in view of his position in the Party that Sharpley possessed accurate knowledge about a wide range of the Communist activities; and close scrutiny of the detail of his evidence leads one to doubt the probability of a serious degree of conscious fabrication.⁵³ Where the facts

52. C.H. Sharpley, I Was a Communist Leader, p. 2. Hill undertook the entire cross-examination with the exception of trade union matters. No doubt the Party considered it more prudent to allow Laurie to deal with these, since Hill figured so prominently as an accused person.

53. The accuracy of a considerable number of points in Sharpley's testimony was successfully challenged by Hill, but they were almost always very minor factual mistakes. Sharpley did admit that there were a number of errors in his *Herald* articles, some of a 'serious' kind, and that he did not in every case take the trouble to see them corrected. For instance, he agreed that his claim that Party recruits swore a 'solemn oath' upon entering the Party was technically incorrect; also that the sentence in his articles declaring that Sharpley was elected to

were distorted, Sharpley's impulse was probably as much his desire to create a picture which conformed to assisting Counsel's pre-occupations as his determination to wreak vengeance on the Party. On the whole, the flaws exploited by Hill derived from his inclination to testify beyond the bounds of direct experience, and from his eagerness to expose the 'real' aims which lay behind Communist activities - tendencies which assisting Counsel conspicuously failed to discipline. Determined to capitalise upon their star witness, Mr. Sholl and his colleagues over-extended the potential of Sharpley's testimony so as to cover every aspect of the terms of reference. Moreover, they laboured to convey the impression that his knowledge of Party practice was supplemented by expertise in the theory of Communism, manufacturing an image of Sharpley which he could not sustain in the face of aggressive cross-examination. Hill destroyed the image with a facility which quickly deprived Sharpley of the smooth confidence he displayed under examination-in-chief.

Perhaps sheer nervousness induced by the hostile confrontation with Hill stultified his mental processes, for Sharpley was unable to articulate a clear understanding of some of the most elementary aspects of Communist theoretical teachings, although he has worked as a Party tutor for a number of years. (RCT. 1766 ff; 1830 ff.). Hill frequently saw occasion to point out the faultiness of Sharpley's memory about matters not dealt with in evidence, contrasting it with the detail of other occurrences recounted in his articles and in the witness box. He demonstrated that notwithstanding this apparently detailed knowledge of the Party's affairs, a great many of Sharpley's allegations lacked a solid factual basis. In support of his assertion that the Party received substantial monetary donations from 'wealthy foreign-born manufacturers', Sharpley

53. Cont.

the position of assistant Secretary of the Munition Workers' Union after 2 weeks work at Maribyrrnong munitions factory should have read '10 weeks'. (RCT. 1149; 1177). More often, however, the effectiveness of the cross-examination was based less upon a direct challenge to the factual accuracy of the evidence, than upon its exposure of Sharpley's tendency to rely on hearsay or on knowledge of a single isolated event for his generalisations about Party behaviour. In other words, Hill concentrated upon *distortion* rather than *fabrication* of the 'facts'.

could cite only a single example, and admitted he had no idea how many people were involved in this category of contributors. (RCT. 1301). His evidence that Comintern controlled the operations of the A.C.P. was similarly demonstrated to be of nebulous character. Sharpley had told Sholl that the sources of policy directives from Moscow were the Comintern newspaper, *Pravda* editorials, and broadcasts by Moscow radio. Questioned by Hill, he could give no examples of the Victorian State Executive discussing the content of these newspapers, or of Party policy being altered in accordance with the views they disseminated; he knew of one occasion alone when a Party member had recorded a Moscow radio broadcast. (RCT. 1249 ff.) The last occasion he could recall of a Party leader paying a visit to the Communist International was in 1938, but he 'assumed' that R. Dixon's recent trip abroad was of a similar nature to those of the Comintern period. (RCT. 1876 ff.)⁵⁴ Sharpley's evidence on control and authority within the A.C.P. was also shown to be a distortion of reality. Hill asked Sharpley to illustrate his claim that the State Executive altered resolutions passed at the State Conference.

The witness: ... I think that in 1947-48 there were discussions on the final form of the resolution, that is on the State Executive, and for certain political considerations it was altered.

Mr. Hill: Were they material alterations on what had been carried? A: I do not think so.

Q: There was in fact no change of policy at all?

A: No, I think it would be just some question of emphasis. (RCT. 1286).

Likewise, the allegation of 'interference' by Party leaders in A.C.P. elections amounted, in the face of Hill's questions, to pressure on voters deriving from their 'general fear of displeasing the leadership'. (RCT. 1286).

By the end of Sharpley's cross-examination, Communist Counsel could feel well satisfied with the way they had diminished the stature of the Commission's major witness.

Sydney school-teacher J.N. RAWLING, the second ex-

54. J.D. Blake (former Victorian President, and in 1949 a member of the National Committee) returned from a visit to Moscow in 1938. R. Dixon was National President in 1949.

Communist led by assisting Counsel, was in terms of personality their most successful witness, although his testimony benefited their case very little as a condemnation of the Communist Party. Motivated by pacifist rather than revolutionary political persuasions, Rawling was active throughout the 1930's in the New South Wales branch of the Party, and particularly in Communist peace movement organisations. His expulsion in 1939 (from the Australian League for Peace and Democracy, of which he was National Secretary, as well as from the Party itself) followed the publication of articles in Communist journals in which he denounced the Russian invasion of Finland and the A.C.P.'s initial support for war. (RCT. 2488; 2508). Thenceforth Rawling moved rapidly towards a position of committed opposition to Communism, during the 1940's participating in Sydney Domain politics as an outspoken critic of his former party.⁵⁵

Deeply interested in historical research in later years, his image at the Commission was that of an intellectual, 'academic' witness, more comparable with Malcolm Ellis than with the other ex-Communists. Unlike Ellis, however, he did not spoil an apparently detached and intelligent approach to the subject by allowing his political bias to become obtrusive. He tendered a vast amount of Communist Party literature, much of it from his private collection, manifesting a devotion to 'historical truth' and an obsessive regard for detailed documentation which effectively destroyed any potential for sensationalism in the matters he dealt with. His evidence primarily concerned the workings of Communist front organisations in Sydney, and the role of the Party within them. Although it involved no allegations of criminal conduct, another type of witness could have utilised the material to add considerable vigour to the anti-Communist case; as presented by Rawling it became a lengthy and tedious succession of documents in which

55. Rawling told McInerney that he left the Party because 'I had come to the conclusion that socialism had not been established in Russia, that the Communist International was organised merely as a tool of the Russian Foreign Office, existing ... to organise support for Russia in various countries, and I came to regard the Communist Parties of the world as fifth columns inside a democracy, and I further came to the conclusion that Stalinism and

the force of revelations about secret Communist fractions and 'facades of respectability' was lost beneath the weight of pedantic detail. But if he did the Party no serious harm, Rawling succeeded in convincing Lowe that a variety of voluntary public organisations espousing 'progressive' causes were Party-creations effectively controlled by their Communist members. By frequent quotation in the Report, Lowe indicated that he accepted Rawling's evidence virtually in its entirety.

The other two ex-Communists offered testimony strikingly different in style to that of Rawling. Their evidence, while less solidly grounded upon factual detail, and strongly tinged with anti-Communist paranoia, nevertheless produced information of a considerably more challenging order. Communist Counsel could, in their own minds, dismiss much of the evidence as the fabrications of a political crank and a neurotic widow,⁵⁶ but they were compelled to furnish the Commission with some kind of answer to the allegations made. Lowe in fact showed in the Report that he accepted the bulk of 'Mrs. X's' allegations of the Party's 'offences', and that he was unwilling to discount all of McGillick's evidence. Even taking into consideration the difficulties faced by Communist Counsel in effectively refuting witnesses such as these, it strikes one as surprising that Lowe found himself able to accept their testimony to the extent that he did.

The anonymous 'Mrs. X' was Mrs. M.M. BAXTER, a middle-aged widow who joined the Communist Party in 1936, and subsequently became Secretary of the Middle Park branch. In 1939 she severed her Communist Party connections, according to her evidence because she felt 'frightened' by its preparations for illegal activity in response to the war situation (RCT 5139-

55. Cont.

the Communist International represented a bigger danger to culture and democracy and freedom than even Hitler and the Nazis had done'. (RCT. 3563).

56. Ted Laurie (interview, Melbourne, 11 October 1971) said that the Party did not take McGillick seriously because he was an obvious crank. He claimed that Mrs. 'X' was a neurotic, mentally disturbed woman, and that he privately protested to Sholl in very strong terms for allowing her to be brought forward as a witness.

5144). At the Commission Sholl presented Baxter as an unhappy victim of Communist vindictiveness towards those who deserted the Party's ranks. A large portion of her nine-day duration in the witness box was devoted to the recounting of a variety of ill-doings perpetrated by Communists in an effort to inflict suffering upon her. These included threats of physical violence, the distribution of scurrilous leaflets in her neighbourhood alleging she was a policy spy, and the use of industrial pressure by Communist unionists as a means of forcing factory managements to dismiss her from several jobs.⁵⁷ (RCT. 5344 ff.). Baxter's most sensational allegation was that shortly after leaving the Party, and while she lay ill in bed, a group of Communist officials forcibly entered her home in search of some Party documents which she held in her possession; she claimed that they ransacked the house and physically assaulted her in their attempt to discover where the documents were concealed. (RCT. 5340-42).

Baxter managed to retain the documents, and she produced them at the Commission as the basis for her evidence on the Party's organisation and activities. As well as branch minute books, and extensive notes on 'theoretical' matters which she said comprised material taught to her during her membership of the Party, she possessed a notebook of names and particulars of Communists and Party 'contacts', which was utilised by assisting Counsel for the most protracted session of 'naming of names' in the entire proceedings.⁵⁸ To Sholl she explained that she had compiled the list of names after she had decided to leave the Party, but while she was still a member, indicating her motives in so doing:

57. Mr. Sholl went into considerable detail in dealing with Baxter's dismissals from jobs, and he later called 5 minor supporting witnesses to testify in confirmation of Baxter's claim that Communists in the factories spread rumours among her fellow workers that she was a police agent who spied upon the working class. Baxter lodged numerous appeals against the dismissals, and she enlisted the support of S. Keon (M.L.A. for Richmond) in her fight for reinstatement. Keon drafted several of her letters of appeal. (RCT. 5574).

58. The notebook contained the names of Communists, their position in the Party and their specialised Party work. Much of the information rested on hearsay, and it appeared she had frequently included names she had come across in Party records, but about whom otherwise she knew nothing. Lowe told Mr. Laurie that he would not

Mr. Sholl: Do you mean that members of the Communist Party were attacking you? A: Yes

Q: And were you trying to note down all persons whom you had known in the Communist Party for the purpose in your turn if necessary of protecting yourself by referring to their names? A: Yes, or memorising who they were in case they did attack me.

Q: So that if somebody later attacked you, you could refer to those notes as indicating that person was a member of the Party? A: Yes.

(RCT. 5403)

Cross-examination showed that Baxter in fact adapted her notes for a very positive purpose. She admitted to Laurie that she had been engaged in adding names for fifteen months prior to leaving the Party, and that she continued to make additions after she left. Laurie established that many of the entries in her book could only have been made in the years 1940-1945. (RCT. 5460; 5463). During this time she supplied information on the Party to Melbourne security police and A.L.P. conferences, and in the course of 'private discussions' with D. Lovegrove, she had revealed the names of 'secret Communists operating in the Labour Party, who were accordingly expelled. (RCT. 5461 ff.)⁵⁹

In approaching most of assisting Counsel's witnesses, the Party's cross-examination tended to concentrate upon undermining personal credit rather than directly challenging the truth of the allegations. In the case of Mrs. Baxter, this procedure was followed partly because of the problem of gathering evidence with which to refute allegations involving events

58. Cont.

regard the information in the book as proof in itself, unless its reliability was confirmed by oral evidence.

'... it may ultimately turn out with regard to, say, name A, I am satisfied it is something which is significant, and it may be with regard to name B, I am satisfied that the witness has no real recollection of how the name got there and it may not prove significant at all', Lowe stated. (RCT. 5287).

59. Those expelled included J. Lazarus, Melbourne solicitor, who himself featured at the Commission later in the proceedings. There was one Labour man alleged by Baxter to be a secret Communist, whose name she did not give to the A.L.P., but whom she did name at the Commission. Samuel Merrifield, M.L.A. - already 'named' by Sharpley as a useful contact for the Party in the Victorian Labour Caucus - had according to Baxter addressed two State Conferences of the Victorian Communist Party (1938 and 1939), and had been introduced to her by another Party member as a secret Communist. (RCT. 5282).

which occurred more than a decade in the past, and partly because Communist Counsel regarded her evidence about what happened after she left the Party as indisputable in its essentials.⁶⁰ Laurie tried to show that there was some foundation to the Party's belief that she was a police informer, thus providing a 'justification' for the Communists' treatment of Baxter at the points in her testimony where he was unable to deny that mistreatment had occurred.⁶¹ But, however much success he achieved in impressing upon Lowe an image of Baxter as a professional informer, the fact remained that her evidence of the Party's misdeeds went unchallenged except on very trivial points of detail;⁶² and as judge of the evidence Lowe was interested primarily in the nature of Communist activities rather than the reasoning which lay behind them.

Mrs. Baxter's feud with the Communist Party did not produce incriminating evidence, but it showed the Party in a most uncomplimentary light, and gave considerable weight to Sharpley's claims about its ruthless manipulation of influence in the unions to discredit political enemies. Her evidence on the organisational aspects of the Party proved at once less

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60. Laurie said, when interviewed (1 June 1971), that Baxter's allegations about the visit of Party officials to her home in 1939 were probably an exaggerated but more-or-less correct version of the event. He added that the Communists' behaviour was a product of their correct assessment of Baxter's character as a likely informer who would use the documents against the Party.
61. Laurie cited evidence in addition to Baxter's admissions that she gave information to the Labour Party and the police. He drew attention to the fact that some time after leaving the Party, Baxter had incurred a police charge for perjury in signing a false declaration with regard to a property transaction. Proceedings against her were subsequently dropped for no apparent reason. (RCT. 5466). Laurie suggested too, that during the war, Baxter had acted as Crown witness in several inquiries into aliens' appeals against internment, and that she had testified as to the Communist affiliations of some of these aliens. Laurie asked leave to recall Baxter for questioning on this matter during the course of assisting Counsel's re-examination, but Sholl objected strongly to the introduction of 'new evidence', and eventually Lowe refused Laurie's application on the grounds of a technicality of legal procedure. (RCT. 5590-93).
62. Lowe's comments in the Report indicate that he took seriously a failure by the Party to deny an allegation, in coming to a conclusion about its likely truth. (See Report, p. 7).

damaging in its effect, and more susceptible to attack from opposing Counsel.⁶³ Baxter exhibited an impressive memory for the names and positions of Party members, but she could rarely give a clear indication of the nature of their activities, and her account of Party procedure was obscure and contradictory. Undoubtedly a dangerous witness from the Party's point of view in her exposure of a vast quantity of names, she nevertheless frequently showed her knowledge of Communists and their sympathisers to be trivial in substance, and based upon hearsay. The primary contribution of her evidence on organisational matters was the identification of a variety of Communist fractions, but Mr. Sholl sought in vain to attach some sinister significance to their operations. Mrs. Baxter did not know whether the duty of Communist taxi-drivers was to report information acquired in the course of conversations with their passengers (RCT. 5394), and she was forced to admit that, contrary to Sholl's expectations, there was no form of 'ceremonial or ritual' performed at the Party's 'cottage meetings'. (RCT. 5396). She thought that the Communist unit in Melbourne's Greek community raised funds for use by the Party, but the 'considerable sums' suggested by Sholl amounted in her own experience to only 'a few pounds'. (RCT. 5397).

Mrs. Baxter emerged from the witness box with her credibility more-or-less intact. Inconsistencies in her evidence about the Party's internal affairs could be explained by the impossibility of accurately recalling matters so far removed from the present. And if her efforts at name-gathering for fifteen months prior to her exit from the Party carried unpleasant connotations, there was sufficient proof of subsequent victimisation by Communists for Sholl to rationalise her behaviour in seeking to give public exposure to the evils of their Party.

63. Laurie managed to throw doubt upon the reliability of parts of the branch minutes she produced, suggesting that she had written up sections long after the branch meetings took place, with a view to giving an inflated image of her role in these meetings. (RCT. 5512 ff.). A similar point of view on Mrs. Baxter was developed during the Communist Party's case, when Mrs. Samson (an official in the Party's South-Port district) challenged the truth of Baxter's claim that she had acted as District Secretary for a short period of time (see RCT. 7911-7986).

Communist Counsel's difficulties in meeting allegations of past events were compounded, in their cross-examination of T.C. McGILLICK, by the fact that his evidence related almost exclusively to the South Australian branch of the Communist Party. But there was perhaps less need in McGillick's case to draw attention to flaws in the evidence, for many were self-evident. Unlike Baxter he possessed no documents to add an aura of authenticity to his allegations; nor could he relate any sympathy-evoking 'misfortunes' to explain his violent antipathy to the politics and doctrines he had embraced for thirteen years of his life. In its pre-occupation with secret Communists and fellow travellers, and its picture of the Party's omnipotent and sinister influence, his evidence exhibited the standard characteristics of anti-Communist paranoia. Of all the ex-Communist witnesses, McGillick was most vulnerable to the charge that his current political affiliations were distorting his view of the nature of Communism.

Mr. Sholl introduced McGillick as a lecturer employed by the People's Union, a 'non-party public-relations organisation in Sydney'. To Ted Laurie in cross-examination, McGillick said the Union aimed at preventing the establishment of socialism. He agreed that it maintained close links with Eric Butler's League of Rights in Melbourne, and that it received substantial monetary donations from employers' organisations, but he claimed to know nothing about Laurie's suggestion that the Chamber of Commerce had recommended its members to give their support to the People's Union. (RCT. 5248 ff.)⁶⁴

McGillick's evidence covered a wide range of topics, and as he has pointed out in a recent letter, it contributed something to each one of the particularised sections of the terms of references 'alleging' harmful conduct, with the exception of ballot rigging.⁶⁵ He described the events of a

64. Eric Butler provided me with McGillick's present address in Perth. The latter has apparently maintained the political viewpoint which he exhibited at the Commission, his letters to me bearing the note-paper crest 'Crusade for Freedom - free enterprise and individual rights'.

65. T.C. McGillick to V. Rastrick, 6 December 1971.

Communist-organised strike at Port Adelaide in 1930, when he delivered speeches which included the quotation of revolutionary poems designed to incite the strikers to violence. (RCT. 5002-3).⁶⁶ Evidence of Moscow-control was furnished by the 1930 visit of a secret Comintern envoy operating under the false name of Herbert Moore,⁶⁷ although McGillick's information about this person was apparently based upon surmise. 'You do not ask too many questions in the Communist Party', he explained to the Commissioner. (RCT. 5014-16). In 1938 McGillick was appointed as delegate of the Friends of the Soviet Union to the May Day celebrations in Moscow. He claimed that before he left Australia the National A.C.P. Secretary (J.B. Miles) gave him a sealed envelope to deliver to J.D. Blake, then attending the Moscow Lenin School. McGillick testified that he examined the contents of the envelope during the course of his trip, finding that they comprised a plan of an anti-submarine device to be affixed to ocean-going vessels. He delivered the plan to Blake as requested. (RCT. 5042). In cross-examination, Laurie wanted to know if he had asked Miles any questions about the nature of his 'mission'.

The witness: No, you do not ask questions in the Party.

The Commissioner: Is that a matter of practice, or something which is taught to you? A: It is very unwise, Your Honour, to ask questions or to be curious.

Q: But I would like to know how you got that feeling that it was unwise to ask questions - was there any teaching which was given to you in which you were taught not to ask questions? A: No, I just acquired that habit.

(RCT. 5231)⁶⁸

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66. McGillick treated the Commission to a recital of these poems. In a letter to me, McGillick says that while he was reciting "Might is Right", 'Sir Charles Lowe interrupted me and asked me not to be so dramatic in my rendering. I think he was afraid I might incite Communists in Court to applaud'. (McGillick to Rastrick, 6 December 1971). In the Report, Lowe quotes two stanzas of this poem as evidence that the Party contemplated the use of violence at 'appropriate times'. (Report, p. 75).
67. McGillick said that he had recently discovered in the course of conversations with the superintendent of the 'political squad' of the N.S.W. police force that Moore's real name was Vakin.
68. Lowe's comment in the Report reads: '[McGillick's] evidence on this matter was not contradicted, nor indeed did Blake give evidence, although at the preliminary sitting he was present and asked leave to appear, and although the Crown Solicitor wrote offering to lead his

McGillick provided assisting Counsel with a quantity of names of persons he believed to be Communists or Party sympathisers, including several journalists whom he identified on the basis of his work as a steward at the Sydney Journalists' Club in 1940. (RCT. 5054). Amongst other people whom he claimed were secret Communists, he named R.A. King, who had been another delegate to Moscow in 1938, and who in 1949 held the position of Secretary of the Sydney Trades and Labour Council - elected, as Laurie pointed out later, on a right-wing ticket. (RCT. 5229). E.J. Ward, M.H.R. was also secretly associated with the Communist Party, McGillick claimed, supporting his allegation with the explanation that in 1940 he (McGillick) had been sent to Canberra by the Friends of the Soviet Union to protest at the censoring of its journal, *Soviets Today*, and that J.B. Miles had told him to see 'our man', Ward. Mr. Sholl asked McGillick to elaborate his reasons for believing that Ward had Communist connections, but on Lowe's direction, his answer was struck from the record. (RCT. 5058).⁶⁹ In cross-examination, Laurie questioned McGillick about his methods of deciding whether somebody was a member of the Communist Party. Anyone who supported the Communist 'line' was probably a member, McGillick said, and ex-Communists who publicly opposed Communism were very likely to be secret members attempting to disarm their political opponents. This belief, McGillick told Laurie, was based on his knowledge that for a Communist, the end always justified the means. (RCT. 5228).⁷⁰

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68. Cont.
evidence. No explanation was offered for his not giving evidence.' (Report, p. 37).
69. In a letter to me (6 December 1971) McGillick pointed out that having thus been publicly 'exposed' as a Communist representative in Canberra, Ward made no attempt to deny the evidence against him. McGillick had a definite pre-occupation with Ward. Some months before his appearance at the Commission, the People's Union convened a public meeting in the Sydney Town Hall (on 31 June 1949) to discuss the emergency Coal Strike legislation. McGillick, who spoke at the meeting, declared that the passage of the legislation had been deliberately held up by E.J. Ward M.H.R. and Senator W. Morrow, who both consistently followed the Communist line. This, said McGillick, was a matter for a Royal Commission. (*Age*, 1 July 1949; *Sydney Morning Herald*, 1 July 1949)
70. McGillick's letter conveyed his satisfaction with his own performance at the Commission. 'After being in the witness box for four days, when the Commission was nearing

The 'cranks'

McGillick provided the Commission with a view of the Communist Party within the framework of some probably authentic detail about his own experiences, but the style of his testimony differed only marginally from that of the anti-Communist 'cranks'. The first of these swore the solemn oath of truthfulness as MISS CHORKLES NELLIE LOUISA KASNER MOSS. She was a middle-aged farmer from the outer Melbourne district of Croydon,⁷¹ who contacted the Commission authorities and offered to testify about Communism, 'to let them know the damage it can do'. 'I have been speaking for a long time about certain Communist activities and the activities of certain people at the University, and I let the Commission know that I was prepared to give evidence to that effect', she told Mr. Julius in cross-examination. (RCT. 1661). In an effort to show Communist influence at work in the University, Moss recounted several conversations she had conducted some years in the past with a Mr. and Mrs. D. Taylor, members of the Melbourne University Philosophy Department, and, Moss alleged, both Communists. Mrs. Taylor had not only allegedly admitted that she and her husband used their teaching positions to influence students towards accepting their political viewpoint (RCT. 1633), but she had threatened Moss: 'If you continue to oppose the Party in this manner, when the Party comes to power it will not be very pleasant for you'. In addition, she had outlined the A.C.P.'s plan for revolution, which included the 'liquidation' of Robert Menzies. (RCT. 1642).

The remainder of Moss's evidence concerned the 1944 Lilydale Shire Council Election, in which a Communist

70. Cont.

its conclusion, I overheard the barrister for the Communist Party Mr. E.A.H. Laurie, tell the barrister for the Commission Mr. Reginald Sholl K.C. ... that of all the witnesses for the Commission, I was the best'. (Dec. 6 1971). When interviewed, Laurie indicated that he was very unimpressed with McGillick's performance as a witness.

71. The Melbourne *Herald*, which did not usually describe the physical appearance of witnesses, was apparently struck by Moss's 'get up' on the first day of her appearance at

Solicitor (R. Grant-Taylor) stood for election with the goodwill of an ex-Minister of religion (A.A. Hughes) but in opposition to the candidate supported by Moss.⁷² Moss portrayed Hughes as a Christian willing to accommodate himself to Communistic atheism for political purposes, 'incriminating' him with what she claimed were his own words to her in conversation: 'Communists are fine people', he told her, and 'the Marxian philosophy is full of lofty ideals akin to Christianity'. (RCT. 1631). Grant-Taylor (the defeated candidate in the election) attempted to gain a position on the Lilydale Council for the purpose of advancing Communist Party interests, said Moss. Evidence of his attitude was provided in a detailed account of an incident in which Taylor allegedly disposed of the property of one of his clients (a mentally-deranged woman) to a friend of his in the Communist Party. (RCT. 1637).⁷³

Assisting Counsel produced the successful Shire election candidate (Rogers) to bolster Moss's claims that A.A. Hughes was a Communist sympathiser. His primary contribution to the evidence was a claim that during 1944 Hughes had held political discussion groups at his home for the stated purpose of educating the local people in the workings of Parliament, and that two Communists had attended them: Grant-Taylor, and the assistant Secretary of the B.W.I.U., Bernard Heinze. McInerney, examining Rodgers, managed to extract little about the part played by the Communists at the meetings.

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71. Cont.
the Commission: she was dressed in 'jodphurs, flat-heeled brown shoes, a man's grey overcoat and scarf, and a man's brown felt hat'. (*Herald*, 26 July 1949).
72. Hughes at the time of election was Independent M.L.A. for the seat of Caulfield; between 1923-43 he had been a Minister of the Church of Christ in Swanston Street, Melbourne. He had already been the subject of allegations by Sharpley, and he appeared voluntarily at the Commission as a 'fellow traveller' witness to answer the charges of both Sharpley and Moss. See this chapter, pp. 159.60.
73. Ted Hill made a statement at the Commission on behalf of Grant-Taylor to the effect that the latter would welcome a full inquiry by the Law Institute into Moss's allegations of professional misconduct. The day after Moss completed her testimony, Taylor went into the witness box and testified that he was unaware at the time of the sale that the person who bought the house was a Communist. (RCT. 1742). Lowe made a special finding about Grant-Taylor in

Mr. McInerney: Did they ... voice any opinions?

A: Occasionally, when the meeting was thrown open for discussion, yes.

Q: And what opinions did they voice? A: Well, more-or-less on the lines of helping workmen.

Q: Did they express any political views? A: Well, they never used any Party politics or Party names when they expressed their views.

Q: Was there any reference to 'isms' or anything of that nature? A: No.

(RCT. 1652)

Chorkles Moss had no experience of the Communist Party itself; her evidence was based solely upon individual Communists with whom she had 'crossed swords' in the course of a decade or more, and against whom she directed the full vent of an intense, almost pathological hatred of Communism. One cannot help but assume that those who bore final responsibility for the content of her evidence must have called her to the witness box in an attempt to discredit particular people (Communist and non-Communist) rather than to make a serious contribution to the Commission's information about the Party's activities. Moss's allegations about Communist indoctrination of Melbourne University students, and a Communist solicitor's abuse of his professional position to benefit the Party, were undoubtedly intended by assisting Counsel to be regarded as evidence of the nature of the Communist Party. But at almost every point the foundation of the allegations appeared to be hearsay, or the fabrication of a conspiratorial incident from the flimsiest body of facts. The effect was considerably aggravated by Moss's poor performance as a witness. Lowe's cautionary remarks betrayed a hint of real irritation at the hysterical tone with which she delivered her charges of Communist ill-doings, and particularly, at her persistent refusal to limit herself to the questions asked. In ignoring the evidence of Moss and fellow-'crank' Noble Kerby when making his Report, Lowe perhaps found himself in agreement with Laurie's comment in the Communist Party's final submission to the Commission: that their value as

73. Cont.

his Report, concluding: '... there is not the slightest ground for the allegation, and ... Taylor's conduct in this transaction is not properly open to any criticism whatever'. (Report, p. 101).

witnesses upon whom reliance should be placed was 'beneath comment'.⁷⁴

At the time of the Commission, KERBY was proprietor of a kiosk at Station Pier on the Melbourne waterfront, and notorious in wharf-labouring circles and elsewhere as a bitter foe of the Communist Party. He made some allegations, sensational in their import, though only lightly endowed with factual substance, concerning the Party's access to government military secrets. By way of illustration, he claimed that during the war while employed in the military embarkation office, he was approached by a member of the Communist Party and asked for confidential information on the movements of Australian troops. (RCT. 2892). During the war years the Department of War Organisation of Industry and the Rationing Commission had Communists working in them, said Kerby, and furthermore, a man named O'Donnell whom he believed to be a Communist, was currently employed in work dealing with Guided Missiles. (RCT. 3049 ff.).

The focal point of Kerby's evidence was his allegation of Communist influence in the Melbourne City Council. As Vice-President of the 'Services Party'⁷⁵ in the 1930's, Kerby had been refused a building permit to renovate a city building for use by his organisation. He was informed by the Council's Building Surveyor (H. Reed) that his plans contravened a city by-law; Reed subsequently approved plans submitted by Australia-Soviet House for alterations to the same premises. According to Kerby, Reed's actions had been motivated by political considerations, and he was a secret member of the Communist Party. In condoning preferential treatment for Australia-Soviet House, Sir Thomas Nettleford (the Lord Mayor of Melbourne at the time) had shown himself to be a Communist fellow-traveller, Kerby alleged. (RCT. 2890 ff.)⁷⁶

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74. Final submission on behalf of the A.C.P., p. 15.
75. The United Ex-Service Men and Women's Political Association of Australia.
76. Too ill to attend the Commission, Sir Thomas Nettleford submitted an affidavit denying these allegations. (RCT. 3133). Reed appeared voluntarily to give evidence in his own defence, explaining why he considered that the building plans he had received from Kerby had not accorded with city building regulations. Sholl cross-examined Reed and managed to leave the impression that if he wasn't

The 'crank' witnesses did nothing to enhance assisting Counsel's case against the Party, and indeed probably did it a great disservice. Mr. Sholl presumably bore final responsibility for calling the anti-Communist witnesses: considering the extraordinarily low standard of evidence provided by Moss and Kerby, the question naturally arises as to why he allowed them to be placed into the witness box. Perhaps the presence of the 'cranks' is an indication of the poor quality in general of witnesses willing to testify against the Communist Party at a public inquiry. But assisting Counsel were able to gather together a numerically impressive group of 80 witnesses, and it would surely have been no problem to dispense with the contributions of Moss and Kerby. Did the strength of Sholl's anti-Communist convictions perhaps blind him to the calibre of these witnesses? An alternative answer is that the 'cranks' were called purely for the purpose of attacking certain prominent Melbourne citizens (in Moss's case, A.L.P. members opposed to the Industrial Groupers); that assisting Counsel assumed the Press would cover up the weak aspects of the evidence, and that therefore the quality of the witnesses was not a serious concern so long as sensational exposures were made to be reported. The implication of such an explanation is that assisting Counsel aimed to make their appeal first and foremost to the news media, this being a more reliable and effective means of publicising Communist misdemeanours than a Royal Commissioner's Report.

The 'fellow travellers'

Of the numerous people who came forward at the Commission to deny allegations that they were Party 'friends' or secret Communists, five were prominent in the community. They were Andrew Hughes, a former minister of religion and Independent M.L.A.; John Bennett, past-editor of *Labour Call* and at the time of the Commission, commentator of the commercial

76. Cont.

positively sympathetic to the Communist Party, Reed had in Kerby's case deliberately been a 'stickler for form', and had not shown a corresponding attitude when dealing with A.S.H.

radio programme 'Labour's Views on the News'; Samuel Merrifield, a Labour M.L.A.; Brian Fitzpatrick, Secretary of the Australian Council for Civil Liberties; and John Rodgers, Director of Australia-Soviet House.

HUGHES came forward to answer the allegation by Chrokles Moss that he was a Communist sympathiser, and by Sharpley that he was a person 'who could be considerably influenced by the Party'. In his *Herald* articles, Sharpley had mentioned BENNETT as a newspaper editor⁷⁷ who pursued a line of propaganda favourable to the Communist Party; in evidence at the Commission he claimed Ted Hill had told him that Bennett was a secret Communist. The naming of these two men was from their own point of view seriously inopportune. Bennett had recently won endorsement as the A.L.P. candidate for the seat of Latrobe in the coming Federal Elections, while Hughes was seeking victory in the A.L.P. pre-selection ballot for the seat of Flinders, in progress at the time he appeared at the inquiry. In the witness-box both of them advanced claims that they had been singled out for political victimisation by Right-wing elements operating indirectly through the Commission. Counsel for Bennett suggested that the *Herald* had encouraged Sharpley to name his client, not only because Bennett was a moderate Labour man opposed to the Industrial Groups in the unions, but in addition because he had been active in the advocacy of a controlling body to supervise the ethics of Press reporting. (RCT. 2297). Hughes believed that Sharpley had mentioned *his* name in furtherance of a *Herald*-Liberal Party campaign to smear the Labour Party in general, and to destroy his personal chances in the pre-selection ballot. (RCT. 1688).

Like some of the other 'fellow traveller' witnesses who presented their defence without the aid of Counsel (Fitzpatrick, and initially, Rodgers), Hughes was considerably disadvantaged by his poor grasp of the techniques of cross-examination when questioning Sharpley. Lacking discipline over the direction of his testimony, he was inclined to

77. At the time of the Commission, Bennett was editor of the *Mountain District Free Press*, a local newspaper.

devote more attention to portraying himself as the innocent victim of a 'pattern' of political attacks than to disproving Sharpley's allegations. The latter task was probably more difficult than it was for Bennett, since the allegations were peculiarly nebulous in character. Apart from a denial of any actual dealings with the Communist Party, Hughes could respond only by an assertion of the non-Communist bent of his political convictions.⁷⁸ Whether or not the charges of anti-Labour plots were well-founded, both Hughes and Bennett lost their chances of A.L.P. candidature as a result of being named at the Royal Commission.⁷⁹

SAMUEL MERRIFIELD was the subject of accusations by six different witnesses; after a number of appearances in an effort to clear his name, he became an almost familiar figure

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78. Bennett's defence was more substantial. His Counsel pointed out that the Communist Party had attacked some of Bennett's publications, and had distributed leaflets criticising him for refusing to publish its articles in the *Free Press*. (RCT. 2298) Reynolds, in cross-examining Bennett, drew attention to the fact that at the 1948 Victorian A.L.P. Conference, the editorial policy of *Labour Call* was criticised for 'Leftist' tendencies, and he suggested that this criticism had been directed against Bennett. Bennett claimed this was incorrect, because he had ceased to be editor in 1947. Throughout his evidence, he denied being either an A.C.P. member or sympathiser.
79. In the House of Representatives in July, Mr. Rankin (Country Party, Vic.) asked Chifley if he would have the allegations made at the Commission against Bennett (and Merrifield) investigated by the Security Service. Chifley refused, but the allegations were considered by the A.L.P. Central Executive, which subsequently withdrew Bennett's endorsement for the seat of Latrobe. In announcing the Executive's decision, the General Secretary of the A.L.P. (Senator P. Kennelly) said that it was concerned about the danger of unscrupulous political propaganda being used, not only in Latrobe, but in other electorates also. Under those circumstances, the Executive had decided that the best interests of all would be served by withdrawing Bennett from the campaign (see *Herald* 7 July 1949; *Age* 17 September 1949).
Hughes had actually won an earlier pre-selection ballot for the seat of Flinders, held in March. After being named by Sharpley at the Commission, he was asked to go before the A.L.P. Central Executive to answer questions about his relations with the Communist Party, and was charged with disloyalty to the A.L.P. The charge was referred to the disputes committee, which exonerated him, but a new pre-selection ballot was conducted in July. (RCT. 1689). Hughes won the ballot again, but the A.L.P. Central Executive gave its endorsement to one of the defeated nominees. (*Age* 24 September 1949)

in the proceedings. He first came forward in response to Sharpley's evidence that he had supplied information from Labour Caucus meetings to Ted Hill during the 1946 and '47 Metal Trades and Transport Strikes. After Mrs. Baxter claimed that she had witnessed him address the 1938 and 1939 'closed' Communist Party State Conferences, assisting Counsel probably considered that the evidence against Merrifield was sufficient to make worthwhile a more intensive investigation of his politics. They thereupon called three minor supporting witnesses to contribute to his indictment: an ex-Communist (P.B. Wilson) who confirmed Baxter's allegation;⁸⁰ and two past members of Merrifield's (Essendon) A.L.P. branch (W. Ryan and J. Molloy), whose evidence dealt with an incident in 1945 when Merrifield had allegedly evaded their questions concerning his attitude to Communism. Mr. Sholl also took the opportunity when examining the Vice-President of the Victorian State School Committees' Association to elicit information about Merrifield's voting habits during his term as a member of the Association's Executive, 1947-1949. McLean claimed that he invariably aligned himself with Communist members on controversial issues, and that he expressed disapproval of the Executive's action in expelling two of these Communists because of the nature of their political affiliations. (RCT. 5708).

Merrifield interrogated Sharpley, but the latter adhered firmly to his allegations, and Merrifield had to be content with simply placing against them his own vehement denial. In subsequent appearances at the Commission to answer the evidence of other witnesses, his defence was greatly strengthened by the services of J.M. Cullity as Counsel. Cullity showed that the information provided by Wilson, Ryan

80. Wilson added that at one of these conferences, Merrifield had been introduced to him as an 'under-cover' Communist. (RCT. 5775 ff.). An amusing incident occurred during Wilson's term in the witness box. At the beginning of his cross-examination he informed Lowe that one Harold Booley (named by Wilson as a dual member of the Communist Party and the A.L.P.), who was present in the public gallery of the Commission, had mouthed an obscene expression at him while he was giving evidence. Lowe directed Wilson to write the expression on a piece of paper, and then Mr. Sholl tendered it as an exhibit. (RCT. 6091-2).

and Molloy was of dubious authenticity, and in cross-examination of Baxter, drew attention to the fact that at no stage prior to her testimony at the Commission, either in her 'note-book' or in her discussions with A.L.P. officials, had she claimed that Merrifield was connected with the Communist Party. Baxter admitted that since leaving the Party in 1940, she had attended a number of A.L.P. conferences at which Merrifield had been present, but could not explain satisfactorily why she had withheld her knowledge until 1949. (RCT. 6027 ff.).

Although he lacked some of the fluency of presentation exhibited by other 'fellow-traveller' witnesses, Merrifield conveyed an impression of indomitable honesty which Mr. Reynolds and assisting Counsel failed to disturb. It was an impression reinforced by the regularity of Merrifield's appearance at the inquiry and the apparent urgency with which he desired an opportunity to clear his name. A routine check upon the political affiliations of his associates was singularly unproductive; and if assisting Counsel demonstrated occasions when he had taken the 'side' of Communists in political meetings, they found nothing to support the allegations of their own witnesses that he had any more positive connections with the Party.⁸¹

The remaining two 'fellow-travellers' were examined by assisting Counsel with a view to establishing that their organisations were Communist Party fronts. A relatively brief witness, BRIAN FITZPATRICK emerged as perhaps the most consistently credible of all the people who came forward individually to answer allegations. His defence was facilitated by the innocuousness of Sharpley's allegation (at least in terms of

81. Lowe's finding in the Report was as follows: 'On the whole I am not satisfied that Merrifield is, or was, a member of the C.P. or that he supplied information to any member of the C.P. of what happened ... in the Labour Caucus'. (Report p. 102) Merrifield did not lose his seat in the Legislative Assembly as a result of the allegations; in fact he was appointed Minister for Works in the Victorian Labour Government which took office in 1952. Robert Murray in *The Split* (Melbourne, 1970) p. 95, says of Sharpley's allegation that Merrifield was a Communist Party contact in the Caucus, that it was 'news to most of [Merrifield's] friends who regarded him as a mild-mannered, fairly conventional moderate socialist, but it made some Groupers bitterly opposed to him'.

the professed aims of the Council for Civil Liberties) and the meagreness of the evidence with which he supported it. Sharpley testified that in 1948, when the Victorian Communist Party saw imminent danger of proscription by the Government, it successfully prevailed upon Fitzpatrick to revive the activities of the Council, and under its auspices to issue propaganda opposing the ban. The Party's appeal was allegedly based on Fitzpatrick's deep personal sympathies with Communism, and his reputation within the Party as a non-Communist who was always ready to take action in furtherance of its interests. (RCT. 875).

Like other witnesses seeking to repudiate the charge of having Communist connections, Fitzpatrick felt obliged to offer the Commission an explanation of his political position. It was a difficult task which he executed with skill and apparent candour, showing none of the defensiveness of the A.L.P. witnesses in their anxiety to define their politics in contradistinction to Communism. After denying that he had ever conducted the alleged negotiations with the Communist Party, Fitzpatrick went on to tell Mr. Lewis that he had at all times been 'approachable' by the Party in his capacity of Secretary of the Council for Civil Liberties if it considered its proper rights were threatened. He was indeed sympathetic to the A.C.P., as he was to the A.L.P., to the extent that it advocated the cause of socialism. (RCT. 2324). Lowe's willingness to listen to a full exposé of the organisation and aims of the C.C.L., (a body about which he intended to make no findings in his Report), may have been a measure of his favourable estimate of Fitzpatrick's integrity. Perhaps, too, it was an indication of Lowe's interest in an organisation set up to scrutinise the functioning of the legal process.

JOHN RODGERS was a very different kind of witness. Already the source of much political dispute before being named by Sharpley, he showed in the witness-box the same tendency to generate controversy that he had in the public arena. He openly expressed his disapproval of the proceedings, and was in fact one of the few defence witnesses (including those called on behalf of the Communist Party) who could properly be described as 'hostile'. His behaviour suggested that he deliberately provoked a clash with assisting Counsel in order to draw attention to what he regarded as the Commiss-

ion's 'pernicious' interference in the private affairs of citizens and lawful institutions. At the same time it is likely that Rodgers genuinely feared the inquiry would precipitate governmental action to dissolve Australia-Soviet House, and that his reluctance to co-operate with Counsel was motivated by this fear.

According to Sharpley's evidence, Rodgers had undertaken his 1948 trip to Moscow and East European Communist countries at the direction of the A.C.P., to collect material for a pro-Soviet propaganda campaign in Australia. He also claimed that Rodgers was a secret Party member, and that the policy of A.S.H. was decided in concert with Communist officials. (RCT. 868). Examined by Mr. Lewis, Rodgers admitted that he had twice attended meetings of the A.C.P. State Committee to solicit the Party's aid in raising finance for his organisation, but he denied the rest of the evidence. (RCT. 2388 ff.)

Sharpley, however, had furnished more detail about Rodgers than was his custom in the 'fellow traveller' cases, and assisting Counsel utilised this as a basis for an interrogation which made their cross-examination of Fitzpatrick seem perfunctory by comparison. Hostilities came to the surface almost immediately when Lewis and Reynolds sought to discover the names of those who contributed to the cost of the Moscow trip. Rodgers declared his reluctance to provide any detailed information, because he wished to prevent further 'persecution' of the kind he alleged had been suffered by people who had publicly supported him during the freedom of speech controversy. In the ensuing argument as to whether the finances for the trip was a proper subject for investigation by the Commission,⁸² Lowe ruled in favour of assisting Counsel, while assuring Rodgers that the information would remain confidential. Rodgers responded in typical style: 'I am prepared to give these names and any future names, as

82. Mr. Julius (Counsel for the Communist Party) declared that the matter was not relevant to the terms of reference of the inquiry. Lewis explained his purpose thus: 'I am trying to show ... that instead of him being independent of the Communist Party, he was really a delegate or something of the kind for them, and what he has been giving out as to his general mission and how the funds were arranged is not a true and candid statement of what took place'. (RCT. 2430).

long as they are withheld from Mr. Lewis and the *Herald*'.
(RCT. 2431)

From this point onwards, assisting Counsel's cross-examination of Rodgers was concerned exclusively with an inquiry into the financial affairs of A.S.H. in an effort to discover monetary links with the Communist Party, and thus to establish it as a Communist front organisation. Rodgers' evasive attitude when questioned about the source of finance for the purchase of the A.S.H. building caused Lowe to order the production of all its financial records, including bank accounts and Rodgers' private account. Sholl examined them closely, seeking irregularities which might have indicated that money had been received from unacknowledged sources. (RCT. 3602 ff.). He recalled Rodgers to the witness-box to explain why he had testified in an earlier session to the sale of a café by A.S.H. for the sum of £1000 when the records indicated that it had been sold for a sum of more than twice this amount. With considerable reluctance, the witness admitted that the café had been sold under a sham contract in which the purchaser agreed to accept a receipt showing a payment lower than the real amount. Rodgers said this procedure had been devised in response to the Hollway Government's threatened anti-Communist legislation of March 1948, which A.S.H. believed could have resulted in the seizure of its assets. At a special meeting of the A.S.H. Committee on 31 March 1948, a contract had been drawn up which disguised the true extent of A.S.H. funds; the surplus money was kept in a secret safe deposit, to be used as a political 'fighting fund' if necessary.⁸³

Rodgers refused to tell Sholl whether his organisation had conducted any other transactions for the same

83. Lowe directed Rodgers to give assisting Counsel the names of those people present at the Committee meeting, undertaking that the names would not be revealed to the public. Rodgers said that Professor Greenwood of Melbourne University was one Executive member present, but that he could not remember any others. In explaining the creation of the special fund, Rodgers told the Commission: '... we felt that we had not worked so hard and made the sacrifices that we had made, to see some Government or some political party that was temporarily in power, take these funds from us without a strenuous effort on our part ...' (RCT. 3605)

purpose.

The witness: I feel in answering this question it means that I have got to discuss all the activities of A.S.H. ... I came here to advertise the truth. Instead of that I have been dragged through the newspapers, and so has A.S.H.

The Commissioner: I am not going to allow you to make statements of that sort. You are here in pursuance of the carrying out of the duties of this Commission, and when questions are put to you which I think are within the scope of the Commission, you are bound to answer.

(RCT. 3623)

Rodgers, who until this stage had conducted his defence without the aid of Counsel, requested and was granted leave to obtain legal advice. He re-appeared with two lawyers who engaged Lowe in protracted argument in support of their client's stand.⁸⁴ Their eloquence was to no avail, however; Lowe directed that Rodgers must answer the question, although he allowed a confidential sitting to be held for that purpose, to which neither Press nor public would be admitted.⁸⁵

Examined *in camera*, Rodgers told the Commission that A.S.H. had no secret fund other than the one to which he had testified. After much debate, Lowe finally agreed to allow Sholl to ask for the names of the persons who held the safe deposit, but said he would not require Rodgers to indicate where the deposit was located because, said Lowe, it might lead 'certain persons to attempt to get control over it'. (RCT. 3665).⁸⁶

84. See Chapter 2, p.

85. Rodgers' term in the witness box provides a number of examples of Lowe's efforts to protect witnesses from damaging publicity. All financial records (of which there were many) were made confidential exhibits, and most of the names which Rodgers was required to give to the Commission were written down on paper and thus concealed from the Press.

86. Rodgers testified that originally the money had been held in the private safe deposit of a Mrs. Turnbull, a member of A.S.H., but that when the Royal Commission was appointed, it had been transferred at her request to the Commonwealth Bank. (RCT. 3665).

Sholl took the opportunity during this confidential sitting, which marked the end of Rodgers' testimony, to obtain identification of all the people listed by Rodgers as having contributed to his Moscow trip, particularly with regard to their connections with the Communist Party.

Their generally intelligent approach to the giving of evidence enabled the 'fellow travellers' to perform well in the witness-box. There was considerable variation in their temperament, the inclination of Hughes and Rodgers to launch a political attack on their accusers and on the Commission itself, contrasting with the mild approach of Fitzpatrick and Merrifield, both of whom seemed content to limit themselves strictly to meeting the particular allegations against themselves. In most cases they succeeded in throwing some doubt upon the accusing evidence, chiefly by showing that it almost invariably rested upon what Sharpley purported to have heard discussed at Communist Party Executive meetings rather than upon his direct experience.

Mr. Reynolds and assisting Counsel in cross-examination sought to establish that each of the witnesses, if not actually Party members themselves, had consciously served the Party by promoting the aims of Communism in the community. In all cases except perhaps Rodgers', their success was limited. They drew attention to occasions when the witnesses had shared the public platform with Communists or been active in alleged front organisations, but the evidence supported no conclusion beyond that enunciated by Lowe in the case of Fitzpatrick - that 'it is correct to say that he was favourable to many movements supported by the C.P.'⁸⁷ Rodgers' credibility was seriously undermined by the revelation that he had deliberately concealed matters from the Commission, and in his subsequent interrogation assisting Counsel managed to extract information which suggested that there were in fact close connections between A.S.H. and the Communist Party. But ultimately the facts did not permit Lowe to find in favour of assisting Counsel's argument that A.S.H. was a Party

87. Report, p. 55.

'facade' organisation or that Rodgers was a secret Communist.⁸⁸

All of the 'fellow traveller' witnesses showed common purpose in their reluctance to provide the Commission with people's names. Thus in an attempt to investigate the political persuasions of their families, social acquaintances, and associates in political organisations, assisting Counsel had difficulty in condemning the witnesses in terms of 'guilt by association', as well as in expanding their own list of 'associated persons' to any profitable degree. The 'fellow travellers' were effectively displayed by the daily Press as guilty parties, but at the Commission the testimony they offered in answering their accusers generally held its own against a rigorous cross-examination. Assisting Counsel's experience with these witnesses probably confirmed them in a belief that their case would progress more satisfactorily if it confined itself to the evidence of witnesses who subscribed to their own view of the Communist Party.

The trade union witnesses

Assisting Counsel's argument against the Party rested heavily on evidence of Communist misdeeds in the trade unions, provided chiefly by witnesses who claimed membership of A.L.P. Industrial Groups. Sharpley's testimony formed the basic structure of this section of the case; a great many of the witnesses who came forward to support and elaborate upon his allegations must have been old opponents from his days as a Communist trade unionist. Assisting Counsel did not concentrate exclusively on ballot-rigging matters; in fact they produced more witnesses on broader aspects of the Party's

88. Lowe's finding on A.S.H. and Rodgers reads in part:
 'There is nothing in the management [of A.S.H.] to suggest that it was controlled or directed by the C.P. ... [and] nothing to indicate that it was a subsidiary of the Party. It was in fact supported by many who were neither Communists, nor sympathetic with Communists, but who simply desired to see better relations with the U.S.S.R. ... As to Rodgers, I see no reason to prefer his evidence to that of Sharpley ... but I am not satisfied on the evidence that he was a member of the C.P., secret or otherwise, or that Sharpley's allegations as to his attending meetings is true, or that his trip abroad was arranged or facilitated by the C.P.' (Report, p. 54). As already noted, Lowe himself was one of the original patrons of A.S.H.

industrial activities, the main theme of their evidence being its use of strong-arm tactics in union politics and 'on the job' as a means of intimidating its opponents. Inevitably, much of the evidence given on trade union affairs tended to be a re-hash of current disputes between militants and Industrial Groupers. One gained the impression that in the case of many witnesses, tempers ran high; this was reflected in the frequent explosion of hostilities between Mr. Lewis, in charge of the trade union section of the case, and Mr. Cullity, cross-examining Lewis's witnesses on behalf of the accused unionists.

Four members of the Victorian Ship Joiners' Society, a break-away group from the B.W.I.U. formed in March 1949, testified to Communist-inspired violence on the Melbourne water-front following the imposition of a black ban on the Society by the B.W.I.U. According to the evidence of R.J. WATERS (the Secretary of the Society and an Industrial Grouper), members of the B.W.I.U. at the instigation of its Communist officials had physically threatened the Ship Joiners in an effort to force them from their jobs. (RCT. 1362-1389). A similar kind of evidence was given by W.T. LLOYD, who headed a break-away group from the Munition Workers' Union in 1945 in protest against the vote taken to amalgamate with the Communist-controlled Federated Ironworkers' Association.⁸⁹ Lloyd claimed that he had been dismissed from his job after the factory management had been pressurised by F.I.A. officials, some of whom were Communists. Subsequently, other jobs on which Lloyd worked were declared 'black'. (RCT. 4374-4515).

Three Industrial Groupers from the Clerks' Union (D. NEGLINE, S. PITT and J. HENRY) testified about the operations of the union's Communist-dominated Executive. They described attempts by militant officials to manipulate union meetings in order to over-ride opposition from the Groupers, and gave a detailed exposition of events during 1945 when the militant Executive had been ousted from office by a vote of no-confidence. The displaced Secretary (Merrett) apparently refused to be dispossessed of the union offices even when a court order went against him, and for several months the

89. See p.114 of this chapter.

building was barricaded against efforts by the new Executive to gain forcible entry. It was not established by the evidence that Merrett was a Communist, but the witnesses claimed that several union officials who aided his defiance of the new Executive were Party members. The new Secretary, Pitt, alleged that Communists guarding the Clerks' Union offices armed themselves with weapons and employed threats of violence against him.

Mr. Lewis: Who was there, refusing you admittance? Was Merrett there? A: Well, Merrett was there, Shave was there ...

Q: Were the shock troops there too? A: there were a few shock troops.

Mr. Laurie: If Your Honour pleases, I submit that these lurid references should be matters of fact.

The Commissioner: Yes, I thought so.

Mr. Laurie: I object to them as they are being put by my friend Mr. Lewis.

Mr. Lewis: Well, the person who was there with a piece of wood, according to the evidence. What would my friend Mr. Laurie describe him as?

The Commissioner: You might describe him as a woodman.

(RCT. 5795)

Assisting Counsel also adduced evidence about Communist employees in the Post Office, a section of their case which they may have thought related to the question of whether the A.C.P. aimed at interference in the essential services of the community. Their witness on the subject was the founding Secretary of the A.L.P. Industrial Group in the Victorian Postal Workers' Union, J. WARD. As he had told delegates to the 1948 A.L.P. Easter Conference, Ward believed that there was a red cell in existence in the Postal Workers' Union, and that 'if war was declared on Australia I did not think our line of communication would be as safe as is considered by many of our politicians'. (RCT. 2948). Ward's further statements at this Conference that a Communist called Raven and several others used Postal Department facilities for the Party's purposes caused the Postmaster-General (Senator Cameron) to order a departmental inquiry, in which Raven's name was cleared and all the allegations found to be without substance. (RCT. 3005).

At the Commission, Ward re-stated his charges about Raven, and claimed that the Communist Party was 'interested'

in the Post Office.⁹⁰ He told of a militant group which always voted the 'Communist line' at union meetings, and of the union journal, produced by militants, which promoted Communist policies. In addition, the Party spread propaganda in the mail-sorting rooms by having pamphlets put into post-boxes; these were then brought into the sorting area and left lying around. Ward described the basis for his claim that there was a Communist cell in the Post Office as being 'the activities we see around us and which we suspect of being Communist-inspired. We see people working against us politically'. (RCT. 3011). Even Sholl suggested that this was a remarkably thin foundation for his evidence.

In dealing with the ballot rigging matters, the present writer confronts the same problem that Lowe faced when he wrote his Report. As he pointed out, 'to treat the case of each union in detail, to discuss the evidence in support of the allegation and the evidence to rebut it, would require a volume, and the interest of that volume would be mainly to the parties concerned'.⁹¹ For most of the 14 cases of ballot-rigging alleged by Sharpley, assisting Counsel did not produce any supporting witnesses. The charges rested on Sharpley's evidence alone, and were investigated further only when witnesses for the Communist Party, accused of playing a part in the events, gave evidence themselves, and when Mr. Cullity called his clients to deny the allegations. However, for 3 unions there were corroborating witnesses: the Blacksmiths' Society, the Building Workers' Industrial Union, and the Actors and Announcers' Equity Association. I have chosen to deal only with the latter two cases, believing them to be the most interesting and relevant to this thesis.

Lowe commented in his Report that if Sharpley's evidence was put aside, the only proof offered of his ballot-rigging allegations was circumstantial.⁹² The information provided by Sharpley seemed, to the non-legal

90. After Ward had given evidence, Senator Cameron made a public statement declaring that Communist activity in his Department was 'negligible', and drawing attention to the 1948 inquiry which had found 'no cause for alarm'.

91. Report, p. 81.

92. *Ibid.*

mind at least, plausible in its detail. Perhaps understandably, he showed indignation at Lowe's remark that there was some 'unexpected' corroboration of his allegations. In the *Great Delusion* he writes: 'I merely suggest that since I was the only high-ranking ex-Communist to give evidence, the fact that there was any corroboration at all is surprising.'⁹³ But by the time Lowe came to consider the allegations for the purpose of making his findings, he had formed a very poor opinion of Sharpley's character as a witness and indicated that he was not prepared to act upon Sharpley's evidence unless there was corroborating material of a fairly substantial nature. In a number of the union ballot cases Lowe found that there were 'suspicious circumstances', but as he said in the Report, 'suspicion ... is not sufficient', and he did not find the allegations established. For instance in the case of the Blacksmiths' Society, the basic effect of the evidence provided by the supporting witnesses was to show that the events to which Sharpley deposed *could* have occurred; that is, that they were technically possible. For Lowe, this was an insufficient foundation upon which to base a finding. (RCT. 2899-2937).⁹⁴

The B.W.I.U. case, the only one in which Lowe found the allegations proven, differed from the others as a result of several factors. Firstly, the allegations were examined at quite elaborate length. Assisting Counsel produced 5 witnesses in support of Sharpley, one of whom was the defeated candidate in the ballot in question. They also subpoenaed a number of militant officials of the union's sub-branches, whose conduct under interrogation was in some ways confirmatory of the charge that the ballot was not 'straight'. Finally, and most importantly, assisting Counsel managed to produce a vast array of documentary evidence relating to the election, the most significant piece of which was an exhibit tabulating every vote cast, showing for whom it was cast, and whether it was a personal or a postal vote.⁹⁵

93. C.H. Sharpley, *The Great Delusion*, p. 132.

94. Report, p. 84.

95. Exhibit no. 718.

Sharpley's allegation related to the 1948 election for union Secretary, in which Chandler, a Communist, successfully sought re-election, and was opposed by Henderson, the leader of the Industrial Group in the union. Sharpley described a scheme devised by the Communist Party to manipulate postal votes in the election. Communist union members were encouraged to apply for postal ballot papers for which they were strictly ineligible, and these were then filled in to favour Chandler. The returning officer, Morris, who was not a Party member, but allegedly sympathetic to the Communist union officials, had been prevailed upon to issue postal ballot papers in a manner which misrepresented the standing rule on the matter. Sharpley claimed that in addition, Communists who were not members of the B.W.I.U. had been smuggled into union branch meetings on election night to cast their votes for Chandler. (RCT. 1027 ff.).

The Commission was told that while the counting of votes was in progress, Henderson had issued a Supreme Court writ against Morris seeking to restrain him from destroying any applications for postal votes. It had been revealed in the course of the court proceedings that Morris had already destroyed the majority of the applications. At the Commission, Henderson and the other supporting witnesses (all members of the B.W.I.U. Industrial Group) gave evidence that during the election they had protested against the issuance of postal ballot papers to ineligible members, and that they had approached Morris several times while the application forms were still in existence to request that they should be preserved, and that Morris had deliberately ignored their requests. (RCT. 6171 ff.).

G. HENDERSON, assisting Counsel's major witness, gave much incidental evidence about the distribution amongst union members of Communist propaganda discreditable to himself and the Industrial Group. And as usual, Mr. Lewis asked him to identify the political affiliations of numerous left-wing union members. Cullity, who in this case appeared for Chandler, Morris and the B.W.I.U. Executive, cross-examined adeptly. Unable to challenge the factuality of assisting Counsel's documentary evidence, he based the defence on an attempt to show that in contrast to Chandler, Henderson was relatively unpopular in the union and therefore could not

have enjoyed good prospects of winning the election. As in his cross-examination of Grouper witnesses in other union cases, Cullity succeeded in demonstrating that the propaganda tactics of Communists in the unions were matched with corresponding aggressiveness by their Industrial Group opponents. Generally, his cross-examination aimed to present an unappealing view of Grouper activities as a means of off-setting assisting Counsel's picture of a sinister Communist Party fraction. The implication that the disputes between Communists and Groupers were simply part of an internal power struggle in the union, while not absolving his clients, at least had the effect of throwing into question the motives of the Grouper witnesses in testifying at the Commission.⁹⁶

The examination of the affairs of Actors' Equity, appropriately, proved to be quite entertaining at times. The witnesses, while no doubt taking their own evidence seriously, imparted a touch of colour, and sometimes humour to the proceedings, providing a marked contrast with the more prosaic approach of the typical industrial union witness. Part of the interest of the Actors' case lies in the fact that the evidence concerned attempts by themselves to secure the passage of a resolution by their union which would have made it illegal for a Communist or a member of any other 'subversive' organisation to hold executive office.⁹⁷ At union meetings in both June

96. Lowe concluded in the Report that Sharpley's allegations about the B.W.I.U. ballot were 'substantially true'. He believed that a deliberate scheme to have false ballot papers issued to enable Chandler to win the election had been carried out, but he was hesitant about how to apportion blame. Of Morris he said, 'his participation may have been due to obstinacy, ignorance or bewilderment in an unusually large poll, rather than to conscious co-operation with Chandler and his supporters'. And of the others, 'I have not found myself able on the evidence to determine the degree of complicity of each of those who took part'. (Report, p. 86).

97. The resolution, formulated by two of assisting Counsel's witnesses (L. Furze-Morrish and Kenrick Hudson) read as follows: 'No person shall become an officer of the Association unless he shall prior to nomination have signed a statutory declaration that he is not a member of the Communist Party or part of a body ... which advocates as its policy ... the overthrow of the Australian Constitution, and that he has not been a member of such a Party ... since the first day of January 1942, and that he accepts and agrees to abide by the Australian Constitution and its association as part of the British Commonwealth of Nations'. (RCT. 4525).

and December 1948 a motion to this effect had been put forward; on the first occasion it was ruled out of order, and on the second it was defeated. Sharpley had alleged that this result had been bought about following discussions on the Communist Party Executive with the Federal Secretary of Actors' Equity (Alexander) and the Victorian Secretary (Diamond), both of whom Sharpley said were Communists. He claimed it had been decided to send Party members along to Equity meetings to vote with the bloc of Communist union members against the anti-Communist motions; non-members of the union were issued with false receipts in order to gain entry to the meetings. (RCT. 1014 ff.). As Lowe points out in the Report,⁹⁸ Sharpley made a number of factual errors in his original allegations which he subsequently corrected. One of the more serious of these was that, when asked by Sholl to name the people who were illegally sent to the Union meetings by the Party, he named among others several members of Actors' Equity who were committed *anti*-Communists.

Assisting Counsel found 6 members of Actors' Equity who were willing to testify at the Commission in support of Sharpley's evidence: L. FURZE-MORRISH, KENRICK HUDSON, ROBERT PEACH, KEITH HUDSON, C. ELLIS, and PATRICIA KENNEDY. Their evidence ranged in a haphazard fashion over a wide area of disputed matters in Equity affairs, its main contribution being claims about the presence of non-members of the union at the June and December meetings, and about the partisan manner in which these meetings were conducted by the chairman (another alleged Communist) so as to prevent the motions from being carried. (RCT. 4536, 4543, 4548 ff.). Their belief that strangers had attended the meetings rested on the fact that there had been people present who were 'shabbily' dressed and lacked the general bearing of actors. Attempts by Counsel on both sides to obtain a definition of 'shabby' dress were not altogether successful. Mr. Cullity asked Kenrick Hudson to point out people in the public gallery of the Commission whom he considered to be dressed in similar fashion. One spectator used as an example subsequently rose in his seat and addressed Lowe, explaining that he was 'a real old-time vaudeville artist'. Responded Lowe: 'At present

98. Report, p. 82.

the Commission won't call upon your services. However, I don't think anyone has reflected on your skill'.⁹⁹

Mr. Cullity's cross-examination launched a general attack on the Equity witnesses, portraying them as a partisan group which organised itself within the union in a deliberate attempt to undermine its leadership. His efforts were facilitated by the revelation in earlier evidence that the activities of a number of the witnesses within the union were influenced by strong external political affiliations. Furze-Morrish, for instance, was employed by the Australian Constitutional League at the time of his appearance in the inquiry, and had written several radio broadcasts on Communism at the League's behest. (RCT. 4571). The witness Ellis testified that the anti-Communist members of the union were friendly with 'a Mr. Manson' who had previously been a member of the Constitutional League, and who now held an 'administrative and propaganda' position directly in the Liberal Party. Manson was not a member of Actors' Equity, but according to Ellis, the anti-Communist group frequently held meetings with him in which he acted as their 'advisor'. '[He] has a wide knowledge of Communism, and he advises us in many regards, how to keep ourselves in order at meetings when attacking various forms of Communism in Equity.' (RCT. 4807).

The Actors' Equity evidence was unique among the trade union cases, not only because it showed the activities of organised anti-Communism emanating from a source other than an Industrial Group, but it also revealed in an unusually clear way the process whereby assisting Counsel obtained their witnesses for the case. Apparently, on the night following Sharpley's testimony to the Commission concerning the affairs of Equity, Manson had accompanied Ellis and Keith Hudson on a visit to Sharpley and Mr. Reynolds to inform him that some of his allegations contained errors of fact which should be corrected. Subsequently, upon the advice of Reynolds, Ellis contacted assisting Counsel on behalf of his anti-Communist associates to offer their services at the Commission in support of Sharpley's evidence. (RCT. 4758).¹⁰⁰

99. *Herald* (report on Royal Commission proceedings), 28 September 1949.

100. It is interesting to note that during cross-examination, Cullity succeeded in establishing that none of the Equity

It is illustrative of assisting Counsel's difficulties in making out a convincing case against the Communist Party's industrial operations, that even in the investigation of Actors' Equity where they managed to produce a sizeable body of corroborative witnesses, they still failed to make the allegations appear persuasive.¹⁰¹

PART (B): THE COMMUNIST PARTY CASE

The Commissioner: Well, at long last Mr. Laurie.

Mr. Laurie: Perhaps it is appropriate at the opening of the cricket season, Your Honour, that Mr. Sholl just did not get his century.

The Commissioner: Yes, it has been the fate of many famous batsmen.

(RCT. 6295)

Thus on the 99th day of hearings, Mr. Laurie opened for the Communist Party. A span of four months seemed to have eased the tension of the earlier stages of the inquiry, and it had begun to take on the qualities of an endurance test for Counsel of both sides rather than a bitter struggle for legal and political victory. Nevertheless, neither side had lost any of their original commitment. The case presented by Mr. Laurie, albeit in mild and decorous manner, was the product of long and careful planning by the Party leaders. Mr. Sholl and his colleagues, in response, supported the thrust of the anti-Communist case with frequent objections to the 'propagandising' of Communist witnesses, and with an aggressive cross-examination which more than matched the treatment of their own witnesses at the hands of the Party's Counsel.

In the formulation of their defence, the Communist Party's leaders had one distinct advantage over assisting

100. Cont.

witnesses had challenged the bona fides of the attendance at the June and December meetings at the time they were held; in fact, they raised the issue for the first time only after Sharpley had given evidence that the Communist Party had packed the meetings with its supporters. (RCT. 4754).

101. Lowe found that the allegations made by Sharpley and supporting witnesses were un-proved, although he thought there was some suspicion as to the regularity of the conduct of those in charge of the meetings. (Report, p. 82).

Counsel: they enjoyed a very tight direction of their witnesses, not only in terms of selection, but psychologically in that they could control closely their performance in the witness box. The Communist case was in fact constructed in the opposite way to that of assisting Counsel's. The Party leaders decided upon the kind of picture of Communism they wished to offer to the Commissioner and then were able to select, from the pool of potential witnesses represented by the Party's entire membership, those whom they considered to be best fitted to present such a picture. On the other hand, assisting Counsel to a large extent had been forced to devise their case from whatever raw material they could unearth; it was the quality of the witnesses themselves (over which assisting Counsel had negligible control) which had primarily determined the nature of the case. And in a very real way, assisting Counsel were the 'victim' of these witnesses. The overall structure of the anti-Communist case equalled the sum total of a large number of idiosyncratic witnesses of varying capabilities. It lacked the unity, and as a result some of the forcefulness, of the Communist Party's case.

For the purposes of this thesis, these divergences have dictated a different approach to each case.¹⁰² In dealing with the case against the Party emphasis has been placed on the individual witnesses because essentially it was they

102. Mr. J.M. Cullity's defence of a group of trade union officials against charges made by Sharpley and other witnesses for assisting Counsel's case amounted to a third 'case' at the Commission. From the close of the Communist Party's case on 15 December 1949 until the last day of hearings on 6 March 1950, the Commission was largely occupied with the evidence Cullity presented on behalf of his clients. I have chosen not to deal with this case in my thesis. While an important part of the evidence answering assisting Counsel's case, Mr. Cullity's case was entirely separate from that presented by the Communist Party, and quite a number of his witnesses denied membership of the Party. I have been concerned with Cullity only in his capacity of cross-examiner of anti-Communist witnesses during the course of Mr. Sholl's case. Cullity's case-proper restricted itself almost entirely to detailed and complex evidence re ballot-rigging charges, and it adds little directly to the picture of the clash between the Communist Party and its opponents in the Royal Commission.

who made the case. Moreover, their evidence has been dealt with at considerable length, because the *raison d'être* of the thesis is chiefly as a study of anti-Communism, and not of the nature of the Communist Party. The Party's general response will not be examined through a detailing of its evidence, but as an expression of the Communists' political position in the wider framework of the Cold War anti-Communist offensive. Rather than to 're-try' the Party, the concern of this chapter is to look at the pre-occupations of the 'prosecution' and the defence as a microcosm of the Commission's political setting. The witnesses for the Communist Party were really only spokesmen presenting parts of an argument which had been formulated in advance as a carefully-devised and consistent whole. It is the broad objectives of the defence, rather than individual contributions to it, which are important. Thus the approach will be thematic rather than chronological.

Comprising only 30 days of hearings and the testimony of 12 witnesses, the Communist Party case was considerably shorter than Assisting Counsel's. This relative brevity was not wholly a matter of the Party's own choice: it was at least in part a result of the divergence between the role ascribed to its Counsel by Lowe, and the functions which the Party leadership wanted their evidence to serve. Lowe's determination to conduct the inquiry as far as possible in the manner of a litigation *inter partes*, which had led him to grant the Party separate representation, operated at the same time to confine it to a purely defensive role. His rulings stipulated that the case should be directed exclusively to 'completing the picture' presented by assisting Counsel. Essentially, the Party was allowed the opportunity to try to prove it was not guilty of misconduct, but prevented from giving the 'case for Communism' in a positive sense.

As it happened, Lowe's ruling on the scope of the case, made at an early stage in the proceedings, proved in practice to be less restrictive than Mr. Laurie might have feared. The fact that assisting Counsel's evidence had traversed such a wide spectrum of the Party's operations left the defence case unhindered in terms of *coverage* of subject matter. And the impossibility of treating supposedly harmful actions without going into more generalised aspects of the Party - a problem confronted by assisting Counsel in their own case - operated to the advantage of the Communists when

they came to give their answers to allegations. Lowe himself tended to be pragmatic in his decisions on the admissibility of evidence. While pointing out that such matters were 'on the very fringe of permissible evidence', there were a number of occasions when he allowed the Party to deal with its 'benevolent' activities, in the absence of objection from assisting Counsel. Laurie, of course, could never be certain when Lowe would see fit to draw the line, and had to steer a very delicate course between procedural rulings and the pressure of assisting Counsel's objections in order to present the picture of Communism formulated by the Party leaders.

He was not seriously hampered in his attempt to give a full explanation of doctrinal matters, for Lowe seemed interested to examine Communist theoretical aims more-or-less *in toto*. This was not true of the sphere of Party practice, where assisting Counsel's concentration on specific misconduct, and Lowe's antipathy to 'a roving Commission on every aspect of political activity in this Party', dictated that the defence confine itself to evidence which directly met the charges against the Party. From the Party's point of view, these were adverse conditions in which to present a satisfactory answer to the anti-Communist case. It conceived of the defence in much broader terms than a simple refutation of the allegations made by assisting Counsel.

The Communist leaders no doubt saw in the Commission a way of infusing the Party's rank and file membership with a spirit of revolutionary zeal - something particularly desirable at a time when Communist strength in the unions found itself seriously challenged, and when less hardy elements in the Party were dropping away in the face of pressure from the Right-wing political offensive. The Communists' performance at the Commission, if managed carefully, could help to boost the Party's morale. It could do so through the solidarity engendered by common adversity, through the co-operative effort required in the preparation of evidence, and through the use of the inquiry as a forum to publicise the aims of Communism. Communist doctrine demanded that the Capitalist courts be used for propaganda purposes by Communists brought before them, and it is probable that some of the Party rank and file anticipated such a role for its barristers and witnesses at the Commission.

There arose a real dilemma here, since an aggressive restatement of the revolutionary creed was incompatible with the need to present a palatable view of the Party to Commissioner and public. Generally, where there was conflict between these two aims, the defence tended to opt for a 'soft' interpretation. In November 1949 the time for evangelising was past; the Party was fighting with its back to the wall and needed above all else to consolidate its fast-disintegrating hold on the union movement. The Party leaders recognised that the propagandist value of their performance at the Commission lay at least as much in the opportunity to project a moderate image of Communism to workingmen alienated by adventurist industrial policies, as in the opportunity to propagate Communist revolution for Australia. The Communist Party Counsel made every effort to discredit the evidence of assisting Counsel's witnesses as a means of exposing them and the Commission as the instruments of the external anti-Communist campaign. But if there were Party members who hoped for a more general politicisation of the Party's role in the Commission, they were disappointed. Mr. Laurie's case plainly showed that the Party leadership was anxious to preach its ideas only so far as was consistent with the priority of self-defence.

The Party did aim to use the Commission to advance its own interests, but its approach was more complex than Sholl realised on the numerous occasions when he drew Lowe's attention to the Communist teaching on the use of the courts as a public forum. The Party's case was moulded more by the needs of self-preservation than by a desire to proselytize.

Suspecting that Lowe regarded much of Sharpley's evidence as dubious, and that he would give their case at least the semblance of a fair hearing, the Party had decided to proceed with its defence in a serious vein. Ted Hill told Sholl when giving evidence himself that he had been relieved of all normal political duties for the duration of the proceedings, and that the Party had made 'significant alterations' in its day-to-day operations in order to cope with the 'threat' of the Commission. (RCT. 7366). Some Party members were engaged on a full-time basis researching information which could be put in refutation of the allegations made by anti-Communist witnesses. As already noted, the Communist witnesses were generally the Party 'intellectuals', certainly unrepresentative.

sentative of the Party as a whole; and their selection, like the Communist Counsel's performance at the Commission, was based on an attempt to gain Lowe's favour through the presentation of a rational, intelligent view of the Party. But the case did not really aim to prove its innocence in the manner of an ordinary legal defence.¹⁰³ At no stage did the Communist leaders entertain any great faith in the likelihood that a Report favourable to themselves would issue from the Commission: doctrine and experience dictated a lowly assessment of the Party's chances of receiving justice within the confines of the Capitalist legal system, and in any case the Communists tended to see the inquiry as an instrument of the Victorian Government's anti-Communist policies rather than as a judicial body. Despite the fact that they were favourably impressed by Lowe's conduct of the Commission, the prejudices of Hill and his colleagues ran too deeply to allow them to believe that they could convince him by the evidence. At most they hoped to make it difficult for him to provide the Government with a strong weapon to use against the Party.

The Communist Counsel's scepticism about their ability to 'win' the case, combined with the knowledge that the Press would not feature denials by Communist witnesses,¹⁰⁴ led those responsible for the formulation of the defence to place only limited importance on the need to refute specific allegations. In fact, there were more pressing circumstances to consider in working out their case than the likely nature of the Report itself. In its essentials the Communist case was conceived in direct response to the anti-Communist offensive, of which the Commission was seen as a mere preface.

Virtually all of the instances of alleged misconduct were denied, and the more serious allegations were met with

103. The following interpretation of the Party's attitude to its defence is based on information provided by Rex Mortimer (correspondence with myself, 30 January 1972, 3 February 1972) and to a lesser extent on interviews with Ted Laurie, Melbourne, 1 June 1971 and 11 October 1971.

104. The Party tried to compensate for an inadequate reporting of its case in the mass media by circulating accounts of its evidence as widely as possible - in pamphlet form as well as in increased editions of the *Guardian* and *Tribune*.

challenging evidence - particularly the ballot-rigging charges, which could have resulted in criminal prosecutions, and which were directly damaging to the Party's credibility in the eyes of the working class. In addition, the opportunity was taken wherever possible to show inaccuracies of detail in the evidence of anti-Communist witnesses. But at every point the desire to protect the Party's security from governmental invasion guided the line of defence. Where the refutation of an allegation involved the risk that a Party witness would be forced to reveal facts about the Party's membership and source of funds, or the names of members other than those already publicly known as Communists, then the allegation was usually allowed to stand unanswered.¹⁰⁵ As with the 'fellow-traveller' witnesses, the evidence of the Communist witnesses gave the impression of a great reluctance to furnish the inquiry with the names of persons associated with the Party who might thereby be pilloried by the Press. This determination to avoid giving confidential information which could aid attempts to outlaw the Party, or could harm individuals, inevitably hampered their ability to present a full-scale defence case. It also caused the witnesses at times to compromise the image of co-operativeness and candour which they were seeking to project.

Mr. Laurie opened his case, as his opponents had

105. Mortimer quotes a personal example of the way in which the Party was sometimes unable to answer an allegation for this reason. 'In my own case ... I had a good answer to the allegations regarding the Clerks' Union, but the Party would not allow me to enter the witness box because of my position in the University Branch of the C.P. between 1943 and 1947', thus making him liable to be cross-examined about Communist members operative in the University. (R. Mortimer to V. Rastrick, 12 January 1972). One of the assisting Counsel's witnesses (R.D. Martin, an Industrial Group supporter) gave evidence that he attended a meeting of the Communist fraction in the Clerks' Union, chaired by Mortimer, after having accidentally received a notice of the meeting. Martin testified that the Communists discussed business to come before the next meeting of a section of the Clerks' Union (which Mortimer was also to chair), the tactics to be pursued at the meeting, and how unfavourable moves might be blocked by adroit chairmanship. The evidence later revealed that Mortimer was in fact ineligible to be even a member of that section of the Union, according to the Union rules. (RCT. 5736 ff.; 9740).

done, with a theoretical introduction in which he stated his argument as to the real nature of Communist doctrine and aims, and gave a general indication of the Party's answer to the propositions of assisting Counsel's case. State Committee member RALPH GIBSON, the first witness, elaborated the theoretical matters raised by Laurie. His long experience as a Marx School tutor and platform orator, as well as his intellectual background, fitted him for the role of Party expert on doctrine. Laurie called a further three officials as his major witnesses on practical aspects of the Party: TED HILL, FRANK JOHNSON (the Victorian President), and 'JACKIE' BROWN (leader of the Railway Workers' Union and also a member of the Party's State Committee). Hill's evidence ranged widely over almost all the matters alleged against the Party, but devoted special attention to Sharpley in an effort to undermine his credibility. Johnson was likewise concerned with general Party practice, and in particular with industrial matters. Sharpley had declared Hill and Johnson to be the chief architects of Communist malpractice in the trade unions; as personal targets of the allegations and as leaders of their Party, both were anxious to demonstrate Sharpley's error in this sphere of activity above all others. J.J. Brown was presented as the exemplar of the Communist trade union official. He attempted to disprove the notion of Communist manipulation of the unions, especially in relation to strikes, and to illustrate the altruism of the Party's industrial policies.

Minor witnesses were called to refute particular allegations, although like Brown's, their evidence always had the wider objective of showing Communist 'good works' in areas where they possessed some expertise. Three trade union witnesses supplemented Brown's picture of Communist policy in industry: the secretary of the Party's branch in Melbourne waterside unions (J. SAUNDERS); the Chairman of the branch at the Williamstown dockyard (F. SHARPE); and a militant member of the State Committee of the Federated Ironworkers Association, the only witness for the Communist Party who was not a Communist (E.L. JOHNS). A fourth 'industrial' witness (A.R. McLINTOCK) was a commercial artist, alleged by Sharpley to have employed his artistic talents in the production of false ballot papers in aid of a Party effort to rig the 1948 Blacksmiths' Society election. He was the only minor witness whose

evidence concerned ballot-rigging allegations.

A broader spectrum of activities was covered by the remaining witnesses. Mr. Laurie summoned the head of the Party's 'Ex-service Committee' (W.H. TREGGAR) to testify about Communist action in the R.S.L., and a medical practitioner (A.H. DOBBIN) to refute charges of professional abuse by Communist doctors. A founding member of the New Housewives' Association (MRS. P.G. BALDWIN) gave evidence of a Communist front organisation in action; another woman (an official in the Party's South-Port district, MRS. J. SAMSON) was called chiefly to challenge the evidence of Mrs. Baxter. A young Communist connected with the Methodist Church (R.D. KENNETT) explained the possibility of a co-existence between Christianity and Communism.

Laurie's treatment of theoretical matters laid emphasis on the pragmatic, evolutionary aspects of the Marxist-Leninist theory of revolution. He argued that the class struggle was not an invention of Communists, and that equally the social revolution it would produce would not be a product of the machinations of the Communist Party. Both issued from natural changes in the relationship of the economic forces in society. The role of the Party was merely to assist, through the political education of the masses, the development towards a new socio-political order which was historically inevitable. (RCT. 6299 ff.). Laurie constantly stressed that the Party's actions were a direct expression of the level of political awareness of the working class, and that the steps towards revolution would, and could, be taken only with majority support. He argued that the Party could not maintain itself at the forefront of the revolutionary movement if it did not mould its actions in accordance with the natural growth in mass political consciousness; this view was to be developed by his witnesses as a standard defence against allegations of Communist trickery in the unions.¹⁰⁶ The Communist Party's central objective, said Laurie, was the replacement of Capitalism with a Socialist State, but the question of how the actual transfer of power from the incumbent ruling class to the proletariat was to be effected was a secondary issue which

106. See p.189 of this chapter.

depended entirely upon the exigencies of time and place. (RCT. 6339). The main Party witnesses all referred to the nature of Communist revolutions in Eastern Europe as an indication of the possibility of revolutionary change without violence. Ralph Gibson said that violence would be employed 'if necessary'; in other words, if the Capitalist class resisted the natural tide of change resulting from the political awakening of the masses. (RCT. 6766).

Laurie was anxious to assert the flexibility of Communist theory, claiming that it was habitually re-interpreted and modified in the light of the operative political conditions at a given time. The nature of the Russian revolution could be no guide to the form which revolution would take in Australia; the writings of the early Communist theoreticians were studied closely by the A.C.P. but were not regarded as a rigid blue-print for its own operations. Thus Laurie and his witnesses argued against assisting Counsel's almost exclusive use of the Russian Communist writings to present a picture of the ruthless nature of the Australian Party's aims and objectives. Laurie suggested that those A.C.P. declarations which before 1935 expressed extreme revolutionary sentiments had been genuinely discarded in favour of a more moderate programme appropriate to Australian political conditions. Constitutions which stressed the Party's role as the vanguard of a violent working-class struggle to capture the State, and early election manifestos such as that of 1934 which called for the creation of a 'Soviet Australia', were a response to particular political circumstances. Later Constitutions were an accurate representation of the Party's objectives and not, as Mr. Sholl had implied, merely an attempt to tone down revolutionary content for popular consumption. (RCT. 6660 ff.). It was frequently apparent that Mr. Laurie and his witnesses wished to avoid giving the impression of being doctrinaire. When cross-examined by Sholl as to the nature of the society which they envisaged as following Communist revolution, Ralph Gibson repeatedly resisted Sholl's attempts to pin him down to detail, reiterating Laurie's assertion that procedure would be determined pragmatically. (RCT. 6741-48). Thus the stress on flexibility of theory served a dual purpose of dispelling the idea that the Party was dedicated to the implementation of Russian-style

revolution in Australia, while enabling individual witnesses to side-step awkward questions designed to establish that life under a Communist regime would be anti-libertarian and oppressive.

Rex Mortimer believes that the main function of the Communist Party's evidence was to 'reassure and enthuse the faithful, and project a favourable image to the public generally and the working class in particular'. He continues: 'Here our main problem was to combine fidelity to Marxism-Leninism with an interpretation of it which would not repel our audience'.¹⁰⁷ To a certain extent, a careful distinction between immediate and ultimate aims, and as a corollary, ends and means, helped overcome this central dilemma of the case. Laurie could concede that the Party's primary objective was indeed the overthrow of existing society through revolution and the institution of a Socialist-Communist system, while asserting that such circumstances could only come about as a result of gradual changes in the relationship between economic classes. His introduction suggested implicitly that revolution was considered by the Party to be a distant prospect.¹⁰⁸ Meanwhile, Communists were willing to work within the existing framework, using what were essentially reformist¹⁰⁹ methods, to soften the harshest effects of Capitalism on the working population.¹¹⁰

The main thrust of the Communist case as a whole was

107. R. Mortimer to V. Rastrick, 3 February 1972.

108. Gibson told Sholl in cross-examination that the Capitalist order would be overthrown 'at the earliest practicable time' (RCT. 6473) but he did not see this as occurring within any foreseeable term of years, and other witnesses gave no more definite indication of when revolution might be expected.

109. This is certainly not Laurie's adjective, but it sums up the implications of his argument.

110. Gibson told the Commission: 'When we struggle for improved living conditions, we want to see improved living conditions. When we struggle for greater democratic freedom we want that and we value it, and when we struggle for peace we want that; we consider it vital and indispensable'.

The Commissioner: Does that mean that each of these steps in your opinion, and your Party's opinion, has a value which you desire to achieve although it might be part of a larger plan to bring about your strategic objective? A: I would accept that statement. Yes, Your Honour. (RCT. 6763).

to show the A.C.P. to be an ordinary political party oriented to Australian conditions, closely identified with working class interests, and dedicated to the improvement of the living conditions of the masses. An important aim was to challenge the implication of assisting Counsel's evidence that the Party was 'un-Australian'. Laurie read from numerous documents in an effort to prove that it was not foreign-imposed, but rather had grown naturally out of the well-established militant working-class traditions of the country. (RCT. 6313). He also contradicted the notion that Australian Communists were controlled by Moscow; the Party's links with Comintern were ideological only, he claimed. (RCT. 6320). According to Ralph Gibson, the Party was respectably patriotic. In answer to a direct question from Lowe, he said that there had been several Party members fighting with Australian forces in the war *before* the Russian involvement. (RCT. 6486). Other witnesses made a special point of giving their war records where these were favourable; for the same reason, during the course of Tregear's evidence, Laurie made much of the latter's position on the State Council of the R.S.L. (until expelled in 1946 for his Communist affiliations) and of his achievements as secretary of the Party's ex-service committee in securing benefits for returned soldiers. (RCT. 6937 ff.).

The Communist witnesses all implied that until circumstances were ripe for revolution, the Party was willing to 'work' the existing system as far as it could be worked. The contesting of Parliamentary elections by Communist candidates, as well as the existence of a variety of Party committees dealing with such things as health, women's interests, and agrarian problems, were presented as evidence that immediate Communist goals were concerned with an improvement of conditions within the Capitalist framework. (e.g. RCT. 6615). Mr. Laurie said that Communists viewed the existing laws as having been framed to protect the interests of the propertied class; the Party aimed to create a new kind of society in which the legal system would operate in the interest of the toiling masses. Until such time, however, Communists were willing to observe the law, and only in 'special' circumstances would they consider it justifiable to commit an illegal act. (RCT. 6409-10). On this point the Commissioner asked Ralph Gibson '... do you reserve to yourself the right

of considering whether the occasion is sufficiently important to warrant your disobeying the law as it exists?' 'In extreme cases, I think nearly every human being does', answered Gibson. (RCT. 6751). The evidence of assisting Counsel had suggested that for the Communist Party the end justified the means, and that its members would break any law which fettered their purposes if there was a good chance their crime would go undetected. But the Party's witnesses denied that they were defective in moral principles. Ted Hill told Mr. Sholl that 'Communist morality is the only honest morality'.

Mr. Sholl: That implies that it is different from others, does it not? A: It is based on ---
 Q: Let us get that clear first. Does it imply that? A: I think it is undoubtedly different from yours.

(RCT. 7396)

Later, Hill said, 'I think that my morality and that of the Communist Party is determined by what will assist human development forward'. (RCT. 7396).

The Party claimed that only by 'keeping faith' with the working class could it hope to fulfil its role as the vanguard of the Revolution. Its witnesses all advanced this idea when faced with cross-examination as to what objection the Party would have to breaking the law (and particularly to rigging a trade union ballot) if the result would be an increase in Communist political influence. As Laurie first put it in his opening,

... as far as the Party is concerned, we say that if the Party did in fact adopt fraudulent means or did in fact try to win a position of leadership by violence ... the evil consequences even from the point of view of the Party would so outweigh the immediate possible gains that it would not be justifiable and would result in the loss of confidence of the working class.

(RCT. 6425)

The witness Hill was closely cross-examined on this point. Mr. Sholl accepted his contention that the Party might lose face with the workers if they became aware that Communists had tampered with a union ballot, and that furthermore, 'the effect of doing such a thing would allow the enemies of Communism and the working class movement to use it against them'. But what if the fraud was undiscovered?, asked Mr. Sholl. The Communist Party would not do it, Hill responded lamely. 'It would infringe the law'. (RCT. 7398).

In the sphere of Party practice, the major aim of the evidence appeared to be to dispel the impression of a subversive, conspiratorial organisation conveyed by assisting Counsel, and to illustrate the Party's 'good works', with particular emphasis on a view of the Party which might appeal to the working class. Examples of Communist efforts to improve the general lot of the workers, or to struggle for political rights, usually had to be given in the context of refutation of specific allegations - for instance, in the course of J.J. Brown's testimony on the Party's industrial policies.¹¹¹ But in dealing with the subject of Party 'organisation', Laurie found it possible to include evidence about the achievements of some sub-committees (particularly those concerned with health and ex-servicemen) in the field of social welfare. (RCT. 6956 ff.; 7807 ff.). During examination of Tregear on the activities of the latter committee, Laurie did not reveal that his witness had been involved in two attempts to instal homeless ex-servicemen's families in vacant holiday homes without the owners' consent, since to do so would have been to provide the Commission with evidence of illegal action by a Party member. But after Mr. Sholl introduced the matter during cross-examination in an attempt to discredit Tregear, Laurie revealed the details of the incidents with a view to illustrating the Communists' deep concern for the welfare of the underprivileged. (RCT. 6999 ff.). The Communist evidence on 'fraternals' or front organisations devoted as much attention to portraying their espousal of progressive, humanitarian causes, as to refuting allegations that these bodies were controlled by the Party for the purpose of enlarging its own political influence. Generally, the Party's effort to counter assisting Counsel's charges of subversion and conspiracy was made indirectly, by

111. Brown's quite lengthy evidence purported to show that the primary aim of Communist Party's involvement in union strikes was to rectify workers' grievances. He outlined the gains made by the union while under Communist leadership, and asserted that Communist policies were pursued only to the extent that they were endorsed by the rank and file union membership. (RCT. 7026-7110).

creating a picture of a moderate, intrinsically 'normal' political organisation; but in cross-examination, Communist witnesses denied the charges outright.

The pattern of assisting Counsel's questions exhibited a number of marked pre-occupations, causing Mr. Laurie to complain in his final submission to Lowe that 'the cross-examination of witnesses called on behalf of the Communist Party in no way enabled them to explain the aims, objects, origins [and] funds ... of the Communist Party, but was designed to elicit statements which would assist to discredit Communism'.¹¹² On matters of Communist theory, for instance, the questioning was largely directed towards two major issues: the role of violence in the transition from a Capitalist to a Socialist State; and the kind of measures which would be adopted by a Proletarian Dictatorship in dismantling the old system, with particular emphasis on the problem of expropriation of the capital-owning classes.¹¹³

Mr. Sholl's basic approach was to demonstrate that the Party relied on methods of secrecy and fraud to advance its interests. He made much of the fact that several members admitted to having adopted false names in the past, and to having kept their Communist affiliations concealed from non-Communist associates. Every witness who occupied a leading position in the Party was tested at length about the Party's claim that it had destroyed its own records. Sholl appeared to be very sceptical of the truth of Ralph Gibson's statement that minutes were no longer taken at meetings, and that no correspondence now passed between the A.C.P. Central Committee in Sydney and the Victorian Executive. (RCT. 6666 ff.).¹¹⁴

112. Final submission on behalf of the Communist Party, p. 8.

113. See particularly the cross-examination of Gibson, RCT. 6739-6794.

114. Mr. Sholl: You can hardly be surprised if [the absence of Party records] gave a pretty general impression that the Party is essentially conspiratorial in nature, can you? A: The Party is not conspiratorial at all. Q: As I follow you, this is a Party which says it is a political party and has nothing up its sleeves, and it keeps no membership records, it keeps no minutes, and it has no correspondence even between its head body and its branches. A: The Party is absolutely open in all its dealings with the people, but it cannot ignore the fact that it is proclaimed as the dangerous enemy by monopoly capital and by the powers that be. (RCT. 6674).

In response to the witness's further claim that the Party did not engage in any 'underground work', Sholl read to the Commission a Communist pamphlet setting out procedures of organisation for illegal activity, and reminded Gibson of the evidence of ex-Communist witnesses on the measures which were taken by the Party during the 1940-42 ban to ensure that its propaganda continued. (RCT. 6680 ff.) A number of the Party's witnesses were questioned on their activities during this period, as well as on current preparations for a return to similar undercover operations in the event of the Party being outlawed again. Most of them professed to have little knowledge of what had occurred during the war-time ban, accounting for their own political action simply in terms of a 'discussion' of Communist ideas and policies on the war when they came into social contact with other Communists.¹¹⁵ All witnesses questioned on the illegal period denied knowledge of the existence of secret printing presses, and of any formalised system for communication between members.

Assisting Counsel had notably little success in their efforts to supplement their collection of names by questioning witnesses on the identity of Party members and associates.¹¹⁶ Nor did they get much co-operation when trying to ascertain the origin of a number of political pamphlets and articles concerned with the Royal Commission and the Essential Services issue. Hill denied any personal responsibility for the publication of material attributing biased motives to Sir

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115. Lowe summed up their viewpoint when he helped the witness Johnson out of his difficulty in meeting Sholl's suggestion that, as a leading member of the Party in 1940, Johnson should have known about the arrangements for the printing of the *Guardian*. 'Was it the policy at that time that the less each individual knew about the actions of others, the better it was', asked Lowe, and Johnson agreed. (RCT. 8207).
116. The cross-examination of R.D. Kennett (the Party's 'religious' witness) provides a good example of the process. Kennett was asked for the names of Communist clergymen, of members of the Methodist Youth Fellowship who participated in the radical 'Youth March on Canberra' in May 1949, and of Communist members of that Fellowship. Sholl was particularly interested in the Rev. Stephen Yarnold, whom Kennett had mentioned as someone with whom he associated in the Christian Commonwealth Movement. It was not apparent whether Sholl regarded him as having connections with the Communist Party, but he noted that

Charles Lowe as Commissioner and to Sharpley as witness, and attacking the Royal Commission Contempt Law. When pressed, he said that he was in agreement with their general content, but he did not 'subscribe to every word' in a *Guardian* article which criticised Lowe for his acceptance of the Commission while a shareholder in the Herald and Weekly Times Ltd. He failed to explain to Sholl why he had made no attempt to restrain the Party Press from publishing material of this kind. (RCT. 7361 ff.)

Wherever possible, assisting Counsel revealed a witness's record of court convictions. Sholl opened his cross-examination of Gibson by listing the occasions when he had been convicted for political offences resulting from participation in demonstrations and the illegal holding of street meetings. (RCT. 6639 ff.). He appeared to consider it significant that at a public meeting in 1940, Gibson had told his audience that the flag to which he gave allegiance was the Red Flag, not the Union Jack. (RCT. 6649). Sholl even went to the trouble of producing two police witnesses who had taken short-hand notes of Gibson's speech, and who testified to the Commission in support of the charge. (RCT. 6967). This method of discrediting the Communist Party's witnesses was probably most effective in the case of its President, Frank Johnson. Cross-examination showed him to have been involved in a number of minor breaches of the law, including the use of a false name in a court proceeding, and the falsification of documents. Assisting Counsel were quick to draw conclusions about Johnson's attitude to law-breaking in the sphere of trade union politics.¹¹⁷ Most attention, however, was given

116. Cont.

Yarnold was 'the gentleman who broadcasts on the A.B.C.', and that he had left his position as Chaplain of Scotch College after 'some disagreement with the authorities'. Kennett agreed with Sholl that there were 'a number of leading members of the Churches who are members of the Communist Party', but searching questions by Sholl revealed that he did not know if this was the case in Australia. 'I have never sought after such information ... since religion is not a subject that we discuss much in the Party', Kennett claimed. (RCT. 7991; 7997; 8002-3).

117. Mr. Sholl: Well, so far we have got you known as 'Ewer', 'Johnson' and 'Cassidy', and we have got an untrue statement in your application for a motor-car driving licence, a false name given to police, and a nomination

to undermining Hill's credibility as a witness, the attack being based upon his position as a practising member of the Victorian Bar. Assisting Counsel suggested that in condoning the Party's publication of pamphlets critical of the Royal Commission proceedings and the Contempt Law, Hill had acted irresponsibly as a lawyer. (RCT. 7362). At a later stage in cross-examination, Sholl devoted an entire day to an investigation of events relating to the settlement of Henderson's court action against Morris during the 1948 B.W.I.U. Election. Hill had appeared for Morris in this case, instructed by J.M. Lazarus, a Communist solicitor. The information which Sholl managed to reveal pointed to the possibility that Hill and Lazarus had behaved dishonestly, seeking to engineer an agreement with opposing Counsel about the preservation of ballot papers which they were aware were no longer in existence. (RCT. 7564 ff.)¹¹⁸

With the probable exception of the B.W.I.U. ballot-rigging matter, the anti-Communist case rested upon evidence of the kind which would not have furnished proof in a court proceeding. But by concentrating on the conspiratorial 'atmospherics' of Communist activities, and on a number of instances in which the Party had shown itself willing to break the law, assisting Counsel were able to imply the likelihood of other more serious occasions when Communists had been guilty of misconduct. And if the Party was conspiratorial in nature, then here was an explanation of their difficulty in procuring substantial evidence to prove its misdeeds.

117. Cont.

of authorised insurer in another false name, haven't we? Do you regard those as some of the latent capacities which the Communist Party has developed in you? A: No.

Q: Well, after that, I suppose a little bit of ballot-rigging would not worry you, would it?

(RCT. 8218)

118. It is interesting to note that Hill, the Party's 'strongman', broke down in the witness box, showing severe emotional distress, during his refutation of allegations of professional impropriety as a barrister - he was the only Party witness who did so. (R. Mortimer to V. Rastrick, 3 February 1972). In the Report, Lowe made no finding against Hill or Lazarus with regard to this matter, but said he believed he had 'not heard the whole truth' about it. (Report, p. 103).

The effort put into preparing its case served the Communist Party well at the Commission. The Communist witnesses, thoroughly schooled in the objectives of the case, and in the kind of information they should avoid revealing, usually succeeded in presenting their evidence-in-chief in an articulate, non-aggressive fashion. For the most part they gave the impression of having a great enthusiasm for their cause, an eagerness to explain it to their audience, and a desire to co-operate with the needs of the inquiry. Gibson was probably the most outstanding of the Party's witnesses in these respects. Lowe seemed to respond favourably to his eloquent, almost academic style of explaining Communist theory, although he reprimanded him more frequently than any other Party witness for a tendency to 'propagandise'. Apart from an occasional protest against assisting Counsel's efforts to limit the scope of his theoretical explanations, Gibson maintained a markedly genial manner which was echoed in the performance of most of the other witnesses. R.D. Kennett, who testified on Communist attitudes to religion, was perhaps the most successful of the minor witnesses. He was a young Communist who had continued to pursue his involvement in the Methodist Church after joining the Party. He was employed as a witness to demonstrate that the Party did not regard a person's religion as an obstacle to his acceptance as a member, and that there was no basic antagonism between the aims of Communism and the true ideals of Christianity. One suspects that Lowe was interested in the subject matter of Kennett's evidence, as well as being receptive to his earnest, youthful idealism.

Under the pressure of cross-examination, the Communist witnesses found it considerably more difficult to maintain an impression of willingness to 'tell all'. Particularly when questioned about alleged fraudulent activities, they tended to produce the stock answer that a certain event 'may have occurred', but they had 'no recollection' of it. Ted Hill showed a strong inclination towards this type of response, to the extent that he seriously risked the appearance of calculated untruthfulness. It was a defence doubtless at times used to protect the Party from revelations which might endanger its security; it may have had the additional aim of deflating assisting Counsel's image of a

tightly-knit organisation whose control lay wholly in the hands of its top-ranking officials. Hill's refusal to admit to any knowledge of numerous Party activities alleged by anti-Communist witnesses had the effect of suggesting a more loosely-organised body, and one not as capable of conspiratorial plotting as Mr. Sholl would have it.

Most of the Party's witnesses were subdued in response to the provocation of assisting Counsel in cross-examination; if they were at times unco-operative, they nevertheless avoided giving expression to open hostility. The only occasion on which Lowe reprimanded a Communist for engaging in an antagonistic interchange with Counsel was when Sholl declared that the witness Tregear was receiving 'signals' from Rex Mortimer (instructing Communist Counsel) in the course of his cross-examination, and Tregear heatedly denied it. (RCT. 7016). It is curious to note that the two witnesses who appeared least capable of observing the Party's formula for a non-aggressive performance in the witness-box were its leaders, Hill and Johnson. The latter, perhaps naturally inept as a witness, was made ill at ease at an early stage in his cross-examination by the revelation that he was guilty of some fraudulent practices. His composure may also have been disturbed because he was most deeply involved with the Party's affairs in the unions, and thus most vulnerable to assisting Counsel's energetic grilling with regard to ballot-rigging allegations. This insecurity expressed itself in a disgruntled manner which bordered on truculence. Hill's temperament in the witness-box was likewise noticeably different to that of other Communists who testified, although in his case hostility seemed to be politically-motivated. Hill had supervised the schooling of the Party's witnesses to ensure that they did not over-politicise their testimony, and yet he himself was unable or unwilling to disguise his personal views on the Royal Commission. He did not hesitate to express disapproval of the damaging effects which the proceedings were having upon people accused by assisting Counsel's evidence, nor to point out that the charges implied in their questions were a development of 'current slanders' against the Party. His tone was particularly antagonistic when he faced Sholl. 'You and I talk different languages philosophically', Hill told him.

Mr. Sholl: That is unfortunate, of course. A: I think it is unfortunate for you.

(RCT. 7390)

Their exchange on the matter of Communists in the trade unions was typical of the way in which the cross-examination proceeded. Hill asserted that the allegation that the Communist Party controlled the unions was 'a slander that has been uttered against [it] as long as I can remember'.

Mr. Sholl: What is there slanderous about it? Why shouldn't the Communist Party control the trade unions? A: The suggestion is put repeatedly that we are conspirators that pull strings here, there and everywhere, and I reject that view utterly.

Q: Don't get heated about it. I am trying to get the logical basis of this. What is there reprehensible about the Communist Party controlling the trade unions, from your point of view? A: If your implication is that the Communist Party pulls a string here and pulls a string there in a trade union, I reject the suggestion completely.

Q: Nobody is talking about pulling strings. A: That is the presentation that you have put repeatedly here.

(RCT. 7397)

Hill's difficulties under cross-examination reflected the central dilemma confronted by the Communist Party throughout the presentation of its case, a dilemma which was probably inherent in its very existence within the confines of a Capitalist democracy. The inconsistencies in the Party's evidence (and there were many) arose from its attempt to reconcile the conflicting demands of survival and respectability on the one hand, doctrinal fidelity and revolutionary spirit on the other. The problem, and the way in which the Communists at the Commission struggled to overcome it, well illustrates the bind of a revolutionary party in an unpropitious environment.

CHAPTER FOUR : THE REPORT

By August 1949 the Royal Commission had settled in to become one of the established features of Melbourne's political life. The daily press kept a polite, if progressively disinterested, eye on the proceedings, but in the Victorian Parliament some uncomplimentary remarks were heard. The Labour Opposition began to refer to the length of the inquiry as proof that its findings would be put to no useful end by the Government. 'Everyone knows that [the Royal Commission] looks as if it would go on forever',¹ declared Mr. Cain during the debate on the Contempt Law, and Mr. Barry rounded off his point with 'Some persons are hoping that [it] will never finish'.² Even some members of Hollway's own Party seemed discontented. Mr. Edmunds, M.L.A. (L.C.P., Hawthorn), unappreciative of Lowe's conscientious efforts to apply strict judicial principles, complained that 'Known members of the Communist Party are accepted at the Royal Commission's hearings on terms of equality as if they were good citizens and good Australians'.³ Patrick Kennelly, least restrained of all, told the Legislative Council: 'The purpose of this Commission has been served. Nothing has been said that anyone in political life did not know. It is a farce and a joke'.⁴

Outwardly impervious to such criticism, Lowe carried on in the same scrupulous fashion with which he had begun his task. And finally on 6 March 1950, precisely nine months after the preliminary hearing, the Commission came to an end. Lowe departed with 31 volumes of transcribed oral evidence and an even vaster amount of exhibits - the raw material which he was required to sift and evaluate before he could present his

1. V.P.D., vol. 229, 9 August 1949, p. 1481.

2. V.P.D., vol. 229, 9 August 1949, p. 1483.

3. V.P.D., vol. 231, 19 October 1949, p. 2967. Edmunds continued: 'It is the personification of impudence on their part to stand up as champions of free speech and a better form of civilization. They are the conscious and deliberate agents of a foreign power ...'.

4. V.P.D., vol. 230, 20 September 1949, p.

Report to the Government. The Press predicted that this would take at least three months,⁵ but in fact Lowe completed the enormous amount of work involved in just seven weeks. On the 28th of April, the day after Mr. Menzies introduced a bill to outlaw the Communist Party in the House of Representatives, and two weeks before the Victorian State Election, Lowe presented his findings to the Governor of Victoria, Sir Dallas Brooks.

The Report, described by the *Melbourne Sun* as a 'classic of clear thinking'⁶ and by the Premier as one of the most important documents that had ever been presented to any Australian Government⁷, was relatively short in view of the immensity of the evidence it summarised.⁸ In its introductory section, Lowe indicated the kind of interpretation which should be put on his findings.

... I have felt that I should not treat the matters investigated before me merely as a piece of litigation between parties in which findings should be made on the evidence in favour of one party or the other, but as matters in which the Executive desires to know, not merely what I find proved by the evidence, but also what the evidence does not satisfactorily determine and which I think may nevertheless be true.

He explained further that there were some matters in which 'all I can say is that I am not satisfied on the evidence that the allegation is true. Such a finding is not intended to be, and must not be taken to be, equivalent to a finding of "not guilty"'. The Introduction also showed that Lowe was prepared to accept Sharpley's evidence only to a very limited extent.

... I have not acted on Sharpley's evidence to prove any allegation except where I find it admitted or not denied by the persons affected, or corroborated by other evidence ... which I accept, or where I think the circumstances are much more in favour of the truth than the untruth of his story.⁹

5. *Age*, 7 March 1950.

6. *Sun*, 1 May 1950.

7. *Age*, 1 May 1950.

8. It comprises 107 pages of findings, plus appendices.

9. *Report*, p. 7.

It is clear from the body of the Report that he felt far less sceptical about the credibility of the other ex-Communists; Rawling's evidence in particular was the sole basis of quite a large number of his findings about Communist Party practice. On matters of doctrine and theoretical objectives, Lowe seemed to rely heavily on the Communist texts and on the testimony of the principal Party witnesses in preference to that of the anti-Communist witnesses. Wherever possible, he allowed the evidence to 'speak for itself', quoting the arguments of Communist and assisting Counsel without interposing his own comment. In the 'Summary of Findings' at the end of the Report he was forced naturally enough to indicate his conclusions, but he warned that these should only be read in conjunction with the more detailed discussion in the Report. 'Read alone, they give a starkness of outline and a seeming simplicity where the truth embodied in the findings is often complex and sometimes not absolute but only relative to the circumstances.'¹⁰

The most striking feature of the Report was its dispassionate tone, entirely out of keeping with the sensationalism promoted by public exponents of anti-Communism. While not always exonerating the Party, the majority of Lowe's findings were both mild and inconclusive. Approximately one third of the Report dealt with basically 'neutral' evidence such as the origins and organisational basis of the Party; on controversial issues, only a very few of his comments were in agreement with the propositions about the Party put forward in assisting Counsel's case. Mr. Sholl,

10. Report, p. 104. This recognition of the complexity of his subject carried into the area of language, the Report having a section on 'Special Sense of Words Used - Capitalism, the State, Dictatorship, Imperialism'. (p. 17)

one suspects, must have regarded the Royal Commission as one of his less successful cases.¹¹

Lowe found, for instance, that there was no evidence to show that the A.C.P. was controlled from abroad, although its policy was 'in harmony' with that of the Cominform. Funds came from various local sources, but there was no evidence that they came from overseas. The Party did not hold itself bound to obey laws which it regarded as oppressive, or restrictive of its efforts to overthrow the existing system. It was in fact, said Lowe, 'prepared to use any means to achieve what it thinks to be a desirable object, so long as it regards the means as fitting and the result as not on the whole disadvantageous'. On the Party's industrial policy, he concluded that 'where strikes have occurred under Communist leadership or influence, the purpose has been really, in the first place, to gain the advantages sought in the men's demands. I think, however, that the leaders of the Communist Party at any rate have never lost sight of what they consider are the further advantages of giving training to the strikers in concerted action against the employers and of striking one further blow at the capitalist system'. Lowe found that the Party had dislocated or disrupted industrial production and essential services, but noted its claim that this effect was only a concomitant to the struggle to obtain better conditions for the workers. He found no evidence of any Party member 'who is or was an officer either of the Education Department or of any School or of the University using his position for purposes of indoctrination in Communism'.¹²

11. In a letter to me dated 4 October 1971, Eric Butler, Director of the Australian League of Rights, suggests that Sholl was not happy with the Report. He writes: 'When the late Vladimir Borin, former Czechoslovakian Communist leader, was living in Australia, I had him look at the report produced by the Victorian Commission, and he was rather critical, charging that those responsible clearly did not understand Marxism-Leninism. I think you will find that Sir Reginald Sholl will agree with this'.

When interviewed on this point, Sholl said he was satisfied with the Report - his response may, of course, have been dictated by professional etiquette, since he is still in the legal profession.

12. This is by no means a comprehensive survey of Lowe's findings. I have merely set out those concerning some of the more contentious issues which arose in the Commission.

One of the sections in the Report most revealing of Lowe's modification of Mr. Sholl's propositions was that dealing with the Party's revolutionary aims and the 'Means and Stages by which C.P. Aims to Achieve its Objective'. During investigation of this subject in the Commission, Lowe constantly tried to arrive at a restatement of Sholl's propositions in a form which the Communist witnesses would accept; and it is clear from the Report that he usually accepted them himself in their modified form. Thus, on the question of the role of the Communist Party in achieving revolution, Sholl's phrase 'to teach [the proletariat] the need of the seizure of power through revolution' became in Lowe's finding 'to teach them the need of *obtaining* power through revolution' and Sholl's 'to train them to use violent means for this purpose' became 'to train them *in the means of obtaining power*'. This latter modification did not mean that Lowe rejected the idea that violence would be a part of the Communist revolution; in fact he found that, in the Party's objectives, 'if the present [ruling class] do not abdicate power voluntarily, they will be violently overthrown'. But he did not find any evidence that the Party *trained* its members to use violence, as alleged by Sholl.

Further modifications of assisting Counsel's phraseology occurred on the issue of Communist methods of achieving revolution. Sholl's 'control' of the unions became 'leadership of and influence in' the unions; and 'the production thereby of a revolutionary situation in which the Government can no longer govern and the masses are perplexed and ready to follow the C.P. lead' was altered to read 'the leadership of the masses in a revolutionary situation *when* the Government can no longer govern and the masses are ready to follow the Communist lead'. Finally, the 'forcible suppression and expropriation of all class enemies' became the 'forcible suppression and expropriation of the owning class who have resisted'.

Throughout the Report, Lowe paid attention to the question of timing when considering the Communist revolution. He had no doubt that the Party aimed to overthrow the present form of government (by force if necessary) 'when a revolutionary situation arises'; but he accepted that until that time, it was willing to use the existing institutions to promote more immediate aims.

'Indeed, it is on the successful operation of the existing system for the workers' benefit that it relies to maintain, consolidate and extend its influence over the working class.' Lowe could obtain no precise indication of when a revolutionary situation might be expected to develop, and he noted that 'indefiniteness of time seems inherent in the authoritative exposition of revolutionary crisis by Lenin himself'.

The circumstances of the Report's release suggest that Premier Hollway was in considerable haste to have the findings publicised. Lowe handed in the Report with several appendices still to be finalised, and the following day, Saturday 29 April, Hollway provided the *Herald* with this incomplete document in time for it to go to press the same afternoon. Thus the *Herald*, which had 'scooped' the Sharpley story, scooped the Commission's findings too. A section of the Premier's Department worked throughout the weekend to have copies of the Report ready for distribution to other newspapers and members of Parliament on the Monday.¹³ Subsequently, Lowe found it necessary to request the circulation of an addendum to the recipients of these copies, making 78 amendments to the text, and disclaiming responsibility for underlining which emphasised some of the findings more unfavourable to the Communist Party. 'It must be noted that much of the underlining in the ronoed copies has been added by some person other than the Commissioner and that the emphasis resulting from such underlining should be ignored.'¹⁴ These events provided the Victorian Opposition with an opportunity to howl with indignation. They complained that a copy of the Report had been prepared by the Premier 'with extreme haste for the benefit of one Melbourne newspaper', and demanded to know who had been responsible for the 'tampering' with Lowe's findings.¹⁵

13. *Age*, 2 May 1950.

14. An officer of the Premier's Department later told the Press the underlinings had been made by a Press-man 'for reference purposes' on a copy of the Report which had then been used by typists for the purpose of making further copies. *Age*, 6 May 1950.

15. *Argus*, 5 May 1950; *Age*, 6 May 1950.

The Victorian public remained ignorant of the essentially mild tone of the Report, for the daily Press sought in general to present it as a complete vindication of its anti-Communist campaign. Through careful choice of headlines and emphasis in their coverage of the findings, it managed to lend them an aura of drama which was certainly not present in the original. A *Sun* editorial summed up the Report's significance thus: 'It constitutes a damning indictment of the activities of a body of men enjoying the advantages of the Australian way of life while plotting to overthrow the country's established institutions and to sabotage its industrial machinery'.¹⁶ The *Herald* thought the Report would convince most Australians that Communism was their 'implacable enemy'.¹⁷ The exception to this style of comment was to be found in the reports of the *Argus* which, perhaps because of anti-Herald sentiments,¹⁸ gave considerable prominence to those matters where Lowe concluded that an allegation against the Party had not been proven, and to his unfavourable remarks about Sharpley's credibility, which it quoted in full.¹⁹

According to the Communist Press, Lowe's findings vindicated the case put forward by Party Counsel at the Commission, and repudiated the claims of public anti-Communist propaganda. The *Guardian* expressed some qualified praise of Lowe. 'There are some curious examples of misunderstanding by the Judge, which demonstrate the difficulty of a person in his position, with no working class experience, having the job of investigating such a matter. On the other hand, some of the Report reveals a penetratingly accurate analysis of the position.'²⁰ Here the Party had an ideological explanation for those findings which went against it, an advantage which

16. *Sun*, 1 May 1950.

17. *Herald*, 1 May 1950. The same kind of exaggeration of the meaning of the findings can be found in Lowe's biography by Newman Rosenthal, who refers to them as showing the Communist Party's 'indoctrination of individuals, and its subversion of industrial and social institutions'. Rosenthal, *op. cit.*, p. 134.

18. This is the interpretation given by Ralph Gibson in My Year in the Communist Party, p. 155.

19. *Argus*, 5 May 1950.

20. *Guardian*, 5 May 1950, p. 6.

the anti-Communist Press did not share in their own interpretative effort. Where the latter was unable to make Lowe's findings amount to the 'damning indictment' desired, it accounted for the moderate tone in terms of Lowe's scrupulous application of the normal rules of evidence - his tendency, in other words, to give the Communists the benefit of the doubt if the evidence did not constitute strict legal proof. The Press of both sides exaggerated the findings to confirm their own viewpoint, yet considering their original expectations, the Communist Party was probably better pleased than the sponsors of anti-Communism with the outcome of the Royal Commission.

The most interesting aspect of the release of Lowe's findings was the way in which it coincided to within the space of a day with the introduction of Federal anti-Communist legislation. While the Commission had sat, a new Liberal Government had taken office in Canberra, and while Lowe had worked on his Report, Mr. Menzies and his advisors had been simultaneously engaged in devising a law which would put into effect his pre-election promise to ban the Communist Party in Australia. Apparently in January 1950 when Federal Cabinet first met to discuss the proposed legislation, there was some suggestion that action should be delayed until the Victorian Royal Commissioner had made his Report. The suggestion was rejected, according to the *Herald* 'because the Commission is expected to sit until about April, and Ministers realise that the longer the ban is delayed, the more time Communists will have to move underground'.²¹ But problems in drafting the anti-Communist law, particularly the outspoken opposition in the Labour movement to the likely provision for the exclusion of Communists from trade union office, meant that Menzies' Bill was itself not ready for presentation until April. Its preamble, a sensational declaration of the current menace to Australian security and industrial welfare represented by the Communist Party, made claims about the nature of Communist activities which were almost identical to the 'allegations'

21. *Herald*, 2 January 1950, p. 3.

contained in the Royal Commission's terms of reference.²² Why, when it was publicly known that the release of the findings was imminent, did Mr. Menzies not wait another 24 hours to discover the conclusions of a Judge who had spent a full nine months hearing evidence on the matter?²³ Whatever the reason, his blithe disregard for the value of Lowe's exertions was symptomatic of the fate of the Report in the coming controversy over Menzies' anti-Communist programme.

The findings of the Commission were not the 'abundant justification' for Menzies' state of emergency that some political commentators would have them.²⁴ Menzies himself saw, if other members of his Party did not, that their very sober nature could not be of great use to him in his attempt to convince Parliament that the A.C.P. endangered the security of the nation. In his second reading speech on the Bill, he referred to a 1948 report of the U.S. Committee on Foreign

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22. The Preamble to the Bill, apart from alleging that the Party engaged in espionage and treason, declared that it would seize power as a revolutionary minority, that it sought to attain its ends by force, fraud or intimidation, and engaged in activities designed to dislocate, disrupt or retard production in vital industries. Communist Party Dissolution Bill, introduced in the House of Representatives by the Prime Minister, 27 April 1950. C.P.D., vol. 207, 27 April 1950, pp. 1994 - 2007

In dealing with the similarities of subject matter between the Commission's findings and the Preamble to the Bill, Brian Fitzpatrick remarks: 'The unprejudiced reader ... is virtually forced to infer either that one-quarter or one-third of the Australian Communist Party membership which is resident in the State of Victoria is utterly unrepresentative of the party and that the Crown witnesses from other States were uninformed of any criminal activities by Communists there, or else that the Commonwealth Government has declared an emergency which does not exist, sees infamous criminality where there has been in fact but political and industrial opposition - vexatious, because effective'.

B.C. Fitzpatrick, The Unnecessary Police State Bill, Australian Council for Civil Liberties, Melbourne 1950, pp. 9-10.

23. In view of the extraordinary coincidence of timing, it is difficult to avoid the suspicion that Menzies had received inside information that Lowe's Report would not be of great assistance to the passage of his Bill, and that he had accordingly decided to 'get in first'.
24. Both Premier Hollway and H.E. Holt, M.H.R., made Press statements to the effect that the Report confirmed the recitals of the C.P. Dissolution Bill. *Herald*, 29 April 1950; *Age*, 1 May 1950.

Affairs - 'The Strategy and Tactics of World Communism' - and to the Report of the Canadian Royal Commission on Espionage, but he declined to quote from Commissioner Lowe's findings on the Communist position in Australia, or even to make mention of his inquiry. The Lowe Report may nevertheless have been of advantage to Menzies in the creation of a public atmosphere favourable to drastic action against the Communists, because on the whole the Press gave a slant to the findings which made them seem quite as alarming as the situation outlined in the preamble to the Bill.

In Melbourne, proximity of the State Election added more controversy to the release of the Report than would otherwise have been the case, considering that its public impact had been eclipsed to a large extent by the presentation of the Communist Party Bill the previous day. At election meetings it was a major point of discussion, with L.C.P. candidates seeking to underline its importance and the Opposition seeking to belittle it. Predictably, Labour leader John Cain asserted that the Government's release of the Report had been carefully timed to distract attention from its 'dismal record of hopeless mismanagement of the affairs of State and from the personal conflicts within the Liberal Party and the Cabinet'.²⁵ Much argument centred on whether or not Communism was in fact an issue in the Election. Premier Hollway appeared to be disenchanted with the suggestion by the *Argus* that Menzies' Bill had shifted the debate into the Federal arena, and that it was now a 'dead issue' for Victorian electors.²⁶

Interest declined rapidly after the Hollway Government was returned to office on 13 May; and the focus of attention was soon directed squarely onto the Parliamentary debate in Canberra. On the whole, despite their sensational interpretation of the findings, neither politicians nor Press expressed an urgent demand for any Government action on the Report. The call by Mr. Keon, M.L.A., for action on the 1948 B.W.I.U. ballot (made while the Commission was still sitting) went unheeded;²⁷ and the Victorian Opposition Leader's reiteration of his request for the introduction of the 1948

25. *Age*, 3 May 1950.

26. *Argus*, 5 May 1950.

27. *V.P.D.*, vol. 231, 19 October 1949, p. 2968.

legislation against Communists had lost most of its sting since the formulation of a Federally-based bill. Speakers for the Labour Party in the Victorian Elections did not believe that action by the Hollway Government was a possibility worthy of consideration: they had branded the Commission as a political 'stunt' whose significance for Mr. Hollway ended with his electoral victory. Before the Election Hollway promised that Communists in the State Public Service would be dismissed as an immediate result of the Commission's Report;²⁸ and his Attorney-General, ignoring one of Lowe's most definite findings, told a public audience at the Malvern Town Hall that Communists 'should not be allowed to serve in juries, in the University or in the teaching services'.²⁹ But these sentiments faded along with election-time excitement. No person or organisation was prosecuted, no protective law was recommended or considered by Parliament. And no newspaper or political party voiced any complaint about the inactivity.

Lowe's Report slipped into an obscurity which nothing, it seemed, could alter. It was scarcely mentioned by the opponents of the Communist Party Dissolution Bill, either in the Parliamentary debate, or during the 1951 Referendum campaign when Menzies sought a popular mandate for the Constitutional powers necessary for him to make his Bill law. L.C. Webb in his Communism and Democracy in Australia observes that the disregard of the Report by campaign leaders and newspapers was 'a revealing commentary on the atmosphere of referendum campaigns'.³⁰ More than this, however, it was a meaningful comment on the nature of Lowe's findings. The Report, a document which according to Webb should have been a 'valuable aid to those seeking to assess the significance of Communist activity in Australia',³¹ had to be overlooked by the Bill's supporters because it failed to conform to their

28. *Argus*, 1 May 1950.

29. *Age*, 2 May 1950.

30. L.C. Webb, Communism and Democracy in Australia - A Survey of the 1951 Referendum (Melbourne 1954), p. 17

31. *Ibid*, p. 14.

picture of a political party which threatened the survival of Australian democratic institutions. In the Australian political environment of the early 1950's, no respectable person would dare to argue that the Communist Party was a political force of such insignificant proportions that it could be discounted; Mr. Menzies' opponents did not really want to question his assumptions about it. In the Parliamentary debate on the Bill its Preamble was not an issue; Labour speakers were willing to argue only against certain arbitrary provisions which they claimed violated the fundamental rights of citizens under common law.³² Likewise, during the Referendum, 'No' campaigners were intent to oppose Menzies' methods rather than to question seriously the dangers of Communism. Thus the only source of opposition to the Bill which found the Lowe Report useful to their cause was the Communist Party itself, which quoted his findings as proof of its own political respectability.³³

Nor did the dramatic advent of the Petrov Conspiracy and the 1954 Royal Commission on Espionage do much to revive memories of the Victorian inquiry into Communism. The Petrov Commissioners themselves may have made use of Lowe's Report:

32. See Fitzpatrick, The Unnecessary Police State Bill, pp. 16-19; H.M. Storey, 'The Anti-Communist Bill in the House of Representatives', *Australian Quarterly* vol. 22, no. 2 (June 1950), p. 22.

33. In his final radio broadcast during the Referendum campaign, Sir Arthur Fadden *did* make a reference to the Royal Commission Report. He spoke of a Communist Party pamphlet, produced for the campaign: 'It is shot through with the most improbable of fraudulent assertions. It states, for example, that Sir Charles Lowe, Royal Commissioner appointed by the Victorian Government to investigate Communist activities, reported that "there was no sabotage, no espionage, no treason, no strikes prompted or inspired by Communists for the purpose of disrupting industry or essential services". As every intelligent voter knows, the reverse was the case'. See M.H. Ellis Collection, National Library of Australia. This is the only reference to the Report by a supporter of the Bill that I have been able to unearth. Articles in the *Australian Quarterly* at the time, chiefly critical of the Bill, likewise make no mention of the Commission's findings.

Newman Rosenthal claims that they found it 'invaluable' as a checklist of names of Australian Communists.³⁴ But there was little comment of a public nature on the earlier Commission. During the course of Menzies' negotiations with the Judiciary in quest of three Judges to act as Commissioners for the Petrov affair, the Press suggested that Mr. Justice Sholl would be a likely choice in view of his experience 'in this type of Commission';³⁵ but nowhere was a comparison made between the current political situation, and that which Lowe had found to exist in 1949.

The controversial nature of the Petrov proceedings did mean, however, that public attention was re-drawn to Lowe's mode of conducting the 1949 inquiry. In the House of Representatives debate on the Petrov Commission in October 1955, Dr. Evatt referred to Lowe's approach as contrasting favourably with the conduct of the later one.³⁶ Brian Fitzpatrick, too, in a pamphlet critical of procedures in the Espionage inquiry, applauded the conduct of the Victorian inquiry. 'The atmosphere of [Lowe's] courtroom was different: the precincts were not littered with Security men, and although one perceived that Sharpley's sponsors were sternly resolved to defame as many left-wingers as might be, at the same time one did not suspect the Commissioner of righteous indignation'.³⁷

In the same pamphlet, Fitzpatrick, who probably felt a degree of personal bitterness, noted the damage done by both the 1949 and 1954 Royal Commissions 'to institutions, citizens, and accepted personal rights and standards of social ethics'.³⁸ In the case of the Victorian inquiry, an interesting comment on its capacity to damage is offered in the behaviour of Patrick Kennelly, M.L.C.: as already noted, he made a statement to Parliament alleging the innocuousness of the evidence being presented to the Commissioner, and yet it was only three days

34. Rosenthal, *op. cit.*, p. 135. Dr. John Burton, in the A.B.C. television documentary on Evatt ('Like a Summer Storm') seems to confirm Rosenthal on this.

35. *Age*, 27 April 1954, p. 3.

36. *C.P.D.*, vol. H. of R. 8, 19 October 1955, p. 1699

37. Fitzpatrick, *The Royal Commission on Espionage*, p. 5. See also W.J. Brown, *The Petrov Conspiracy Unmasked*, (Sydney 1956), p. 133: 'Mr. Justice Lowe ... stands out in shining contrast to the Petrov Commissioners'.

38. *Ibid.*

earlier that he had announced the A.L.P.'s intention of withdrawing John Bennett from its election campaign because he had featured in that evidence. A mood of fear and suspicion was beginning to grip the community, one sign of which was the sense of urgency conveyed by people who wrote to the Press seeking to dissociate themselves from persons of the same name who were mentioned at the Commission. The external political environment was sufficiently hostile that having any connection with the inquiry could harm individuals and organisations irrespective of Lowe's efforts to ensure that proceedings followed judicial lines.

The story of the Commission is thus a two-sided coin: on the one hand it concerns the events inside the courtroom, where Lowe's legalistic approach to the evidence and his protective impulse towards accused witnesses prevented the inquiry from developing into a witch-hunt; on the other hand, it concerns the outside effects of the proceedings, something altogether different. Communist Counsel Ted Laurie has said that in the Party's opinion the only serious injustice it suffered during the Commission was at the hands of the Press.³⁹ It was the publicity given by newspapers to the accusations of anti-Communist witnesses which translated a fairly-conducted inquiry into an instrument disruptive of the personal lives and careers of individual citizens.

It is difficult to obtain a comprehensive picture of the effects of the Commission in this respect; much of the story remains unknown except to the friends and associates of affected persons - many of whom have no desire to re-publicise their injuries. The real extent of the impact on Melbourne's community can only be guessed at through the isolated examples which have come to light, such as those already referred to: the sacking of suspected Communist journalists, and the fact that certain Labour Party men were deprived of their opportunity to stand as candidates in the Federal Election. During the Commission's proceedings, the *Herald* published a photograph of the 'Toorak home' of a woman whom the inquiry was told had contributed to Communist Party funds; later, the windows of the house were smashed by 'hooligans'.⁴⁰ Ted Laurie,

39. Interview with Ted Laurie, Melbourne, 11 October 1971.

40. *Herald*, 23 June 1949; *Guardian* 4 August 1949.

who spent the better part of a year conducting the Communist case in the Commission, found subsequently that no Melbourne solicitor was willing to brief him. A businessman named as a Communist Party 'contact' lost a valuable contract with G.J. Coles, and had to reconstruct his business in another name.⁴¹ After allegations were made at the Commission about the Communist affiliations of members of the Victorian State School Committees' Association, its President told the Press that the organisation had subsequently 'lost' these members.⁴² Some witnesses appearing at the inquiry to answer allegations, testified to the fact that their careers had suffered as a result of being named; Keith Eden, for instance, a member of Actors' Equity, claimed that he had been 'victimised' in his job as a radio actor.⁴³

On a less tangible plane, *Meanjin's* troubles with its Printer⁴⁴ were perhaps symptomatic of a general contraction of the cultural and intellectual horizons in Melbourne, and indeed Australia. Many 'liberal' and left-wing writers saw the Commission as representing a mood of political intolerance and narrow-mindedness which was increasingly permeating Australian cultural life at the end of the 1940's; some of them, finding their creative talent oppressed, or even simply unable to get jobs, departed the country.⁴⁵ This atmosphere is well depicted in George Johnston's novel Clean Straw for Nothing, where a journalist, 'suspect for the extreme liberalism of his political views' was sacked from his position on a leading Sydney newspaper after the editor received two anonymous telephone calls giving fictional accounts of the journalist's undercover activities on behalf of the Communist Party. '... it was a time of prevalent suspicion, and almost any nonconformity was suspect; these were a people disillusioned and disturbed and somebody had to be

41. Interviews with Ted Laurie, Melbourne, 1 June 1971 and 11 October 1971. Laurie seemed reluctant to provide me with other examples of people adversely affected by the proceedings, although he assured me that there were many such cases.

42. *Herald*, 27 September 1949, p. 9.

43. RCT. 6076.

44. See Chapter 1, p. 30, footnote 45.

45. This is based on contributions made in a seminar given by me at the Australian National University on 10 December 1971 - particularly on information provided by Dr. R. Gollan and Professor C.M.H. Clark.

blamed for what was going wrong: it was a time of irresponsible accusations and superficial examinations ...', writes Johnston.⁴⁶ The Commission, of course, was only one manifestation of this thrust against un-Australianism.

The Communist Party bore the brunt of the Commission's effects, although the downward swing in its fortunes from 1949 onwards was only partially a result of the proceedings. True, the Party was stimulated to more vigorous political activity by the general anti-Communist offensive, and by the Commission in particular; and according to Rex Mortimer 'some gains were registered among militant workers and left-wing democrats' as a result.⁴⁷ But this was probably much outweighed by the damage inflicted on the Party through the public identification of a large number of Communists and their sympathisers. The Party probably felt that its forcible exposure at the inquiry brought much closer the threat of dissolution through anti-Communist legislation. In The Hard Way, Frank Hardy describes the atmosphere in the Party as bordering on panic, claiming that its leaders had received information that 'some frame-up might be attempted to prop up the shaky edifice Sharpley had tried to build', such as a plant of arms and ammunition, perhaps at the Eureka Youth Camp. Hardy himself apparently feared that Sharpley would inform the Security Police about the manuscripts of his near-completed Power Without Glory, which he accordingly hid.⁴⁸

It is a hard task, and probably an unnecessary one, to isolate the Commission's detrimental effects on the Party from those which were a result of the wider situation of political polarisation in the late 1940's, in which the Communists were pursuing increasingly 'leftist' policies, and the governmental response was becoming correspondingly harsh. During this period the Party began to lose a substantial part of its middle-class membership, and other 'respectable' undercover members and supporters distanced themselves from its

46. George Johnston, Clean Straw for Nothing (Fontana 1971), pp. 78-80.

47. R. Mortimer to V. Rastrick, 30 January 1972.

48. Frank Hardy, The Hard Way (London 1961), pp. 122-3.

activities.⁴⁹ In his biography of Ben Chifley, L.F. Crisp writes: '... the 1949 Coal Strike was a turning of the tide for Communism in Australia. Coupled with the educational value of the Victorian Royal Commission on Communism of the same year, it really alerted many unionists, perhaps for the first time, to the need for real resistance'.⁵⁰ The Commission's proceedings, if not the Report, were doubtless 'educational' in the sense implied: they gave considerable publicity to Communist activities in the industrial sphere; and the Industrial Groupers used Sharpley's union allegations extensively in their propaganda during the early 1950's.⁵¹ But Crisp is correct in claiming the major cause of the Grouper offensive and the resulting set backs in Communist trade union influence to be the Party's strike tactics of 1948-49, which alienated much of its rank and file support. The first important Industrial Group victory was in the Ironworkers' Union in 1950, and had no direct connection with the Commission, since the ballot issue arose mainly in N.S.W. The impact of the Lowe inquiry in the battle for the trade unions, such as it was, derived principally from the juxtaposition of the proceedings against the simultaneous occurrence of the Coal Strike and other instances of 'Communist-inspired' union aggression. Press publicity given to the testimony of Sharpley and his supporters merely underlined for the public benefit the essential correctness of the stand being made by anti-Communists in the unions.

The major impact of the Commission, however, was not upon committed anti-Communists, within the unions or without, but on the political Left. Evidence against the Party which was publicised in the proceedings certainly came as a shock to many of its fringe supporters; and in particular, to those

49. See A. Davidson, The Communist Party of Australia (Hoover Institution Studies 1969) Chap. 5; Introduction of John Playford's P.H.D. thesis, Doctrinal and Strategic Problems of the Communist Party of Australia, 1945-62. (A.N.U.)

50. L.F. Crisp, Ben Chifley (Melbourne, 1961), p. 366.

51. In a letter to me dated 2 March 1972, B.A. Santamaria said that Sharpley's allegations (as contained in his booklet I Was a Communist Leader) were 'extensively read' by National Civic Council members, upon whom they made a 'deep impression'. The Commission's findings, on the other hand, 'were not regarded as giving great assistance. They served to publicly identify a number of C.P.A. members, but for most of those engaged in the fight in the

'liberal-minded' citizens who, while not actually sympathetic to communism, had long accepted an image of Australian Communists as selfless idealists, pure if misguided in their motives, and dedicated to securing a fair deal for the workers.⁵² Lowe's Report was inconclusive on many points, but his finding that the ballot-rigging charge in the B.W.I.U. was proven, combined with 'circumstances of suspicion' in a number of others, must have severely shaken the Party's moral authority within the Left, so carefully won during a decade of Communist hegemony in the unions. After the Commission, it became very difficult for the Party to promote itself successfully as the guardian of working class interests. The evidence had suggested that like other political organisations it was concerned with power, and that it was prepared to use underhand means to achieve it - a disturbing revelation to many Left-wingers already disenchanted with Communist industrial policies. Thus, by helping to isolate the Party from its fringe support, the Commission can be seen as an important contributing factor in the diminution of Communist strength in Australian politics after 1949.

On another level of the community altogether, the attitudes of the Victorian Supreme Court may have been affected by its experience with the Communism inquiry. Brian Fitzpatrick, stating the position in strong terms, believed that the Australian Judiciary was 'notable among the sufferers' of both the 1949 and 1954 Commissions. It had come in for a considerable amount of criticism, he said, because the four Judges involved lent themselves to political inquisitions against the will and counsel of many of their colleagues.⁵³ Whether Lowe and his fellow Judges were disturbed by the political controversy engendered by the 1949 proceedings cannot

51. cont.

unions, these persons were already known'. In his chapter 'The Movement; 1941-60 - An Outline' Henry Mayer (ed.) Catholics and the Free Society (Melbourne: Cheshire, 1961) Santamaria used Sharpley's pamphlet for five of his thirty-seven footnotes.

52. Based on the contributions made by D.W. Rawson in seminar, 10 December 1971, Australian National University.

53. Fitzpatrick, *op. cit.*

be known, but certainly a hardening of the Supreme Court's attitude to Royal Commissions was evidenced in the following years. In 1952 it adopted a resolution which expressly disapproved of the practice of a Supreme Court Judge participating in such an inquiry except when it concerned a matter of 'national importance arising in times of national emergency'. The resolution provided that if a Judge was asked to act as a Commissioner, 'he will not commit himself to accede to the request before he has reported the facts and they have been considered by a meeting of the Judges'.⁵⁴ The Court apparently did not consider the Petrov affair as coming within their understanding of a national emergency, because it refused to provide a Commissioner in response to the Federal Government's request, and forced Mr. Menzies to look to other States for his investigators of Communist espionage. In spite of Ernest Lawn's claim that Lowe had no objection to acting on Royal Commissions,⁵⁵ one wonders whether the Communist Party inquiry, his last, proved to be too close to the 'mire of party politics' for his liking - or indeed, to that still more perilous morass, the anti-Communist witch-hunt.

This brings us in conclusion to the most intriguing and seminal question raised by Lowe's Commission: why did it present such a marked contrast with the style of proceedings of its prototype in America, and its later Australian counterpart, the Petrov Commission? The ingredients for a witch-hunt seemed to be present: the public temper in Australia in 1949 was probably as intensely anti-Communist as at any time before or since; there was apparently no shortage of witnesses willing to accuse the Party publicly; and the legal counsel chosen to present the case 'for the Crown' were all strong opponents of Communism. Why then did the Commission fail to make that thorough search and exposure of Communists and their Left-wing friends that so many anti-Communists at the time considered necessary? Why were defendants at the inquiry treated like 'good citizens and good Australians'?

Everything seems to point to the conclusion, already

54. See Rosenthal, *op. cit.*, p. 95.

55. See chap. 2, p. 67.

suggested at several stages in this thesis, that the influence exerted by Commissioner Lowe was paramount. The Hollway Government may have appointed Lowe as its specific choice for the position, but once the latter had received his Commission, the Government could play no further part in determining the nature of the inquiry. And as Commissioner, Lowe enjoyed a total discretion in deciding what would happen within his courtroom, for he was circumscribed by rules of neither procedure nor evidence. The manner in which assisting Counsel chose to pursue their case against the Party contributed to the relatively gentle atmosphere, but one is left with the impression that their reticence in compelling the attendance of political suspects was a product of their understanding that in a Commission modelled so closely on judicial principles, the amount of damning evidence they were likely to extract would not justify the time and effort involved in the examination of such witnesses. It is a possibility worthy of consideration that Lowe's legalistic approach, and his antipathy to the rough-handling of witnesses, accorded with assisting Counsel's own idea of proper procedure for the inquiry. But a careful reading of the Transcript reveals that it was Lowe, not Mr. Sholl, who checked their witnesses from over-indulging in hearsay evidence and the 'naming of names'; and in the case of the Communist and 'fellow-traveller' witnesses, assisting Counsel showed a preference for an intimidatory line of interrogation which Lowe on occasion saw fit to caution. Furthermore, it was Lowe who laid the basis for a judicial style of proceedings by granting the Communist Party the right to defence counsel with freedom to present a separate case, and by giving accused witnesses the right to answer their accusers. Whatever their view of the rules adopted, assisting Counsel were obliged to observe them if they wanted the Commissioner's ear for their arguments against Communism.

Lowe's success in conducting an inquiry which avoided the excesses of a political inquisition was in large part a product of his deep-seated respect for the judicial process. But one should not overlook the effects of his personal character: a fundamental humanity, which enabled him to treat Communist Counsel and their witnesses as ordinary citizens

rather than political suspects; and an ironic sense of humour, which was so often exercised to ease the tension between opposing sides.

Granted that the Sharpley revelations were less explosive than those of Petrov, one still wonders whether the outcome of the Victorian Commission might have been vastly different had it been conducted by Commissioners of the calibre of Justices Owen, Ligertwood and Philp, and had Security chosen to involve itself minutely in the preparation and presentation of the evidence. It remains for another to undertake an analysis of the differences which the personal approach of the Commissioners and the role of A.S.I.O. made in the case of the Petrov inquiry. It is to be hoped that this study has paved the way for that most vital of tasks in twentieth-century Australian history.

APPENDIX (A)

An Act relating to a Royal Commission to inquire into and report upon the Origins, Aims, Objects and Funds of the Communist Party in Victoria and the Operations and Activities in Victoria of that Party and Members thereof and Organizations and Persons associated therewith.

[19th May, 1949.]

Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):-

1. This Act may be cited as the *Royal Commission (Communist Party) Act 1949*.

2. The Governor in Council may issue a Commission to, and appoint as sole commissioner, a Judge of The Supreme Court of the State of Victoria (hereinafter referred to as "the Commissioner") to inquire into and report upon the following matters, namely:-

The origins aims objects and funds of the Communist party in Victoria and the activities and operations in Victoria of that party and of members thereof and of organizations and persons associated therewith and, in particular -

- (a) whether that party by its constitution or propaganda, or any of its members or any of such organizations or persons by propaganda or otherwise, advocates or encourages the overthrow by force or violence of established government;
- (b) whether the activities or operations of that party or any of its members or any of such organisations or persons are or have been designed to effect or accomplish, or are or have been directed at effecting or accomplishing -
 - (i) the overthrow or disruption of representative or democratic institutions;

- (ii) the subversion of law and order;
- (iii) the attainment of social economic industrial or political ends by force violence intimidation or fraudulent practices;
- (iv) the dislocation or disruption of services safeguarding, or essential to the maintenance of, the life health and welfare of the community;
- (v) the dislocation disruption or retardation of industrial production;
- (vi) the indoctrination of children and young people with beliefs or ideas calculated or likely to result in activities and operations of the nature hereinbefore referred to.

3. (1) For the purposes of and in relation to the inquiry and report aforesaid the Commissioner shall have all such powers rights and privileges as are vested in The Supreme Court of the State of Victoria or any Judge thereof in or in relation to any action or trial, and particularly in respect of -

- (a) compelling the attendance of witnesses;
- (b) compelling witnesses to answer questions which the Commissioner deems to be relevant to the inquiry;
- (c) compelling the production of books documents and writings;
- (d) punishing persons guilty of contempt or of disobedience of any order or summons made or issued by the Commissioner -

and any order of the Commissioner shall be executed by the proper officer of The Supreme Court of the State of Victoria as if it were an order of such Court.

(2) For the purposes of and in relation to the inquiry and report aforesaid the Commissioner shall have the same protection and immunity as a Judge of The Supreme Court of the State of Victoria in or in relation to any action or trial.

4. (1) Nothing in this Act shall be deemed -
- (a) to limit any prerogative right of the Crown; or
 - (b) to diminish the protection which is afforded to any witness before a commission under the *Evidence Act 1928*.

(2) This Act shall be read as in aid of and not in derogation from any Act law rule or practice relating to the appointment of commissioners or their powers and functions.

APPENDIX (B)

ALPHABETICAL LIST OF WITNESSES

	<i>Transcript Pages</i>		<i>Transcript Pages</i>
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Baldwin, P.G.	7722 to 7807	Cullen, A.C.	2458 to 2475
Barrington, C.C.	8628 to 8630	Currie, N.A.	9718 to 9723
Barter, F.	5631 to 5637	Dace, S.W.	7613 to 7614
Bell, I.	5637 to 5639	Dawes, E.	4150 to 4159
Bennett, John E.	2298 to 2316	Dean, J.	8331 to 8341
Bennett, S.J.	4173 to 4177	Diamond, R.	4697 to 4705 4887 to 4894 9059 to 9134
Bent, P.E.	4312A to 4334		9138 to 9198 9203 to 9215
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Blair, J.H.	3580 to 3581 3616	Dobbin, A.H.	7807 to 7834
Brennan, J.M.	4159 to 4168	Eden, K.D.G.	6058 to 6084
Brophy, J.J.	4283 to 4300	Ellis, C.E.	4765 to 4812
Brown, I.M.	5626 to 5627	Ellis, M.H.	110 to 681
Brown, J.J.	7026 to 7285	Farrall, F.T.	5980 to 5988 7167 to 7179
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Burgess, D.P.	8799 to 8810	Fitzpatrick, B.C.	2325 to 2338
Cameron, J.E.	6962 to 6965A	Flockart, C.P.	4515 to 4519 5731 to 5735
Campion, C.J.	3954 to 3967 3986 to 3992	Friend, R.G.	3096 to 3106
Carleton, M.	4874 to 4887	Garvey, W.H.	6284 to 6292
Chandler, J.C.	6206B to 6226 9427 to 9456 9463 to 9582 9585 to 9599 9652 to 9653	Gibson, R.S.	6441 to 6930
Charlesworth, F.W.	9645 to 9651 9657 to 9673	Goller, G.M.	1598 to 1601
Connell, J.A.	7614 to 7615	Gooding, S.	2475 to 2479
Constantine, L.M.	8992 to 9009	Hansen, E.W.J.	1552 to 1591
Courtnay, F.	8453 to 8488 8522 to 8527 8534 to 8538	Hatwell, A.J.	9784 to 9788
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Hollingworth, J.	3031 to 3035	McLean, A.E.	5645 to 5664 5672 to 5730
Horder, B.L.D.	5823 6258 to 6284	MacLennan, D.A.	2899 to 2928 3015 to 3016 3689 to 3708
Hudson, Keith F.	4705 to 4765	McMahon, M.J.	4300 to 4312A
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Lannan, J.R.	4003 to 4030	Morgan, J.	9153 to 9154
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Rogan, J.F.	3967 to 3986 4148 to 4149	Tennant, A. McN.	9307 to 9327 9332 to 9353 9406 to 9407
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Russell, L.R.	3904 to 3949 3992 to 3994 4334 to 4342	Toakley, A.H.	6965 to 6967
Ryan, W.T.	5890 to 5894 5903 to 5916	Tredinnick, W.H.	7563 to 7572
Samson, J.	7911 to 7986	Tregear, W.H.	6937 to 7025
Satchell, J.S.	3614 to 3615	Voumard, L.	7572 to 7580 7597 to 7601 7666 to 7674
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Scully, T.F.	3016 to 3030 4912 to 4914	Watson, A.W.	1610 to 1626
Seelaf, G.	9026 to 9057	Webb, J.U.	4894 to 4902 4915 to 4922
Sharpe, F.	7889 to 7903 8254 to 8273	Whitcombe, E.A.	8950 to 8992 9075 to 9076 9673 to 9715
Sharpley, C.H.	682 to 1352 1675 to 1692 1758 to 2268 2288 to 2297 2317 to 2324 2339 to 2392 2618 to 2812 5808 to 5888	White, H.S.	1399 to 1406 1475 to 1483
		White, J.	1607 to 1609
		Whitfield, C.T.	9358 to 9378
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	4128 to 4146
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	5258 to 5336
	5364A to 5616
	6027 to 6058

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