

J O H N S T A N T O N

MY PAST IS NOW

F U R T H E R

M E M O I R S

O F A

L A B O U R

L A W Y E R



My Past Is Now

Further Memoirs of a Labour Lawyer

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ABBREVIATIONS

AFL	American Federation of Labor
CAW	Canadian Autoworkers
CBRE	Canadian Brotherhood of Railway Employees
CCF	Co-operative Commonwealth Federation
CCL	Canadian Congress of Labour
CCU	Confederation of Canadian Unions
CI	Communist International
CIA	Central Intelligence Agency
CIO	Congress of Industrial Organizations
CLC	Canadian Labour Congress
CNTU	Confederation of National Trade Unions
COMINCO	Consolidated Mining and Smelting Company of Canada Limited
CPC	Communist Party of Canada
CPR	Canadian Pacific Railway
FLQ	Front de Liberation du Quebec
IWA	International Woodworkers of America
MLA	Member of Legislative Assembly
NDP	New Democratic Party
OSS	Office of Strategic Services
PQ	Parti Quebecois
RCMP	Royal Canadian Mounted Police
SOE	Special Operations Executive
TLC	Trades and Labour Congress
UBC	University of British Columbia
UMA	United Mineworkers of America
USWA	United Steel Workers of America
WFM	Western Federation of Miners
YCL	Young Communist League

PREFACE

Lawyers have a deservedly bad name. Fortunately there are some who step outside of the norm, exceptions that prove the rule. John Stanton is one of them.

I have known John Stanton for a decade. This is but a small fragment of a life that began, in 1914, with the capitalist powers scrambling to partition the globe. Coming to intellectual maturity in the 1930s, living, as many thinkers did, in the aftermath of the Russian Revolution, Stanton graduated from the University of British Columbia in 1933 and was called to the bar in 1936. War was again on the horizon, years of economic dislocation and depression lay behind him.

But ahead of Stanton lay decades of involvement in the legal struggles of the Canadian, and especially, British Columbian, working class and its unions. In other writings, and in these new memoirs, Stanton provides us with evidence of how labour history is a record of brutality and battle, a constant clash of opposing interests and values. As he did throughout his life, Stanton speaks for workers, be it in his history of the Canadian Seamen's Union, published in 1978, his 1983 exploration of how arbitration affects labour, or his own recollections, of which this text forms the second instalment. From 1936 to his semi-retirement in 1976, Stanton represented most of the unions on the west coast, and he lived through the momentous conflicts that helped to consolidate industrial unionism in the western resource-extractive sector of the economy.

When I moved to British Columbia in 1983 I met John Stanton, largely through mutual friends, some of whom were in the left-leaning Law union, and also through connections that I had forged independently with his family. He had a reputation as "a grand old man" of labour, and in the years to come I enjoyed his abilities as a *raconteur*, learning from an insider's knowledge of the personalities and practices that were something of a magnetic field ordering the legal history of class relations. Stanton taught me about J.L. Cohen and Hal Banks, making such figures come alive in tales of triumph and tragedy. He could tell these stories not only because he lived through the period, had access to the records before they became

historical documents, and knew intimate details long since airbrushed out of official accounts, but because he cared about what happened to workers and unions and he remembered what is so easily forgotten and banished from mainstream accounts of the past.

For all interested in the history of the working class Stanton's past *is* now. Our present, if we want to make a new future, is never separate from those who have fought our fight before we came along. This doesn't hold for many lawyers. John Stanton happens to be a different matter. His history is one to learn from, as these recollections of a labour lawyer show.

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20/1/94

My Early Life

That summer day in 1988 seemed brighter as I read a letter from the University of Victoria Law School. It requested an interview with me as part of a Legal History Project.¹ The plan was to “ensure that the memories of those who made a major impact on the practice and development of law [in British Columbia be recorded] in a vital form for future generations.”

Such a possibility had not occurred to me. However, I did feel pleased that colleagues remembered enough of my 40 years in labour law to think that parts of them were worth recording for the public in permanent form.

The interviewer was a young woman, Maryla Waters, who patiently conducted three long, friendly and informal discussions, a word I prefer to interviews. One particular question she asked, set me thinking: “How did a nice middle-class boy like yourself turn into a passionate advocate for unions?” I was able to pinpoint the Battle of Ballantyne Pier in 1935 as one event that gave me a powerful motive to become a labour lawyer. Later, a brief arrest on a picket line, and realizing the need of unions for legal counsel when few lawyers relished such work, were also factors.

My family background didn’t have anything to do with labour law or the working class. My dad, Frederic, was born in India to Church of England missionaries, Herbert and Ellen Weitbrecht. Despite their German surname Herbert was an Englishman and Ellen was an American. They were an unusually handsome couple. I never met either grandparent, but we carried

¹The BC Aural Legal History Project is conducted by the Law Faculty, University of Victoria. It is funded by the Law Foundation of BC, the University, and the Provincial Archives of BC. The voices are captured on high quality equipment, and the tapes are transcribed at the archives. After review and correction by the interviewer and interviewee, the transcripts are typed and placed in various law libraries. A copy, and the tape itself, become part of the Archives’ own collection. Public access is assured unless restricted by the person interviewed.

on correspondence for some 30 years. It was our way of keeping family ties alive, especially because my dad and I were our parents' only sons, and visits between poor people in England and far Western Canada were out of the question. I still have letters in my grandparents' elegant handwriting.



Herbert and Ellen Stanton, my paternal grandparents.

In 1906, Herbert received from King Edward VII of England, acting on the advice of the Archbishop of Canterbury, an honorary degree of Doctor of Divinity. It was in recognition of his services as a missionary and his translation of the New Testament into Urdu, the language of the upper classes of the area (now a part of Pakistan) where he was stationed. The degree is represented by an impressive parchment document bearing the Great Seal of England. I will always be grateful to my grandparents for modest financial help during one very tough year after my dad died, the year when I was just starting law practice. Economically, this is a low point in the career of not a few young lawyers.



Ellen Stanton

Dad suffered from asthma all his life, and died of it in 1936, shortly before I was called to the Bar. When he was two, his parents sent him to England to be cared for and educated. From then on he saw very little of his parents because missionaries were only given furloughs for six month periods every five years.

My father attended a number of English “public” schools, not top-drawer places like Eton or Harrow but less well known institutions. He was academically inclined and eventually became a teacher of languages: English, French, German, Spanish and Italian. In this respect he was like my grandfather.

Like many young Englishmen around the turn of the century, dad toured Europe. He stayed in France, Switzerland and Germany including the town of Worms on the Rhine, the famous place where Martin Luther had challenged the Pope in 1531. While in Worms, my father met a young woman, Klara Dieffenbach (Claire, in English), who later became his wife and my mother.



Claire and Fred Stanton, my parents.

My mother’s father, who was German, owned a leather factory, and had contracts to supply saddles and the like to some of Kaiser Wilhelm II’s cavalry. My mother’s mother, who was of French ancestry, died when my mother was only twelve. When her father remarried, she and her older brother had difficulty with the stepmother, and resolved that the sooner they could get out of the household, the better. The brother went to New York

in the later years of the last century, where he became an architect. When his sister was old enough to travel, he brought her to live with his family in New York for a year or so.

In the meantime, my father had made his way to Barbados in the British West Indies, where he had a job as a schoolteacher. He and my mother had been corresponding, and married in Barbados in 1909. I found it amusing, many years later, looking at my mother's marriage certificate and her death certificate, to find that she had underestimated her age at the time of marriage by two years. My wife did exactly the same thing when we got married in 1939!

My parent's wedding was an elegant society affair, held on the grounds of Government House. Evidently colonial schoolteachers were allowed to move in exalted social circles.

In 1911, my parents moved to Port Hope, Ontario. My father had been told by his doctor to go to a cold climate to help cure his asthma. He secured a post as a teacher of languages at the prestigious Trinity College School for boys at Port Hope, a small town on the shores of Lake Ontario some 100 kilometres east of Toronto. There I was born on May 13, 1914 and named John Herbert Frederic after my great-grandfather, my grandfather, and my dad. I was the only child.

During World War I, severe military problems developed for the Allies in France and anti-German feeling ran high. Dad was subjected to physical attacks by some of the students for his German name. The headmaster and his staff advised Dad to Anglicize his name. Meanwhile, my grandfather in England had been encountering the same kind of hostility, so both men agreed to adopt my grandmother's maiden name, Stanton. During that war, even the English royal family changed their names from Saxe-Cobourg to Windsor, and from Battenburg to Mountbatten. In the face of war hysteria, it seemed that a name mattered more than a person's integrity.

After my father had changed his name to Stanton, no one physically attacked him, but my parents were never entirely at ease. My mother spoke English with a strong German accent, which she tried to pass off as Dutch, but she was never very convincing.

I have other memories from early childhood. When I was five I attended Trinity College School and was soon being taught Latin verbs. I remember being beaten with a cane over the rear end, but for what reason I don't recall.

I also remember an Orange Parade which took place in 1922. Port Hope was one of many dozens of small Ontario towns, population 6,000 to 7,000, where the real festival of the year was July 12, the anniversary of the victory



My parent's society wedding (Barbados).



My mother holding me as a baby.

of the Protestant King William of Orange at the Battle of the Boyne in Northern Ireland in 1688. Like any seven-year-old I enjoyed the parade. The Mayor was on a white horse, followed by the constable, the firemen's band, horses pulling the fire engine, and an assortment of townspeople. All then went to the park to hear speeches from politicians. There must have been an audience of a few hundred people. The local federal member of

parliament spoke, the local member of the provincial parliament spoke, the mayor spoke, and an Anglican clergyman gave his blessing to the assembly.

Every speaker attacked the Pope of Rome. Even at seven or eight I could tell that these important people were preaching hate. The town and the province surely had problems, but was the Pope really at the top of the list? I'm glad that I had a spontaneous, negative reaction to this bigoted, right-wing political event. I later came to understand that the French Canadians, not the Pope, were the real targets of the Orangemen's fury.

In 1923 we moved to Toronto where my father got a job with the T. Eaton Company. He worked as an accountant in the head office. One day he was called in to see company owner R. Y. Eaton, who said he had heard that Dad spoke French. To make a long story short, Dad was hired as a coach to teach French to Eaton's son. This provided a bit of extra money, and it also resulted in an invitation for me to visit the Eaton home at Christmas. I was chauffeured there in a Rolls-Royce and, along with a lot of other boys around nine years old, was treated to all kinds of gifts and fancy food. Then I went home to the semi-slum where we lived, in an area not far from where Maple Leaf Gardens stands today.

In Toronto I attended the Model School, an adjunct of the Normal School, the institution where teachers were trained for the public school system. The education I received was good because the school was essentially a training lab for teachers, and everyone strove for excellence. I rapidly skipped two or three grades and by age ten was well ahead of my age group. Later, in other schools, and also at college and university, this situation of being academically ahead of others of my age was a problem. I was with my peers intellectually but not socially, and never really fitted in.

We moved to the west coast in September 1924 because of Dad's health. This time the medical advice was: move to a damp maritime climate, temperate but not tropical. He became a teacher at Brentwood School, a few miles north of Victoria.

Dad managed to get a good transportation deal from the newly created Canadian National Railways for the trip to British Columbia. The privately owned Canadian Pacific Railway had a fixed price for tickets, but Canadian National was willing to negotiate. This new company had been formed by the federal government to take over several privately owned railways, all bankrupt, including the Grand Trunk, the Grand Trunk Pacific, and the Canadian Northern. The last two were transcontinental lines. For the price of tourist (second class) tickets my Dad got us first class accommodation, which was quite elaborate. The parlour car had radios, and a balcony at the

end where I sat for much of the day time. I remember keeping an eye on the telegraph wires alongside the track, because I had heard of flowers being telegraphed and I wanted to see those bouquets buzzing along the wires. Needless to say, I was disappointed.

One morning I lifted the window blind of my berth and looked out. There I saw a mountain, the first I had ever seen in my life. I was enormously impressed. We were in the Rockies, near Jasper. Since that time I have always enjoyed travelling by train. It gives one more of a sense of the country than flying can ever do. When I became politically and socially active I made the trip across Canada by rail many times, and also after retirement. My enjoyment of train travel harkens back to that boyhood journey, and I am saddened by the Mulroney government's passenger-train cutbacks, the near destruction of an important Canadian institution.

In Victoria, I went to St. Michael's School. Of all the schools I attended before and after, I liked it best. It was run by Kyrle Symons, an Englishman and also a special human being; there was no corporal punishment, an extraordinary state of affairs in a boys' school of that era. I fitted in well, played soccer and other sports, and thoroughly enjoyed my year.



1925 prize day at St.-Michael's. Quainton speaking. Symonds nearby.

Among my schoolmates were two boys of about my age whose surname was Fulton. The younger one followed his older brother around, almost

always holding his brother's shoulder by one hand, chanting "Fulton One and Fulton Two, here we come, choo-choo-choo." (In English-style schools the elder boy is Number One and the younger Number Two.) In this case the younger was E. Davie Fulton, later federal Minister of Justice under John Diefenbaker, and subsequently a Justice of the B. C. Supreme Court.

In 1925, my father had disagreements with the headmaster of Brentwood and moved to a job at Shawnigan Lake school. This institution required teachers to enrol their children there, so, willy-nilly, I became a day pupil. Later, in my second, third and fourth years, I boarded even though my parents lived next door.

The atmosphere at Shawnigan Lake School was quite different from St. Michael's. Floggings by headmaster Christopher W. Lonsdale (an Englishman) were routine and brutal. He seemed to enjoy them. There was always a sad little line-up outside his office on Friday nights after supper, and occasionally I was one of the customers. The prefects of the school (senior boys), also had the right to flog, which they exercised quite frequently. It was a system intended to bring people into line and keep them there by harsh physical punishment, as in the British Navy of long ago.

One might wonder why dad did not come to my defence. In fact he was in poor health, needed his job, and was in no condition to stand up to a bullying headmaster; besides, he was by nature conservative and deferential to authority.

My father did rescue me from one unfortunate situation. Lonsdale's sister persuaded me to take violin lessons from her. Earlier I had spent three years studying piano, with no success; as it turned out I had no aptitude for the violin either. Lonsdale's sister, however, was determined to make a musician out of me, and at some point, decided that I should sing, "O For the Wings of a Dove" before the student body in the school chapel. I was extremely sensitive, with a fear of appearing before an audience, and I had no intention of singing that particular song, or any other, before fellow students. Dad talked sense into Miss Lonsdale.

A few years ago I went back to Shawnigan Lake School to see the brass plaque in dad's memory at the school chapel. I discovered that his birthdate and the dates of his service at the school were wrong. I got a certain amount of pleasure out of insisting that the school spend more than a hundred dollars to correct the errors; it helped to make up in a small way for our unhappiness there.

At around the age of thirteen, I gradually became non-conformist. I found myself in conflict with Lonsdale's system and wanted no part of it. I

suppose my feeling of affection for the peace movements in the 1930s, and since, has come from my intense dislike of the violent discipline at Shawnigan Lake School.



Lonsdale playing part of English squire in his Shawnigan's office.

One incident at the school stands out in my mind. A sixteen year old boy in the senior class, whose name was Maxwell, had been discovered cuddling a girl down on the beach. This horrendous event was reported and in due course the entire school, pupils, staff, nurse, and even the Chinese cooks were summoned to the auditorium. There on the platform was Maxwell. Behind him were Musgrave, the physical training instructor and a former Naval petty officer, and Lonsdale. The latter proceeded to deliver a lecture about the evils of women. Then he ordered Maxwell to bend over the table, and told the petty officer to "lay on twelve of the best." Then, as a final grand gesture, Lonsdale announced that Maxwell was being expelled.

Watching this lad being beaten in front of the whole school had a profound effect on me. I knew that Lonsdale was being a total hypocrite with his speech about the dangers of females; he had his mistress living with him in a suite of rooms in the school building.

My schooling had been liberally laced with religious teaching. The injustice surrounding Maxwell's treatment increased my growing suspicion of organized religion. At age fourteen I announced to my dad that I no longer intended to attend or belong to any church.

Our home was not deeply religious. My parents went through the forms rather than the substance. However, in spite of the fact that I walked away from the church at fourteen, some of the Christian teachings which I had learned during those early years have stayed with me. I decided I was and would be my brother's keeper, and I realized that I had no use for the money changers in the temple. The story of Jesus driving them out stuck with me, and I could see a connection between the goings on in that temple in Jerusalem 2,000 years ago and what is happening in Mulroney's marketplace of the twentieth century. In my mind, the money-changers have become today's wheeler-dealers who exploit their fellow citizens, and make the world into a den of thieves whose only god is the dollar bill — preferably American.

When I got through junior matriculation I told dad that I was not going back to Shawnigan Lake School. Lonsdale wanted me to return for one more year (senior matriculation), then called "Grade Twelve." It was the equivalent of the first year of university. My alternative was Victoria College. Dad wanted to know how he was going to get me in as I was only fourteen. "Well, let's give it a try," I suggested. As matters turned out, he did get me placed. I was, of course, ridiculously young to be going to an educational institution at that level.

My situation made me a loner, especially as I felt very strange in the company of girls. I rarely enjoyed dancing (being very clumsy), and buried myself in books. My French blossomed during the first year at college when I boarded in the home of the French professor. Only French was spoken there. That experience made me comfortable with the language. These days I'm fluent enough to enjoy a French TV programme, have a conversation with my friend Toni in French, and read French newspapers.

I spent two years at Victoria College, 1929-31, and two more at University of British Columbia (UBC), 1931-33. I majored in English and French and, at UBC, came fourth in a class of several hundred students. I received my Honours BA the day before my nineteenth birthday.

I remember two of my teachers at Victoria College, then located in Craigdarroch Castle, once the home of coal baron Dunsmuir. H. Ruth Humphrey, a New Brunswicker, taught English. She looked like a slip of a girl, coming in to teach a class of 150 unruly frosh, but she controlled them nicely. She had an obvious love of English literature and since that was my cup of tea, I admired her. Later, long after I had left Victoria College, I learned that she was, politically, a very radical person, which didn't surprise

me in the least, although I don't suppose that in 1929 I would have known what a radical person was.

The other teacher at Victoria College who made a lasting impression on me was Walter Gage. He was the only man I have ever met who was able to teach me anything about mathematics. Walter was charming, very relaxed, and had that uncanny knack of being able to teach people almost against their will. He won several Master Teacher awards, which he certainly deserved, and later became president of the University of British Columbia.

There, a third teacher went far beyond being impressive. Garnet Sedgewick taught a Shakespeare course, covering five of the plays in an academic year. He would stand in front of a class of 300 and act out the essentials of each of those five plays. The words and actions lived so powerfully that some students re-examined their philosophy.

Although I sensed a profound humanitarianism in Garnet Sedgewick, who (as I later found out) was a civil libertarian, I didn't think about my teachers' political philosophies because I didn't have one myself at that time. Nor did I think about the issues of the day. While at Victoria College, I do remember reading about the stock market crash of October 1929, but other than that I don't recall anything from the press or radio.

I worked for a year on *The Ubysey*, the University of British Columbia student newspaper. There I became aware that the Tory provincial premier of the day, Simon Fraser Tolmie, was under a great deal of pressure by a group of businessmen in Vancouver to close the university on the grounds that the province could not afford it.

This course was particularly urged by George Kidd, the head of the BC Electric Company,² a private corporation upon which British Columbia depended for electricity. Kidd himself was a run of the mill tycoon whose sense of values began and ended with the dollar bill. I wrote an article on his report for *The Ubysey*.

²In the early 1960s, Social Credit Premier W.A.C. Bennett, whose administration was sympathetic to businessmen, took over BC Electric and changed it into the publicly owned BC Hydro. Knowing that an open announcement of the takeover would cause the stock market to dip, he had the legislation governing the takeover passed in a secret session of the legislature; it is said that he had the attorney general handwrite the legislation so that no printers would see the plan. When the bill was being adopted into law, the funeral cortege of BC Electric's last president passed by the company's headquarters. It was a curious coincidence.

When Professor Henry Angus, a man who commanded a great deal of respect, came out strongly against the Kidd Report, it was a signal for a lot of people, both on and off campus, to say, "Look, Kidd is spouting a lot of nonsense; we're not putting up with it." The students actually shut down the university for three days, took petitions all over town, and sent a delegation to Victoria to tell the government that we had thousands of signatures saying that people didn't want the university closed.

As I write, it's depressing to realize that, over fifty years later, Kidd's type of economic argument is being raised, mainly by Tories, in connection with funding for colleges and universities, and also with regard to social programmes such as health care and unemployment insurance. Again, we have governments run by men whose vision never seems to rise above the dollar bill or the bottom line.

Then I knew little about the issues of the day, including the right of workers to organize into unions, nor could I make heads or tails of what was going on in Germany although that should have been obvious.

At UBC I took a course in basic economics, because I was curious about what made the system tick. The textbook for the course had been written by a Chicago professor named Diebler, who mentioned various types of economic systems, including "communistic" and "socialistic." Then he said something like this: "We are not paying any attention to those because the purpose of this book is to explain the economic system under which we in the United States live, which I call the 'market economy'." The market economy, he said, consists basically of two groups of people, those with goods and services to sell, and those with money to buy the goods and services. Only buyers with money counted. Diebler was quite candid in stating that between 20 and 25 per cent of the US population was outside that group. In the economic sense, they were non-entities. He had rubbed them out.

Diebler's exclusion of these people made me very angry. I decided I couldn't respect that kind of economics. It seemed to me that, properly speaking, economics should be about the way people make their living and the way resources are developed; it should not be narrowed down into a mere counting of beans. I didn't take any more courses in economics, though later I studied Marx's economic theories. Since then I realize I was lucky to have taken that course because Diebler's textbook offered such a frank explanation of the market system. In recent years, when I thought of the economic policies of Margaret Thatcher, Ronald Reagan and Brian Mul-

ronery, I also thought of Professor Diebler. He puts today's conservatism in its proper context.

In the course of my reading, I came upon the writings of the classical English economist, David Ricardo, who had preceded Marx. Ricardo pointed out that the market economy inevitably led to a cleavage of society into two classes having a fundamental conflict of interest. Later, Marx built upon Ricardo's foundations and wrote about the class struggle. This concept was very useful in explaining what I saw happening after I got out of University and became a first year law student in the summer of 1933.

CHAPTER TWO

A Political Education Begins

I had no ambition to be a lawyer; in fact, I had no ambition for any particular career. At one time I had vaguely thought I might like to work for the Canadian Pacific Railway (CPR) but abandoned the notion when I got some insight into its value system, or lack of same. When I graduated I was green and gormless but happy to be out of the academic grind and wanting nothing so much as to relax and enjoy life. When I got back to my parents' home at Shawnigan Lake it was time for "making whoopie." My attempts didn't go far because the summer of 1933 was at the rock bottom of the Depression. The best I could do was to hang around with three other young fellows as bored and broke as myself. We didn't have enough money among us to buy a glass of beer, but we played some foolish pranks and did a little girl-chasing.

Frankly, I never paid serious attention to what Lonsdale had told us about the evils of the female of the species. It seemed to me inherently ridiculous to say what he had said about more than half the human race. Anyhow, we went out with girls, and pretty soon our fathers began to get outraged calls from girls' mothers. At that point my father decided it was time I took life seriously. He made a deal with an elderly Victoria lawyer, Henry Heisterman, to take me into his office as an articled student. I began work for him on August 1, 1933, at a salary of ten dollars a month.

I have never regretted my father choosing that career for me. I must have been very pliable, but once I started to dig into the law books, I liked the work. I found myself compatible with the law and certainly had no wish to get out of it, but my boss could have been more helpful in explaining things to me. This was not a period when articling students were seen as people to whom a firm had obligations; rather, they were seen as cheap labour. Things have not changed much in the years since then. The articling contract that my boss and I signed in 1933 is similar to the contract that lawyers and their articling students sign today. There is a promise by the

lawyer to "instruct," but few ever do. It's a genuflection made in the direction of a good idea, but that's about all it amounts to.

Of course, articling law students nowadays have the advantage of a few years' academic study of the law, as well as structured professional preparation. In my day, there were only three or four law students in Victoria, not a big enough group to warrant lectures. We were told by the Law Society: "These are the subjects and these are the prescribed texts." There were four subjects in that first year and four exams: county court rules, criminal law, the law governing real estate, and the law governing the sale of goods; that was it. Although I had reasonable skills in the English language, some of those law books were initially just gobble-de-gook to me.

That first year I made an attempt to get away from the office and my studies and to read other things and meet ordinary people. I borrowed books from the public library, whose librarian, as I later discovered, was fairly left-wing. In those days, Victor Gollancz in England published many books for the Labour Party and left-of-Labour readers. I read some of these. I remember a book of essays about Russia, including one by Clement Attlee, later (Labour) Prime Minister of Great Britain. Another book which influenced me was *The Coming Struggle for Power* by John Strachey, a member of the literary family which included a pioneer of modern biography, Lytton Strachey.

During the winter of 1933-34, I became a member of the League of Nations Society in Victoria. I listened to speakers who talked about the efforts of the League of Nations to try to curb the aggression of Benito Mussolini and Adolph Hitler. Most of these speakers believed in "collective security," the idea that if the western democracies got together and said, "No more of this nonsense," there would have been results. However, in the face of increasing right-wing aggressiveness, the British, French and American governments seemed spineless, if not complicit.

Among the speakers I heard was J.S. Woodsworth, formerly a Labour Member of Parliament, and at that time the leader of the new Co-operative Commonwealth Federation (CCF), forerunner of today's New Democratic Party. Woodsworth had been a Methodist clergyman in Manitoba. I found him extremely powerful and convincing as a platform speaker. One of the themes he kept hammering was that the system we were living under was absolutely A-1 when it came to producing things. It fell down badly, however, in distribution because people didn't have enough money to purchase the goods they produced. I realized that this was much the same

thing as Mr. Diebler had written in his book. My ideas about capitalist economics were beginning to fall into place.

They were helped by the Regina Manifesto, a forthright pledge to liberate Canada from a capitalism characterized by inequality and exploitation, and by introducing a socialized economy:

We aim to replace the present capitalist system, with its inherent injustice and inhumanity, by a social order from which the domination and exploitation of one class by another will be eliminated, in which economic planning will supersede unregulated private enterprise and competition, and in which genuine democratic self-government, based upon economic equality will be possible. The present order is marked by glaring inequalities of wealth and opportunity, by chaotic waste and instability; and in an age of plenty it condemns the great mass of people to poverty and insecurity. Power has become more and more concentrated into the hands of a small irresponsible minority of financiers and industrialists and to their predatory interests the majority are habitually sacrificed. When private profit is the main stimulus to economic effort, our society oscillates between periods of feverish prosperity in which the main benefits go to speculators and profiteers, and of catastrophic depression, in which the common man's normal state of insecurity and hardship is accentuated. We believe that these evils can be removed only in a planned and socialized economy in which our natural resources and the principal means of production and distribution are owned, controlled and operated by the people.¹

It is sobering to know that only 23 years later (1956), a tame "Winnipeg Declaration" replaced the Regina document in a CCF effort to curry electoral favour. The ploy did not work if one judges from the CCF's heavy subsequent defeats.

Four friends from that time have lived in my memory. Rudolph Williams, an Austrian by birth, and a professional gardener, was a very solid man. He married Gertrude Watson, of Shawnigan Lake the daughter of a retired British ambassador. At the time of writing she is still alive, but Rudolph passed away a few years ago. They were older than I, and were influential in my life.

So too was Al Whitfield, a young office worker. He was very well-informed and I was glad to have had many discussions with him. Another friend was Ed Balsam, an Englishman, who was a heavy reader. Several of

¹Quote from Hurtig's encyclopaedia.

us would gather at his place on a Saturday night and sit around his fireplace till three or four in the morning drinking tea and talking mainly about politics and economics. He brought in a number of left publications from England and also some English language ones from Russia. I remember particularly an illustrated paper called *USSR in Construction*, which had photographs of major public works projects, such as canals and dams. They reminded me that Woodsworth argued for governments to spend public funds on public works, to create employment and get the economy moving. It seemed to me that his ideas were being put into practice in the Soviet Union.

In addition to meeting at Ed's house, we met in the public library or the YMCA, where League of Nations' speakers appeared. The big issues to us were peace and unemployment. We never formed ourselves into an organization, but we decided that we should try to do something in the community. It took the form of a demonstration for peace, to take place on August 4, the twentieth anniversary of the outbreak of World War I.

In this endeavour I had support from the Dean of the Anglican Cathedral in Victoria, a far-sighted man named Quinton, who had taken me under his wing and helped to educate me about social issues. (See photo on page 9.) I was a member of the Anglican Young People's Association attached to the Cathedral and attended a study group which Quinton led. We would go over to his rectory and have philosophical discussions on atheism, agnosticism, and the like. Quinton was a learned and charming man and appealed to young people.

As the time for the peace demonstration approached, Quinton asked me to address his congregation about the event. I was terrified at the prospect of speaking publicly, so went to the echoing cathedral to rehearse. When the Sunday came I spent a few minutes reading my statement to a congregation of some 500. It was then that I discovered the meaning of the phrase, "my knees turned to water." Nevertheless, I made no major errors. Quinton had given me my first experience in speaking to a fairly large group.

Three thousand people came out to march for peace on 4 August. Accompanied by the Salvation Army Band, we paraded to the cenotaph near the Parliament Buildings, where we laid a wreath, and then went on to Beacon Hill Park to hear speeches by six or seven clergymen. The event was a success.

Looking back, I think 1933-34 was the period in which I changed from being a boy into being a man. I had an intellectual awakening. By the time I moved to Vancouver in September 1934 to take a better job, I had come to the conclusion, as J.S.Woodsworth used to emphasize, that capitalism

was not working very well and that we had to think in terms of building a better society.

Somehow, during that busy summer of 1934, I began finding out something about Canadian history. Till then my history teacher at Shawnigan Lake, had concentrated on English kings and queens and made sure that I and my fellow students were convinced about how dull and unimportant was the history of our "colonial" country. More than 60 years later I still find Canadian history a fascinating, if complex, study.

Small wonder that when I moved to Vancouver the conservative Mr. Heisterman was glad to see the last of me. I too was happy. I got a berth in a middle sized Vancouver law firm and increased my salary to \$25 per month.

In those days you could get by with room and board for \$30 a month and if you had another \$20 over and above that, you could begin to enjoy life. The difference between what I earned and what I needed came from my dad. I have always felt that the legal profession was content to perpetuate this system, which tried to ensure that the people who got into law were from middle class families, with private means — anything but working class. The law, to some minds, was supposed to be a profession for gentlemen (but few, if any, ladies).

I went to work for the firm of Burns, Walkem and Thompson. Ernie Burns, the senior partner, was also the treasurer of the Law Society, who presides over meetings of the Benchers and generally speaks for the profession on official occasions. He was a kind man but always very busy. He never had time to explain anything to me. George Thompson was also a decent person but mainly concerned with keeping the firm's books. Knox Walkem was not a lawyer at all so much as a businessman; he was out wheeling and dealing most of the time.

I attended a series of useful lectures in the courthouse, offered for a nominal sum by the Vancouver Law School. The lectures were presented by practising members of the bar and were designed to assist students in answering questions that might show up on the bar examinations.

Not long after moving to Vancouver I had gone to a dance where I met Florence Leck, the woman to whom I would be married from 1939 until her death in 1986.

When we met, she was 25; I was 20. My introduction to her family was unsettling. Many years earlier her mother, Agnes, had left her job as a



Florence Leck

bookbinder in Edinburgh, a community awash in presbyterianism and conservatism, and had come to Vancouver in search of a husband. A brother, Tom Oliphant, was already there, leading the life of Riley. We shall meet him in Chapter Nine.

Agnes met and married a widower, Henry Leck, the father of a small daughter. He was no aristocrat in the traditional sense, but a true one in the word's basic meaning of "best citizen." Henry was a fifth-generation Nova Scotian from a farming area near Truro. Through no fault of the inhabitants, deep impoverishment prevailed, so much so that even the soil could not produce decent grass. By guts and determination, backed only by a minimal education, Henry learned building design and construction, and early in the century became a respected Vancouver contractor.



Henry and Agnes Leck

It didn't take Agnes long to ship her stepdaughter off to the United States to live with an aunt. Then the couple began their own family. Florence was born in 1909, followed by Claudia and Ronald.

The Depression, which had disrupted the lives of so many, was having a negative effect on Florence's family. At about the time I was called to the bar (1936), the Lecks had to sell off a fine big home in a classy neighbour-

hood and move to more humble surroundings. I found Henry older than his years, worn down by hard work and the stern disapproval of Agnes, who seemed perpetually angry that he had not come through the depression as a rich man. Agnes resented the loss of her substantial home, and took out her frustrations on her family.

Her favourite technique was to threaten to leave a child out of her will unless the child yielded to her wishes. Florence, in particular, allowed this bullying to worry her, but Claudia did not. Indeed, for the last 20 years of Agnes's life, Claudia refused to communicate with her mother, calling her "the great white bitch."

Toward her husband, Agnes made little effort to conceal her contempt. She kept pressing him to go to work as a carpenter, and this he did, until in the spring of 1948 he died after a brief illness, an exhausted old man well into his 80s.

I had been introduced into this domestic scene by Florence in 1935. The prospect of a lawyer in the family was regarded negatively. "Oh, no," Agnes said, "not another starving young lawyer!" I never did find out who the others were. Also, I never did seek financial assistance from Agnes.

While Claudia was a sunny, blithe spirit who seemed above the family tensions, Florence identified with her mother, seemed to fear her, and worried that she could never please her. Ronald was much younger than his sisters. He gave me the impression of being keen to please people but quite timid. In later life, after a stint in the Air Force, he worked his way up in a large paint company, first as an ace salesman and then in managerial positions at Toronto, Montréal and Winnipeg.

At dinner with the Lecks I was a reluctant observer of this unhappy family. Henry's pattern was to bolt his food, then escape to read his paper. He used his knife to eat his peas as Agnes, angry but helpless, looked on. Once I thought I saw Henry wink at me as he went on annoying his wife. I am sorry that Florence was clearly on her mother's side but was not anxious to let that be known. It was unfortunate that far too much of Agnes and far too little of Henry had rubbed off on Florence.

As my relationship with Florence continued, I had some misgivings about our future together. However, I was young and idealistic, with a strong urge to do the right thing and felt under a heavy responsibility to marry her.

Meanwhile, office work and learning law were ever pressing. Burns, Walkem and Thompson handled work for the National Harbours Board, the federal government agency that was responsible for the management and administration of Canadian harbours. The firm didn't handle work for

unions. When I thought ahead to my own future, I had no idea of specializing; I was prepared to handle any kind of case that came my way so as to pay the bills.

At the same time, I was concerned about the condition of society. The world was in crisis, with the depression here at home and the spread of fascism in Europe. It seemed to me that any young man or woman who had a conscience and even a limited understanding of what was happening was pretty well duty bound to join either the CCF or the Communist Party and to participate in any union he or she was eligible to join.

The real and urgent need to stand up to fascism (and its German phase called Naziism) became obvious when the port of Vancouver was visited in mid-March of 1935 by a warship of Hitler's navy. It flew the well-known swastika flag and its officers had no qualms about getting directly and personally involved in Canadian political issues. The business community, particularly in Vancouver, was quick to fawn upon these Nazi naval officers and especially their captain. Apart from his other talents he was a master of public relations.²

The ship, a 6,000 ton cruiser, had been built in the late 1920s. Armed with nine 6-inch guns, having a range of twelve miles, she carried a complement of 560 men. The ship, named *Karlsruhe*, was not big by the standards even of those days, but the men serving on board were something else. They were the potential cream of Hitler's navy; officers-in-training under a captain destined soon to become the senior admiral in the German navy.

Gerald G. McGeer, the Mayor of Vancouver, called himself a Liberal and won election to public office as such. In fact, the man (as events later in 1935 would prove), was far to the right and a dedicated servant of Vancouver's largest business interests. He served them with no regard for the problems of ordinary citizens caught up in a vicious Depression. Indeed the greater a person's misery, the more McGeer seemed to hold him or her in contempt. For example, he had no compunction about using police violence to defeat strikes and to suppress demonstrations for redress of serious grievances.

²An account of the visit of the *Karlsruhe* to Vancouver in March 1935 is given in the *B.C. Workers' News*, 22 March 1935, available in the Labour Canada Library, Hull, Québec. During the visit of the *Karlsruhe*, a Nazi flag was attached to the Vancouver cenotaph. A group of ex-servicemen met and decided to pull it down. The flag was torn down by a war veteran named Duffy, who was never arrested.

When the *Karlsruhe* was heading towards Vancouver, public organizations were urging City Council to stop the visit. McGeer not only brushed this aside but arranged to spend public money to hire a hall and to invite Nazi speakers plus hundreds of local Germans and hundreds of officers-in-training from the ship. The guests would receive free beer, courtesy of the taxpayers.

On a Friday evening, some 600 people (half naval personnel and half civilian Germans), crowded the large hall and were treated to speeches by a local Nazi shipping agent, the Nazi Consul for Western Canada, and Günther Lütjens, the Nazi captain of the *Karlsruhe*.

Captain Lütjens angrily denounced members of the public, because (as he explained) in every port visited by his ship, crowds demanded the release of one of Hitler's chief political prisoners, the German Communist Party leader, Thaelmann. Vancouver, in this respect, was no different from any other port. The captain declared proudly that Thaelmann was not going to be released. So much for the desires of many thousands of Canadians. Thaelmann was later murdered in prison.

The crowd was cool toward the speakers, clamouring that, instead of talk, talk, talk, they wanted beer, beer, beer. They finally got it. But first, the Nazi consul announced that his great leader had struck a new medal for presentation to war veterans. The consul had brought some of the medals with him and appealed to every German veteran, which would include some Canadians, to apply for one. At this point, the consul read out the names of five veterans. They stepped forward and gave the Nazi salute in front of the audience, whereupon the captain of the *Karlsruhe* pinned a medal on the chest of each man. It is a curious fact that there was no applause when this ceremony had been completed. Apparently no one was too enthusiastic about Hitler's war medal!

As for me, I played a double role that evening. Early, I had joined a picket line outside the hall, protesting what friends and I saw as an outrage coming from a contemptible, "Liberal" politician and his Nazi pals. Later that same evening, through a friend of Florence, I went to a fancy local yacht club where a reception was in progress. The line down which I passed was made up of German naval officers in full-dress uniform complete with swastika badges. The star of that show was Captain Lütjens. He seemed to have stepped out of a cartoon, with his tall, thin, ramrod body, his piercing blue eyes, and his monocle. Less than six years later, Admiral Lütjens, took the world's most powerful warship, *Bismarck*, across much of the North Atlantic where many of the British navy's heaviest ships narrowly avoided

a disastrous defeat. The *Bismarck* was wounded by a lucky hit and later sank under concentrated fire. Lütjens died with his ship.

Frankly, I did not feel privileged to have met Lütjens, but it was both interesting and disgusting to see how subservient the big-shots of Vancouver were in the Nazi presence. A good deal of Nazi influence was present in the Vancouver "society" of those days. I remember going to movies on Saturday nights and watching the news reels, with Hitler holding forth loud and clear, and then listening to CJOR Radio in Vancouver and hearing much of the same stuff from a man called Tom McInnes. "We'll have to send the communists back to Moscow," he used to say. He was a strong supporter of the Citizens' League, an organization of BC's business elite, that had its birth at a luncheon at the Vancouver Club in April 1935. Mayor McGeer headed the league.

Its immediate aim was to destroy any possibility of an effective union on the waterfront. In those days, many of the best union organizers were either members of the Communist Party or people who were on the left wing of the CCF. The handful of Communists active in the unions gave the Citizens' Leaguers a basis for using the Red Scare against the unions. Those who remember the McCarthy era, a period of American paranoia and witch hunting in the 1950s, must realize that an almost identical campaign was being waged in Vancouver in 1935.³

In May and June that year the Citizens' League took out full-page ads in the *Vancouver Province* listing the names of union people whom they thought were Reds and naming the various Communist organizations of the world, starting with those in Vancouver and also including groups in Toronto and in Europe, including Moscow. It was almost like a family tree, purporting to show, step by step, how the word got from Moscow right down to a leader of the waterfront union in Vancouver. It was an obvious attempt to frighten people into believing that there was a world-wide conspiracy to throttle the port of Vancouver. The Citizens' League urged that steps be

³A disturbing example of the impact of the McCarthy era on Canada was the hounding of E. Herbert Norman, the Canadian Ambassador to Egypt in 1957 during the administration of Prime Minister John G. Diefenbaker. The Americans suspected him of being a communist, although he had undergone a series of questionings by the RCMP and had been given their top clearance. The Americans went on hounding him until he committed suicide in spite of Canadian Government support. See Peyton Lyon, "The Loyalties of E. Herbert Norman," *Labour/Le Travail*, 28 (Fall 1991).

THE FACTS ABOUT THE WATERFRONT STRIKE

Communism gets in its deadly work

1. For years the Shipping Federation of British Columbia has been dealing with the Waterfront Workers of Vancouver through their organization. They have had their differences, but settled them by agreements, which agreements have been honorably carried out by both parties.

2. On November last an agreement for three years was entered into between them.

3. Since then, three men, Ivan Emory, George H. Brown and Oscar Salonen, have formed a super-organization known as the "Longshoremen and Water Transport Workers of Canada." *This super-organization has no charter and no affiliations with organized labor.*

4. These three men have formed eight other unions which, along with the Vancouver and District Waterfront Workers' Association, have been constituted "locals" of their super-organization.

5. Emory, Brown and Salonen thus control the locals.

6. Ivan Emory is a member of the Communist Political Bureau of British Columbia, and is associated in this alleged trade union work with Arthur H. Evans, Communist organizer of the "Party Trade Union Department."

7. Under the direction of the Communist-controlled "super-organization," the Vancouver and District Waterfront Workers have, during the past month, deliberately violated their agreement—more than once—all in line with Communistic doctrine.

8. Official Communist literature shows that it is the avowed object of the Communist Party to destroy legitimate trade unions, and to build up Revolutionary trade unions under their own leadership. Instructions from Communist Headquarters prove the intent to destroy legitimate Trade Unions. The printed instructions are: "Combat the remnants of Craft Unionism and abolish them."

Confidence has been built in Trade Unionism over a period of years. Communism seeks to destroy this confidence by setting up mushroom alleged unionisms which break their agreements and thus bring discredit on legitimate labor organizations.

10. The issue on the Vancouver waterfront today is whether agreements shall be honored or whether Communist organizers are to be permitted to place labor under a Communist dictatorship and disrupt the industrial life by which the people of this city earn their livelihood.

DO YOUR PART IN THE FIGHT AGAINST COMMUNISM

Apply personally or write to 509 Richards Street

CITIZENS' LEAGUE of BRITISH COLUMBIA

Vancouver Province, 7 June 1935.

HAVE 2300 MEN THE RIGHT TO WORK?

Communist Tactics Endeavour to Throw 1500 Men Out of Work at Powell River

Jobs of 800 Loggers Also Imperilled

The facts concerning the so-called Powell River strike are so fantastic that, if they did not conclusively show the unprincipled methods of Communism, the whole situation would be ludicrous.

The Facts Are:

Powell River Company employs approximately 1500 men at its mill and supports a community of around 4000.

On May 17 in loading one of the ships the Powell River Company, following the usual procedure, employed seventy-five of its regular men.

Fifteen unemployed living in the district adjacent to Powell River were also employed on a day basis. Early in the day, without any notice or alleging any grievance, six of these men left the work, namely—S. Veretzky, W. Fish, B. Botolin, J. Terris, A. Marin, G. David. All others continued on the job.

Later in the day the Company received the following notice:

"The Powell River District Waterfront Workers' Association is now on strike and if the Company wishes to communicate with our committee, Phone 6437."

This was the first intimation, directly or indirectly, through which the Company learned of such an alleged organization. This so-called organization did not even take the trouble to state the reasons for the alleged strike or the objective sought. Not a regular employee of Powell River joined in the alleged strike or was any complaint made. The loading was continued in the regular and normal way.

What happened? The recently formed Longshoremen and Water Transport Workers of Canada, without charter or affiliation with any recognized labor union, but being subservient to the Workers' Unity League, the official trade union department of the Communist Party of Canada, declared "Balpe loading at Powell River unfair," which resulted in all of its affiliated groups of waterfront workers and seamen—

- (1) Refusing to handle freight other than perishables (to and from Powell River)
- (2) Refusing to work ships in Vancouver which failed to comply with its edicts.

THE RESULT, with the flimsy excuse that Powell River does not recognize the alleged union formed, as far as is known, by these six, the Communist leaders seek to paralyze the business of the Port of Vancouver and imperil the jobs of 1800 employees of Powell River.

Several of the many locals which it has absorbed, formed or recognized, have already established records of unscrupulous violation of agreements, fomenting of strikes, etc.

This is in accord with the Communist policy of furthering the cause of revolution by developing grievances, creating strikes, and inciting workers into open clashes with employers and representatives of the law.

This destructive campaign was well afoot on Vancouver waterfront when the Powell River incident supplied the match which touched-off the explosion.

The ruthless disregard of the workers and their families which underlies these Communist-inspired activities is strikingly illustrated at Powell River. To support the action of six men who, at their instigation walked off the job at Powell River, the Longshoremen & Water Transport Workers of Canada have not hesitated to jeopardize the livelihood of—

1500 workers in the town of Powell River,

800 wives, children and other dependants,

800 loggers engaged in cutting pulp wood for the mill, as well as their dependants.

The thousands of people in the Province of British Columbia who benefit from the free movement through the Port of Vancouver of the more than six millions of dollars which are annually expended by this Company in the Province.

The Questions Are:

Have these 2300 men the right to work? Shall the Port of Vancouver be tied up? Shall legitimate union men be slandered by this Communistic MOCKBERRY of unionism?

The Citizens' League has repeatedly warned the public that the Communists are determined to disrupt industry and prevent sane working men from earning a living. Could any better proof be given than the Powell River situation?

Are the thousands of workers in Vancouver to lose their jobs through these machinations?

If the Communists succeed here where will they strike next?

Legitimate trade unions and labor are urged to join in the Citizens' League movement to exterminate the radical element. To permanently rid British Columbia of the Red element, whose avowed policy is to disrupt industry and combat unionism.

The Citizens' League is determined that this sabotage and racketeering must stop

Apply by mail or personally at 509 Richards Street

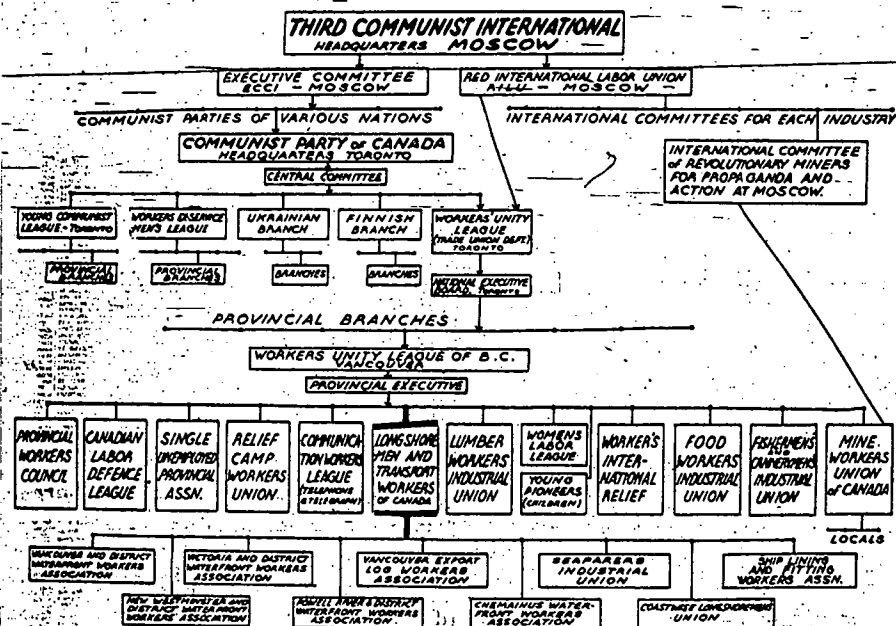
CITIZENS' LEAGUE OF BRITISH COLUMBIA

Vancouver Province, 8 June 1935.

HOW COMMUNISM WORKS IN BRITISH COLUMBIA

MOSCOW TO VANCOUVER

Follow the ARROW on the Chart from Moscow to Vancouver and see for yourself the Result



These Local Unions in turn control other numerous Clubs in this Province

KEEP THIS CHART FOR FUTURE REFERENCE

Send in your subscription to aid in stamping out Communism. No amount too small.

Write or call personally at 509 Richards Street

CITIZENS' LEAGUE OF BRITISH COLUMBIA

Vancouver Province, 18 June 1935.

taken to prevent this dreadful fate; even if it meant breaking legitimate unions and installing company unions.

A climactic experience for me occurred at this time. At 21, having come from a private school education with a fairly hefty mix of formal religion thrown in, I was idealistic and naive. For example, I had been raised to believe that one could trust and respect the law, and the police who enforce it. Then came the Battle of Ballantyne Pier, in which three different police forces attacked a column of a thousand striking longshoremen and their supporters. The longshoremen's jobs had been taken by scabs; but the men wanted to get back to work. Led by longshoreman Mickey O'Rourke, a war veteran who was wearing his Victoria Cross and carrying a Union Jack (then the flag of Canada), they approached the railway crossing near the dock.⁴

On an errand for my boss, and by pure coincidence, I arrived in time to see Vancouver Chief Constable Colonel W.W. Foster, in full-dress uniform, standing by the tracks with BC Provincial Police and RCMP officers. A line of freight cars was being shunted to block access to Ballantyne Pier. The cars partly hid police on horseback. As the strikers approached the crossing, Colonel Foster raised and lowered his hand; police on horseback and on foot attacked. The horseback men had four-foot, leather covered clubs weighted with lead; those on foot had wooden billies. Tear gas was used as well. I saw a machine-gun on a roof. Soon the marching column was broken, and individuals were hunted down and beaten. I was chased by a mounted policeman and only escaped his club by ducking into a doorway. Later I saw some results of the police brutality: dozens of men bleeding, retching and vomiting in the small garden beside the nearby Ukrainian Labour Temple, which had been pressed into service as a first aid station.

The events I witnessed that day showed that the police, with the support of big businessmen, could violate on a grand scale all the precepts I had been taught about civil rights, including the right to organize, to assemble, and to speak freely. These important attributes of citizenship were being trashed by forces paid by the public to uphold these same rights. It was traumatic for me.

I decided that if there was anything I could do to assist working people to maintain and extend their rights, I was going to do it. The battle of Ballantyne Pier was one of the reasons I decided to enter the field of labour law, then in its infancy in BC.

⁴John Stanton, "A Win on the Waterfront," ch. 6 of *Never Say Die: The Life and Times of John Stanton, Pioneer Labour Lawyer* (Ottawa 1987).

I doubt that members of the Citizens' League ever really believed that there was a Communist threat to control the waterfront; still less, to overthrow the government; rather, they used the red scare to prevent unionization. The union was indeed broken and eight to ten years passed before it reestablished itself. Later, in 1944-45, I had a good deal to do with the case in which the breakthrough was made.⁵

In the year after Ballantyne Pier were some memorable months. Early in June 1936 I wrote my final exams — ten papers in five days. After the relatively gentle timetables at UBC, this was a terror. I passed with low marks which surprised me, as I had not expected to pass at all.

My parents wanted to stay in Vancouver for the two-month summer holiday and I rented them a small house where I also stayed. They arrived late in June. We were all delighted that I was now entitled to become a full-fledged lawyer.



Frederic Stanton, my father.

I was concerned about dad's health. He gave me the impression of one who had held on beyond the limits of his strength. His unspoken reason could only have been his deep wish to see that I could now qualify to make my living in the profession he had chosen for me. We had a long talk one evening about my plans for the future and about my philosophy of life. He was reassured by my hope to marry Florence (though not till I was estab-

⁵*Ibid.*

lished) and by my overall world view. Since my stridently radical days of 1933-34 at Victoria, which had worried him, I had somewhat matured. Although I was more determined than ever to do my bit towards helping in the fight for social justice, I was also determined to be more sophisticated.



Frederic Stanton, my father.

I am very glad that dad and I had that talk, because a few days later he was dead. I had known for years that his only real relief from an asthma attack came from injections of adrenalin which he administered to himself with his doctor's permission. What I did not know was that an injection that came too late could threaten his life.

So it came about early on the morning of July 11 that I heard a crash. Running into my parents' room I found dad slumped beside the bed, hypodermic syringe in hand. He had been unable to inject the adrenalin soon

enough. My mother and I laid him on the bed. We both knew that he was beyond human help.

My employers were kind and sympathetic. As counsel for the Harbours Board, Ernie Burns made their patrol vessel, *Fispa*, available to us so that dad's wish to be buried at sea was fulfilled. Mother and I took Florence and a few friends, together with an Anglican priest, to a place off Point Atkinson at the entrance to the Outer Harbour. An "old salt" in the coroner's office had sewn the body into canvas and added weights. As the *Fispa* hove-to, the priest intoned the service "For the Burial of the Dead at Sea." The body was then slid over the stern, a single wreath marking the place.

These events were traumatic in the extreme for both me and my mother. My dad was much closer to me than I had realized. I felt he had sacrificed his frail health to see me through the exams and then simply let go. I found his loss hard to bear. With Mother, the situation was severe. She began to suffer from a nervous affliction that took the form of constant hiccups. They continued for many months. While she survived for 28 years she was never robust and preferred a solitary life. As her only means of support, I visited her frequently, and early in 1964, witnessed her death.

After passing my bar exams, I persuaded Burns, Walkem and Thompson to keep me on until the end of 1936, which they were kind enough to do. In October of 1936 I went to Victoria and was called to the bar. I returned to Vancouver to meet Florence. We bought a 95 cent bottle of wine, and celebrated. A minor irony of the situation: the wine was popularly known as "Herbie Anscomb's Rot Gut." It produced a distinctive hangover. Anscomb had been a mayor of Victoria, a prized client of Mr. Heisterman and later a Tory finance minister of British Columbia. In the dark months after Dad's death, Florence was most kind and helpful, with gifts of money from her small salary. She also helped with household chores.

Late in 1936, with a high temperature, I was taken to the General Hospital where pneumonia was diagnosed. However, when red blotches appeared, I was found to have measles. For an adult, this is no joke. I was rushed to the isolation wing of the hospital and kept there for two weeks.

After recovery, I was approached by a nephew of J.S. Woodsworth, Ken Woodsworth from Toronto, to help form a branch of the Canadian Youth Congress in Vancouver. This was something new for me. The Congress seemed to be more of a movement than an organization. Started in 1936 in Ontario with considerable input from Tommy Douglas, David Lewis, and Paul Martin, the Congress consisted of youth councils composed of delegates representing youth organizations. The Councils were being

established in all main population centres across the country. Its agenda centred on problems that confronted young people: unemployment, the ever-growing danger of war, and poor housing.

In those days there were dozens if not hundreds of organizations, many based in churches, recreation centres, and community groups, in which young men and women were active. In some cases only youth (people under 30) belonged, in others there were youth sections. The wish to exchange ideas with one another on important issues encouraged attendance at Youth Councils. If from their discussions a consensus emerged, Council would earmark that for submission to governments.

I became president of the Vancouver Youth Council in 1937, its first year, when monthly meetings of 50 to 70 people were common. They sent me as a delegate to the national body which that year met in Montréal, where I made my first acquaintance with French Canadian young people, almost all of them men. After an exhausting night of argument with their committee over how certain resolutions should be worded, I emerged with respect for my colleagues and with no question whatever that they represented a distinct society. I will never know how any sane person can doubt that. I also became acquainted with union people for the first time and was greatly impressed by them.

Soon after the Montréal Congress I was invited to join the Communist Party; but as I was already a member of its Youth League (see page 215), I thought membership in the adult party was premature.

During the rest of 1937 I worked for the Youth Council and also for myself by doing some legal work. A good deal of it was referred to me by Gertrude Williams — bless her! Not until the next year did I have an “office.” It happened when the Woodworkers’ Union discovered me and gave me a table, a chair and a phone in one corner of its meeting hall in Vancouver’s skid row area. With many others, I had spoken at a rally of some 10,000 angry citizens called to protest the brutal eviction of single unemployed men from their occupation of Vancouver’s main post office. They had peacefully occupied it as part of their campaign for work and wages. Now that the unemployed men had been gassed, beaten, clubbed, and thrown out into gutters, RCMP officers who remained in the building seem to have enjoyed their “Work,” to judge from their smiles. I suppose one couldn’t expect much else from members of a police force headed by S. T. Wood.

Not long after this, I was hired by the same union to go to Blubber Bay, a small coastal community, five hours from Vancouver by steamship, where



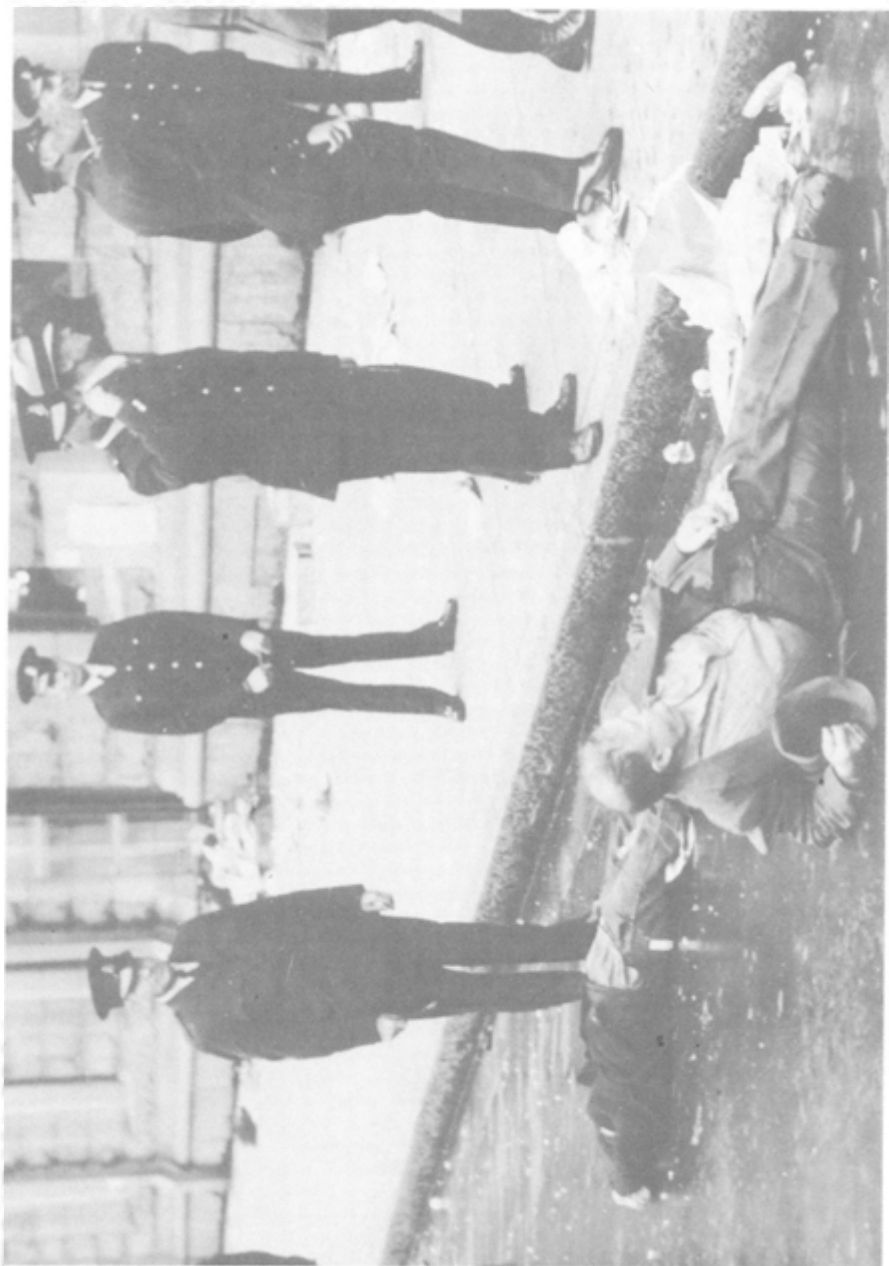
*Injured worker after expulsion from Main Vancouver post office.
Courtesy of the Vancouver Public Library, photo no. 1289.*



*Two Vancouver police throwing strikers out of paddy wagon.
Courtesy of the Vancouver Public Library, photo no. 1275.*



R.C.M.P. officer happy at result of gassing of workers in P.O.
Courtesy of the Vancouver Public Library, photo no. 1295.



*Seven Vancouver policemen observing strikers thrown into gutter near P.O.,
Courtesy of the Vancouver Public Library, photo no. 1309.*

125 workers, mostly Chinese, had been on strike against the New York based Pacific Lime Company. Most of the Chinese worked in the lime quarry; the other workers ran a sawmill supplying lumber and fuel for the quarry. There was a true spirit of brotherhood and friendship among the workers regardless of race. I have often told the story of my arrest at Blubber Bay with Colin Cameron, a CCF member of the legislature, and others.⁶ As I look back I can see that the event helped open up my road to the practice of labour law.

As that practice grew, Florence and I fixed our wedding day for September 16, 1939. It so happened that with no negative intent I was late for the ceremony (at the home of a United Church minister) because I had been on a ship in the harbour settling a wage claim for some 40 sailors.

The wedding was intended to be secret so that Florence could keep her job with a provincial government agency. In those days married women were expected to stand aside to allow men to have jobs. Florence held her post for about six months. After that, she never again worked for wages.

It was fine with me when she left the paid labour force, as I was starting to have all the cases I could handle, representing unions and also individual clients on a case by case basis. The work was demanding, particularly when it involved the threat posed to civil liberties through the gross misuse of federal power. Two such cases are presented in chapter four, but before coming to them I will tell the story of my small involvement with some major socio-political events.

⁶I discuss the strike at Blubber Bay in greater detail in *Never Say Die*, 13-28.

CHAPTER THREE

Changing Times in Canada

It was all very well for me to become academically instructed, but my best education was to come as I stumbled into the whirlpool of social movements that was the world of the 1930s. As always, the establishment had the power to wreck civil liberties, to force a low standard of living on workers, and to create the ultimate disaster of a Second World War. Such leaders as Chamberlain (Britain), Daladier (France), King (Canada), Chiang (China), Mussolini (Italy), and Horthy (Hungary) were bowing and scraping before Hitler. Even the liberal-appearing Roosevelt (USA) seemed mesmerized by the Nazi bullies in Berlin. And what of Stalin in Moscow? Could he be a reliable ally against Hitler, or was he just as bad?

I became preoccupied with trying to sort out in my own head how the coddling of Nazis would affect unions in Canada; were they doomed to destruction, if not directly by Naziism as such, then by a Canadian establishment that gave signs of accepting in Canada the thrust of Nazism? I detected four underlying trends; each interwoven with the others. Together they offered some hope for the future — or so it seemed to me — but only if a tough fight was put up by a united coalition of anti-Nazis based on the working class. In summary form those trends were:

- the rapid growth of industrial unionism coupled with a decline in craft unionism;
- some important changes in labour law leading to the “Social contract” of early 1944;
- a sea change in the policy of the Communist International vis-à-vis Hitler;
- the reaction of the Canadian elite, as represented by the King-Lapointe government in Ottawa to the possible winning of World War II by Hitler.

Industrial vs Craft Unionism

The first type is found almost everywhere on earth. A main characteristic is its policy of accepting as members all non-management employees in a given plant, factory or industry. This is the basic type of union. It encourages working-class solidarity. In contrast are the craft unions which only admit people (usually, white males) to membership if they work in a particular trade. No one else is eligible. It is a structure that encourages elitism and a concern only within the narrow interests of the trade. It began in the United States late in the nineteenth century and spread into Canada. The parent or umbrella organization was the American Federation of Labor (AFL) in the US; while in Canada the corresponding organization was the Trades and Labour Congress (TLC).

In the early and mid 1930s a massive workers' movement in the US and Canada had been sparked by the depression and the unwillingness of the craft unions to organize industrial unions. Soon these coalesced into the Congress of Industrial Organizations (CIO) under the leadership of John L. Lewis, a former AFL officer, and head of the United Mineworkers of America (UMA). Millions who worked in such basic industries as steel, mining, rubber, shipping, and lumber were forming their own industrial unions.

In 1902 the TLC — nominally sovereign — had surrendered to US craft unions the commanding heights overlooking its sovereignty. Congress became infected by the craft union disease but for years managed to keep it under reasonable control. So it happened that old craft and new industrial unions lived together within the TLC, and sometimes outside it, in relative harmony even after the CIO's birth and the rapid growth in Canada of CIO branches during the 1930s.

By 1940 this situation had become intolerable for the AFL and some of its tame units in Canada. They lusted for power. Because they formed a big majority of the TLC membership, they had ultimate control over it. Much against the wishes of rank-and-file union people, Congress was forced to split its own ranks by expelling industrial unions having some 40 per cent of the total membership. By doing so it gained little respect. In September 1940, these expelled unions formed the Canadian Congress of Labour (CCL). It was led by Aaron Mosher, for many years head of a large Canadian industrial union of railway workers, the Canadian Brotherhood of Railway Employees (CBRE), and Patrick Conroy, an ambitious opportunist. Not until 1956 was a form of unity re-established between craft and industrial

unions when the Canadian Labour Congress (CLC) was formed, after the merger of the AFL-CIO in the US.

"Social Contract" of 1944

The burgeoning of industrial unionism was quickly and necessarily followed by basic changes in the labour laws of the US but not so quickly in Canada. The *Wagner Act* of 1935 granted to unions the right to organize, to bargain collectively, to strike (in some situations) and to enforce collective agreements.¹ Those were indeed big developments in a country wedded to a basic form of market economy, with so many backward forms of union structure.

In Canada, union organizers, (mainly left-wingers), felt the *Wagner Act* was too good to be true. They clamoured for similar laws here. Had they not spent far too many years fighting, often against hopeless odds, for the very same rights that were now written into US law?

This understandable reaction did not necessarily offer a solution. I remember a public meeting in Vancouver in support of the Loyalist side in the Spanish Civil War. One of the main speakers was an old Scottish coal miner, Willie Gallagher, a Communist member of the British House of Commons. After the meeting people who took a special interest in unions, including myself, met Gallagher, and we soon launched into a favourite subject — the desirability of having the principles of the *Wagner Act* entrenched in Canadian law. Gallagher listened closely. Finally, in his Scottish accent: "Comrades, do you really think it's wise to put your fate into the hands of the bourgeoisie?" In other words, he asked, "Aren't you putting yourselves at the mercy of the capitalist class if they pass laws that control basic union rights?"

This difficult question lifts the lid off a problem that has bedeviled the left-wing movement for much of the twentieth century: can capitalism be defeated quickly or must the process be slow? It seems to be the case that from country to country and from one time to another, the relationship of forces changes massively, so that, for example in the Canada of 1938 one could say without wishful thinking and also with a degree of credibility — "Capitalism is dying; all it needs is one big shove, so let's join forces and do the job." But one could say also with no wishful thinking but with more

¹The *Wagner Act* (US National Labour Relations Act) was passed in 1935 by the United States Congress. It is administered by the National Labour Relations Board.

credibility, "Terrible as it may seem, there is still life in capitalism, it can still expand; not nearly enough people are solidly against it and well enough organized to kill it off quickly."

Despite Gallagher's views, I believe that most Canadian union people had already concluded that they were in for the long haul. They therefore wanted Wagner-style labour laws to soften confrontations and were turning their backs, to some extent at least, on bare knuckle tactics. The demand for such legislation became common. Hundreds of delegations lobbied governments. Until wartime and even then only gradually, did the provinces lose their jurisdiction over some 90 per cent of labour laws. From 1935 until early 1944, the unions' constant campaigning had its effect in bits and pieces as one province and then another granted some requests. The final breakthrough came in February 1944 when Mackenzie King's federal government reluctantly passed an Order-in-Council (PC 1003) giving unions substantially the same rights as the *Wagner Act* gave to US unions.

This victory, however, came at a price: the right to strike during the life of a collective agreement over even the most serious union grievance was taken away. Until then it had been a major weapon in union arsenals. Instead of striking, unions at first could only arbitrate the dispute. A hitherto vital union power had passed into the often none-too-friendly hands of arbitrators. What had once been a usually quick and painless process now became slow and ever more costly as arbitrations grew ever more complex. Unions had lost their power to deploy their main strength quickly at decisive times to protect their members. Underlying PC 1003, then, was a so-called "Social contract" master-minded by the foxy old champion of company unions, Mackenzie King.

Why could arbitration by a supposedly impartial tribunal have such harmful consequences? My analysis of 3,276 decisions by labour arbitrators over 16 years (1966-81) in Western Canada led me to the view that these arbitrators "bought" employers' cases in preference to unions' cases for three basic reasons.² One is the anti-union skill of such counsel as a Brian Mulroney, although this is not decisive. Indeed the Mulroneys can be defeated if union counsel are well prepared and the union itself is militant. I have had the satisfaction of helping defeat not a few BC lawyers of the Mulroney type. I learned not only to do my homework thoroughly but never to accept the oral assurances of opposing counsel-only written assurances and then only if the language used is ironclad. The mind-set of the arbitrators

²See my book, *Labour Arbitrations: Boon or Bane for Unions?* (Vancouver 1983).

is a more important factor. They almost always come from the same social class as employers, share their economic philosophy, and enjoy their lifestyle and friendship. But not even these powerful influences are decisive. Labour arbitrations are fundamentally unfair to unions because, as I have noted, the "social contract" of early 1944 surrendered the right to strike over even major grievances during the life of a collective agreement. It hands to employers the power to "play" a union along almost indefinitely, just as a skilled fisherman can "play" a fish for a long time. Only when the right has been restored to stop work until a serious grievance is rectified will a more even balance between labour and management power become a reality.

The Communist International

Superimposed on the troubled union scene in 1939-40 but not directly linked with it, was a quick change in Stalin's foreign policy. Since 1935 he had favoured a "united front" of all who opposed war and fascism. In 1939 war had come and by the spring of 1940 fascism and Naziism controlled most of northern and western Europe.

Communists and their supporters loathed and feared the situation because it so clearly foretold the real possibility of a Nazi conquest, not only of the rest of Europe including the USSR but even of the world itself. Alarm bells rang. Were the attempts to build a "united front" against war and fascism of any relevance now after years of "western" fascism and Naziism?

To inform members about the abandonment of the united front policy, the Communist Party of Canada published a *Political Letter on our Present Tasks*. It tried to explain some reasons for the change and to urge compliance with the new "line." Not until late in 1940 did the text of this document reach British Columbia. In Chapter 4 I shall examine some of the results.

The united front policy had not been a great overall success. One recalled the failure of the League of Nations to enforce sanctions against Mussolini's Italy for its aggression in Ethiopia. Equally spineless were meek acceptances of the Italo-German rape of Spain and its lawful government (the product of a "united front"); the failure to assist China's resistance to Japanese attack; the German violation of the Versailles Treaty through rearmament and the seizure of the Saar Valley — to say nothing of the surrender to Hitler of Austria and Czechoslovakia.

All these and similar if less dramatic events had a cumulative effect during the summer of 1939, when a final attempt was made to discuss a USSR-British-French pact against further Italo-German aggression. The governments in London and Paris agreed to meet the Soviet government in

Moscow and named as delegates certain bureaucrats, none of whom had the power to conclude a treaty. Instead of going by plane, the delegates were sent by slow boat and train. Even the name of the British chief of mission, Reginald Aylmer Ranferley Plunkett-Erne Erle Drax, a sometime English admiral, smacked more of medieval England than of serious negotiations. When discussions finally got under way, Mr. Drax began to drag his feet.

Stalin's government had substantial grounds for concluding that even if a non-aggression pact with Britain and France were made, its value would be questionable. Why not see if a non-aggression pact with Hitler was possible? Before August ended, such a pact was formed.

The Canadian Elite

By June of 1940, World War II had passed through what some people called its "phoney" phase in which "The West" (or what was left of it) did nothing to fight Hitler. The slicing up of Poland between Hitler and Stalin and the latter's brief winter war on Finland went by with little response from London or Paris, but when during April and May of 1940 Hitler had conquered Norway, Denmark, and The Netherlands and was about to finish off Belgium and France, panic broke out in Ottawa. Apparently, however, the Canadian establishment had learned absolutely nothing about the international situation. It seemed unable to understand that Hitler was a very dangerous enemy. It may have been bemused by King's myth of Hitler as a "simple peasant" of no danger to anyone.³ The near clerical fascism of the Church in Québec, whose policies King's justice minister Ernest Lapointe reflected, was a major factor. He was strongly influenced by the right wing pontiffs Pius XI and XII, who had signed concordats with Hitler and Mussolini.⁴ The Québec church had no problem, at least in the early stages of the dictators' regimes, in accepting Naziism and fascism as the true shield against what they called godless, atheistic communism; nor did many loyal Catholics in the Liberal Party, including Mr. Lapointe. The most powerful capitalists, who were doing nicely producing, transporting and selling

³On his return from Europe, King told Bruce Hutchison that Hitler was a "simple sort of peasant," not very intelligent and no serious danger to anyone. See Bruce Hutchison, *The Incredible Canadian* (Toronto 1953), 226, as quoted in Lita-Rose Betcherman, *The Swastika and the Maple Leaf: Fascist Movements in Canada in the Thirties* (Toronto 1975), 102.

⁴See "Pope Pius XII" in *The Encyclopedia of the Holocaust*, Vol. 3 (New York 1990), 1135-9.

timber, pulp, grain, minerals and fish, felt much the same way as the Church; red-led unions were far more threatening than Hitler. These establishment forces, it seemed to me, were more dangerous to Canada as a free society than any communist.

An incident in May, 1938, gave insight into Ernest Lapointe. As King's right-hand man in Québec, Minister of Justice and Deputy Prime Minister, he was a central figure in the whole government. He was also a lawyer. Along with four or five colleagues, one of whom was a woman, I took part in a delegation that presented a brief to Lapointe. We spoke for the Canadian Youth Congress. It had recently held a large conference of delegates chosen by young people's organizations with some half-million members, from across Canada. It found a consensus about unemployment and peace. The summarized conclusions and supporting arguments comprised the brief.

We were ushered into a spacious office in the East Block on Parliament Hill. Behind a big desk stood a tall, overweight man who waved us to seats and listened casually to our brief. He made no comments and no effort to conceal his boredom. Nor did he conceal the toe of a large brown RCMP-style boot protruding from under a velour curtain that hung over an alcove behind his desk. As we withdrew, Lapointe offered a flabby hand, remarking that in Québec, no woman would have taken part in such a delegation. It was on the tip of my tongue to say, "Church, Kitchen and Kids, eh, Ernie?" He was not a person one could respect.

It was this very man who, only two years later, became central to the imposition of the *Defence of Canada Regulations*. He himself wielded their most draconian powers. These included the right to imprison people indefinitely without stated reason or charge, without trial, without recourse to a court of law and with no effective appeal. To top this all off, a Canadian jailed ("interned") under the *Regulations* lost his/her civil rights and acquired the status of enemy alien.

So it came about that, just when the unions were recovering from their split, an unusually insensitive government entered the picture by adopting such repressive legislation. It was aimed principally at left-wing organizations in Canada. Despite hypocritical pretensions, Prime Minister King was no friend of unions.

How such repressive legislation as the *Defence Regulations* came into being tells a great deal about the Canadian State in the late 1930s and early 40s.

In the summer of 1939 when war with Nazi Germany was imminent, and war with Fascist Italy only a little more remote, the *Defence of Canada*

Regulations had been drafted secretly by highly placed civil servants on an interdepartmental committee representing External Affairs, Secretary of State, Justice, and the RCMP. Those prominently involved were: Norman Robertson, the Prime Minister's principal advisor on foreign affairs, J. T. MacNeill, a senior official in the Justice Department, and E. W. Bavin, a security officer in the RCMP's intelligence section. The latter organization's main job was to spy on unions and left organizations generally.

The Regulations as originally drafted, contained many of the provisions found in later versions. I have already noted the most severe, but to them should be added the power to render named organizations illegal and to confiscate their property. Because the looming war would be against Nazi Germany and Fascist Italy and because each country had had groups of supporters including some of the press within Canada, the draft *Regulations* banned such organizations. And, presumably, because war with the USSR was not even remotely contemplated, the draft Regulations were silent about communism and communist organizations in Canada.

This silence was not favoured by the implacably anti-communist S.T. Wood, chief of the RCMP. On 26 August he wrote a four page "Secret" letter to Lapointe.⁵ He called for banning certain Nazi and Fascist organizations and, as a "further precautionary measure" urged that some twenty actual or suspected communist organizations and papers be also banned. This letter was passed on to MacNeill who discussed it with Robertson on 28 August. The latter's reaction was swift and emphatic, illustrating well the differences between the narrow view of a hide-bound conservative police chief and a liberal intellectual who was an expert in governmental affairs at the highest level. Robertson fired off a "most secret" memo to Canada's top mandarin of the day, Oscar D. Skelton, a close confidant of King.⁶

Robertson told Skelton he was "appalled" by Wood's program, citing five major reasons:

- it would involve much bitter inter-racial resentment;
- there would be endless trouble throughout industrial and mining areas;
- much sympathy and support for government would be alienated;

⁵The full text of the letter is in the National Archives of Canada (NAC), RG 25, G1, Vol. 1964, file 855E1, Part I.

⁶The memo is in the same file.

- left-wing people would be driven underground and thus increase problems of the police;
- communists were reeling from the effects of the Nazi-Soviet pact, so much so that hasty measures against them were not needed. Much better to wait and see how they adapted to the new international alignment.

Robertson's memo dealt with an even more sensitive issue: Lapointe's inability to say no to Wood. In diplomatic language, Robertson told Skelton why he understood MacNeill's concern about a Lapointe whose "position in dealing with police recommendations of this sort was very difficult." Robertson therefore agreed with the solution offered by MacNeill, namely that dealing with subversive activities in wartime should be the joint responsibility of the Justice and External Affairs departments. No longer would such decisions be left to justice alone, thus opening the way for a police chief with a one-track mind to bully a weak minister into following police diktats.

Robertson's memo led to a Cabinet decision on 31 August to set up a three-man committee. Its job was to consider all proposals for dealing with treasonous and seditious activities and to make recommendations to Cabinet through Lapointe. Robertson, MacNeill and one RCMP officer were appointed. The committee had its first meeting that same day. The RCMP showed its arrogant disregard for a government decision by sending two officers to the meeting. Both were experts in anti-communism, Bavin and a staff-sergeant named John Leopold.

Robertson chaired the committee. He proposed five recommendations:

- immediate arrest of all who were suspected of treason;
- a list of leaders whose arrests would paralyse enemy organizations;
- no immediate action on communists;
- no antagonizing of foreign organizations;
- suppression (banning) only when absolutely necessary.

Bavin found Robertson's program distasteful. Speaking both for Wood and himself, he declared that communists were "of far more importance than the Italians or Germans [and] ... the most dangerous of the three."

Apparently this stubborn attempt to force an unwanted policy upon the committee won no support, as the group sat down to three long days of serious work deciding what Germans and what Italians should be interned. Thousands of names, and the activities of their owners, were discussed,

sometimes at length. It brings to mind the ditty from Gilbert & Sullivan operetta, *The Mikado*, where Ko-Ko, Lord High Executioner of Japan, sings

As some day it may happen that a victim must be found I've got a little list, I've got a little list of society offenders who might well be underground, and who never would be missed — who never would be missed!

[Chorus]

He's got 'em on the list, he's got 'em on the list;
And they'll none of 'em be missed — they'll none of 'em be missed.

Although the committee's engrossing work may have derailed Wood's efforts for a while, the dog soon returned to his vomit. The policy operated on two levels. True, Communists could not yet be interned, but nothing stood in the way of the RCMP interning ten Nazis today and setting three or four of them free tomorrow. By mid May of 1940, 403 Nazis had been interned, and 142 (35 per cent) had been released. When Lapointe's office indicated that eleven more were to be released, Brigadier Panet, the Director of Internment Operations, after ineffective protests, wrote an angry letter to Lapointe: "I feel so strongly ... that I do not wish to release these [eleven] prisoners until I have talk[ed] the matter over with you." He also told Lapointe that public disclosure of the facts would create a "very undesirable situation."

Panet, and no doubt other concerned people, had some success as the release-rate of Nazis dropped until, by late August 1941, 796 Nazis had been interned and 143 released, or 18 per cent. It was much better than the 35 per cent of May 1940. Corresponding figures for Fascists were 41 per cent and for the Communists, 11 per cent (both as of late August 1941).

These figures suggest that Wood's policy of seeing Communists as the real enemy had come close to becoming government policy. But Wood continued his single-minded pursuit of his obsession, when in February 1941 and again in April 1941 he published his essay, "Tools for Treachery" in both *The Canadian Spokesman* and *RCMP Quarterly*. In Appendix 2, I have reproduced it. To me it demonstrates the shallow conceit of the author, who seems to state: "Accept what I say. I'm the police chief. I don't have justify what I say by proving facts. My opinion is quite enough."

CHAPTER FOUR

The Coe Case (1940) and the McKean Case (1941)

Early in June 1940 in the panicky atmosphere of an Ottawa aghast at the pending fall of France, but not to communists, S.T. Wood finally had his way. *The Defence of Canada Regulations* were broadened to include the outlawing of the Communist Party of Canada (CPC) and some twenty satellite organizations and their press. The arrest and internment of individual Communists began. Fergus McKean, the CPC leader in British Columbia, was among the first. I shall discuss his case later: it was not activated until 1941.

In the meantime the CPC's *Political Letter on Our Present Tasks* finally surfaced in Victoria in early autumn 1940. It had to be copied and then distributed on northern Vancouver Island. A sickly, elderly man, friendly with some local CPC members, offered to help with mimeographing. No one suspected him of being the undercover RCMP agent that he was. (He himself told me of this a few months later when on his death bed.) Soon 150 copies were ready for shipment to Nanaimo, 70 miles north of Victoria.

It had so happened that, as a result of the union split, a new labour council of industrial unions was being formed at Nanaimo. It seemed logical that delegates from Victoria should ride together in one car, and if the *Political Letter* could be carried in the trunk of the same car, so much the better.

One of the delegates was Norman Coe, a master mariner, qualified to serve aboard deep-sea merchant ships. At his home port in the north of England he had been an active union man and, when he moved to Victoria in 1924, he carried on. He was the logical choice to represent his union in Nanaimo. He caught a ride in the car just mentioned, whose driver was an acquaintance. The car never reached Nanaimo because at Duncan, the halfway point, police stopped it and seized all copies of the *Political Letter*.

Under the *Defence of Canada Regulations*, it was an offence to have knowingly in your possession any statement that could harm the war effort. Norman Coe, along with the four other men in the car, were charged with that offence. Coe entrusted his defence to me, assuring me that he had no knowledge whatsoever about the pamphlets. According to law he could not be found guilty unless proved to have knowingly possessed them.

Trade unionists on Vancouver Island saw these charges as a police attack on unions and were outraged. Representatives of some twelve unions appeared as defence witness for Norman Coe. They had a simple message: Tell King, Lapointe, and the RCMP to stop trying to push union men around.

Coe and the four others were separately tried in a tiny court room at Duncan, the home of many retired English army officers who had once served their Raj in the so-called Indian army. Presiding at the trial was an elderly, English-style country squire, Magistrate G.A. Tisdall, who lacked legal training but was fair-minded.

The most dramatic witness of all was Archie Greenwell, president of the Vancouver Island Labour Council. A young logger, Greenwell was completely convinced of the justice and the propriety of union activities. In the course of his evidence he told Magistrate Tisdall in no uncertain terms that if Mr. Coe should be found guilty, Vancouver Island would grind to a halt because there would be a general strike. The statement was pure bravado. Nevertheless, the magistrate seemed to feel that there might be some substance to it. After Archie had concluded his statement, Mr. Tisdall said to me, "Mr. Stanton, please do not go on trying to intimidate me."

Suddenly, I not only got the magistrate's message, I also had a strong sense of amusement that this Englishman could speak to me of being intimidated when in his small courtroom there were at least fourteen police officers, some in uniform, some not. It seemed to me if anyone was in danger of feeling intimidated, it should have been myself, but I refrained from conveying this view.

After a three-day trial in November 1940 Mr. Tisdall reached his decision. He was quick to reject critical comments made by various witnesses concerning the conduct of the RCMP, but did accept Mr. Coe's evidence that he had been the last person to enter the car and had not seen the contents of the trunk until it was opened in Duncan. The Magistrate therefore reached a conclusion which tied in with my argument, namely that the accused did not have the necessary guilty knowledge of the *Political Letter* which was central to the offence. Mr. Coe was therefore acquitted. He was relieved to have avoided imprisonment. Personally, I felt that King

and Lapointe were using the war situation to reduce civil liberties to the level that one finds in a military dictatorship, and I was pleased to have helped to strike even a small blow against this misuse of power.

The Coe case shows that a person acquitted under the *Defence of Canada Regulations* could walk out of court a free man. In that important way Coe was dealt with like anyone else tried for a criminal offence and found not guilty.

However, the same *Regulations* had a completely different and sinister side. That was because the federal government had, after some doubts, adopted the right-wing authoritarian view of RCMP Commissioner S.T. Wood. To him, citizens' rights were to be treated with suspicion, if not outright contempt. That is why he and his boss, Minister of Justice Ernest Lapointe, saw nothing wrong with mixing ordinary criminal law with Nazi-type legislation inside the same *Regulations*. The narrow minds of Wood and Lapointe saw little difference between procedures and penalties that were in fact totally separate.

This is not an academic point. In a practical sense the public was given the false impression that the *Defence Regulations* were a relatively harmless extension of the criminal law.¹ In fact, the sinister parts of them were anything but that. They were derived from pre-World-War-I English legislation designed to deal, not with domestic dissent, but with prisoners of war.² These were normally members of an enemy country's armed forces and also spies who were captured by "our" side. For them, ordinary criminal charges and trials were irrelevant. International treaties permitted a special form of imprisonment called "internment" which normally lasted until hostilities ended, unless the interning authorities, for whatever reason, directed an earlier release. Only a very limited form of appeal was allowed. As already noted, the *Defence Regulations* had been passed into law on 3 September 1939 on Lapointe's recommendation. The King cabinet used its power under the *War Measures Act* to hand over to Wood's RCMP virtually unlimited authority to intern not only enemy aliens but "British subjects" as well.³ All that Wood and his minions needed to arrest people and intern

¹See *The Defence of Canada Regulations*, 1939, excerpts, Appendix I. See Section 23 (4).

²Sec. 23 (4) of *Regulations*.

³In those days, Canadian citizenship did not exist. People born in this country and those who considered themselves Canadians were merely "British subjects" along with people who had come from the United Kingdom to Canada to live.

them was that the Minister of Justice be “satisfied” that this was “necessary” to prevent anyone from acting so as to prejudice “public safety or the safety of the State.” If so “satisfied,” the minister could order that any person be “detained in such place and under such conditions as the Minister may determine.”⁴

This was the operational part of Regulation 21. The wringer came at the end: anyone detained by the Minister’s order “shall ... be deemed to be in legal custody.” These eight words eliminated the use of legal methods to challenge the validity of any internment. Once you were “in,” you didn’t get “out” until the minister said so. No court of law could intervene.

It is true that Lapointe, as Minister of Justice, had the sole authority to begin and end internments but there is no recorded case in which he failed to act upon a police recommendation. Not he, but the RCMP, made the real decisions.

Another brief clause in the Regulations bespeaks their viciousness: “prisoner of war” was defined so as to “include any person ... interned under these regulations.”

This explains why Fergus McKean, in common with all other internees, was reduced to the status of a prisoner of war in his own country. Early in 1941 he wrote to me on prisoner of war stationery in the form of a post card, asking me to represent him as legal counsel.



Minister of Justice Ernest Lapointe.

Courtesy of National Archives of Canada, Neg. no. C09796.

⁴*Defence of Canada Regulations*, 1939, Sec. 21.

⁵*Ibid.*, Sec. 23 (4).

Regulations of this kind may have made bureaucratic sense if only because they are easy to administer. From the viewpoint of a lawyer trained in the common law, and respectful of it, these regulations were a disgrace. They had no place in any country claiming to be a democracy.

When McKean was interned in 1940, he was therefore forced to descend to the status of any German soldier captured on a battlefield. He had only the right to be imprisoned, to be fed, and to be given minimal medical aid until Lapointe (actually the RCMP), decided to release him.

By the time McKean wrote to me, other lawyers acting for different clients had thoroughly tested all conceivable avenues of challenge to the legal consequences of the *Defence Regulations*, and, in every single case, the judiciary had slammed the door in their faces: after all, internment constituted legal custody.

McKean was in the internment camp at Kananaskis, near Banff, in the Rockies. He had been interned on 12 June 1940, and had filed an objection. It was heard in mid-August 1940 by an Alberta high court judge named Hyndman. McKean was not represented by counsel, nor even by a friend. Although the hearing produced no decision, McKean was determined to go on protesting his internment.

Hyndman had asked McKean a few questions, the main areas of interest being:

- the fact that McKean, when interned, was working as senior officer of the CPC in BC.
- the reason a man from Nova Scotia, where there are few communists, could “fall from grace.” (McKean did not offer a reply except to say that he was a minor when he left Nova Scotia.)
- whether McKean had made “red hot” speeches about the war. (He had not and months later, after meeting McKean and finding him a placid, stolid man, whose flat monotone was uninspiring, I realized that the notion that such a person could produce a passionate speech was quite grotesque.)
- the fact that McKean had run as a CPC candidate in the federal election in March 1940 and had lost badly.
- the fact that when McKean was interned, the CPC was opposed to the war.
- the fact that McKean disliked capitalism.

The short hearing ended with no indication from Hyndman when his decision could be expected or what it might be. My first job was to try to get that information. To do so was frustrating because of lengthy delays. Some were mechanical, like those caused by non-delivery of letters between

my client and myself. I also had trouble getting in touch with Hyndman because his office at the court house in Edmonton had no forwarding address. After two months, I finally managed to track him down at the Department of Justice in Ottawa. Another delay was of more substance. The rules under which Hyndman operated required him to inform anyone in McKean's situation, "within a reasonable time before the hearing, of the grounds on which the [internment] order has been made ... and to furnish such particulars as are ... sufficient to enable him to present his case."⁶

Hyndman never did give McKean the grounds nor any particulars. He simply quizzed McKean for a few minutes. The four-page transcript was never given to McKean. I only received it in August 1941. But Hyndman, in an indirect way, did something that could help McKean. In 1941, ten months after the hearing, I finally got through to Hyndman's office with my request for a copy of his decision. Hyndman's secretary wrote back promptly:

— no release could be recommended after the Kananaskis hearing, because McKean admitted being leader of the BC CPC.

— Hyndman felt it was "better" not to make a final decision until McKean produced "further evidence."

— The case "is still open" and a "further hearing is possible."

Here was a small ray of hope. True, the call for more evidence was probably an invitation for McKean to recant his beliefs and attack the CPC. That unlikely scenario was not important, but the new hearing was. It gave a fresh opportunity for McKean to present his whole case with legal help. It also offered a real chance to question the government's internment policy of locking away leftists during a war when Canada needed every ally it could get — even communists — in the struggle against a deadly foe.

Acting as legal counsel for a CPC leader was no easy task. I not infrequently had the feeling that the dice were loaded against my client and perhaps against me as well. After the letter from Hyndman's secretary, it took me more than a month to arrange the hearing of McKean's case. It was fixed for 11 August 1941. He had recently been moved from Kananaskis to an internment camp at Petawawa near Ottawa. Hyndman had been replaced by a panel of three: Cameron, a retired junior judge from Belleville, Ontario; Gagné, a Québec lawyer; and Forsythe, a Toronto magistrate.

⁶*Ibid.*, Sec. 22 (3A) (d)1.

Not until late in the evening of 6 August, less than a week before the hearing, did a Department of Justice lawyer, give me full details of the Hyndman hearing and permission to see my client in the camp. Two days later I received from the Department the long-awaited “particulars.” For the first time I had been told the bare bones of the case McKean had to meet. This “memorandum of further particulars” stated:

Re. F.A. McKean:

- 1) that he was Provincial Secretary of the Communist Party of Canada, Vancouver Branch, prior to and at the time of his detention on 12 June 1940.
- 2) that he was a candidate in the Vancouver Hastings East Federal Constituency of a Communist ticket during the Federal Election of 1940,
- 3) that he has contributed articles to a newspaper named *The Advocate*, an organ of the Communist Party of Canada.

Each of these three accusations contained an error:

- 1) There was no such thing as a Vancouver Branch of the Communist Party of Canada.
- 2) There was no “Vancouver Hastings East” Federal Constituency
- 3) *The Advocate* was not a Communist Party organ.

As I had already seen McKean in the camp and couldn’t see him again till the hearing, it was too late to tell him about the three point case against him and its flaws.

My journey to interview McKean on 6 August was, in a sense, a repetition of my much longer journey to procure a hearing. First came the hundred mile train trip from the capital to Pembroke, an Ottawa Valley town near Petawawa. An ancient CPR steam engine hauled its unwilling string of even older day coaches at a crawl with many jolting stops. Refreshment, so called, was brought at a price by a dishevelled “newsie” — cold coffee and week-old, dirty sandwiches.

From Pembroke I took a taxi (there was no other service), to the large military establishment at Petawawa. On the way I was able, but only barely, to save a porcupine’s life, when the driver, in his thick Irish-style accent, told me that he killed “them useless little buggers” whenever possible. My angry shouts forced him to stop as the small animal, a pregnant female, slowly crossed the road in the headlight beams.

The taxi dropped me at the camp gates. "Camp" is a misleading word to describe the brilliantly floodlit area. Without a doubt it was the most fearsome place I ever saw. It was surrounded by fifteen-foot barbed wire fences. At frequent intervals the fence around the outer perimeter sprouted watch towers. From them the searchlights projected their beams across an inner fence of barbed wire as high as the outer one. On each tower large machine guns were mounted, manned by steel-helmeted soldiers.

Between the fences lay a wide strip of sandy ground around which other soldiers marched in groups of two. They wore full battle dress and carried sub-machine guns.

Inside the inner fence stood a number of low buildings each covered by black tar paper and shingles. To one of these I was led by a couple of soldiers, also in battle dress, and introduced to an army captain. He told me he would get McKean. He also told me he would remain to supervise the proceedings but would stay out of earshot. This was a concession to the traditional confidentiality of communications between lawyer and client. In the small area of the interview room, the captain's assurance was nonsense.

McKean was "paraded" in by two soldiers who withdrew. My client and I sat at a rickety wooden table where he started by giving me details of his life. At 40, McKean was of medium stature, husky and compact. He had been born in the small Nova Scotia port of Pictou at almost exactly the same time as the twentieth century began. Like so many workers' children, he got his first job before his fifteenth birthday. Quite typically for workers in the 1920s, he went on to earn his living from various employers in different places. They included a deep sea ship, the Governor General's yacht, a prairie farmer, and a northern Saskatchewan logging company. Finally, in 1924, he landed seven years of steady work in a sawmill near Vancouver. There he became a millwright, a highly skilled trade. As the depression deepened in 1931, the sawmill closed down. McKean was now 30, married and with a growing family. The fifth and youngest child born to him and his wife Nellie arrived in 1936.

In those days, coastal British Columbia and particularly the Vancouver area had a reputation as "red" because few unemployed people meekly accepted the platitudes — even the outright lies — of businessmen and politicians to the effect that "prosperity is just around the corner." The "lyin' Brians" of the 1930s were not just unpopular, they were openly scorned and ridiculed. What is more, people banded together and fought back, demonstrating for jobs and for adequate public assistance until the jobs materialized, which they seldom did. Out of the turmoil arose a growing

Communist Party and also the new Co-operative Commonwealth Federation (CCF, now NDP) They both attracted more and more members. In 1932 McKean joined the CPC and in 1938 became its BC leader. As the left grew, the two old-line parties went into decline for awhile. The Conservative Party governed at the national level from 1930 to 1935. It then disappeared as a national force until it was resurrected by John Diefenbaker in 1957. As for the Liberal Party in BC, its last year in power alone was 1941.

It was clear to me that McKean was a citizen who had exercised what he thought had been his right in a free society to advocate social and economic change in the midst of the Great Depression. Whether I could convince a tribunal, operating in a right-wing political climate, of this, however, was another thing.

In August 1941 the three-man board heard McKean's case in the "camp" at Petawawa. Before allowing me to question my client, members did their own questioning. They brought out a good deal about McKean's personal life. Not a single fact was discreditable; quite the contrary, he came across as an honest, law-abiding, hard-working family man.

The board, of course, made sure to ask the three key questions: Was McKean a member and officer of the CPC? Did he run in the 1940 federal election for the CPC? Did he write a few articles in *The Advocate*? The answers, in each case had to be "yes," unless McKean wanted to make a fool of himself and invite charges of perjury. After all, these three issues had already been deeply carved into the public record and no denial was possible even if McKean had wanted to deny them.

I tried to offset these inevitabilities by having McKean stress a number of points: that he had excellent reasons for joining the CPC in 1932 and in moving up its ladder and that he had a long and honourable record of struggle against naziism and fascism. He cited many specifics. He had done all he could to prevent the outbreak of war, and when that failed, he tried to work for its end through negotiations. That, he said, was a better course because the western allies throughout the "phoney war" (September 1939 - April 1940) had shown no real wish to defeat Hitler or Mussolini -- only to direct them east, where they were now headed. He also stated that he wanted release so he could resume his anti-fascist activities, pointing out that no communist could possibly be a Nazi sympathizer. He also noted that he had never been involved in any overt behaviour of a violent or harmful kind and had no criminal record. On a personal note, he felt that the Camp Commandant had not always given the relatively small group of left and

labour prisoners protection against attacks and insults by the larger Nazi-Fascist group in the camp.

When I had finished trying to bring out McKean's story in full, the panel allowed me to argue for my client's release. I hammered as hard as I could on the shameful injustice that a man had lost his liberty partly because he ran as candidate for a then-lawful political party in a federal election. Reaching back in time to penalize an action that, at the time it occurred, had been lawful, is something upon which the law frowns to the point that such penalization is invalid unless it is authorized by clear and specific legislation. There was no such legislation. I then asked the panel to defend the right of a Canadian to run for election without fear of subsequent penalties by striking down this charge.

I also deplored the attack on McKean for expressing his thoughts in articles in a small Vancouver tabloid. Was it freedom for a would-be journalist to write articles and have them published -- both lawful activities -- and months later to be jailed for his writing? Finally, what about mere Party membership? Again, it was legal at the time, but, more important was the fact that this and both other accusations involved absolutely no harmful act, only ideas. Why should the panel condone what was, in essence, a foray by thought-police, to attack a philosophy that some may have hated and feared, but nonetheless, a philosophy that McKean or anyone else had been free to support?

I was not too hopeful of the outcome as I scanned the cold establishment faces of Messrs. Cameron, Gagné, and Forsythe. That is why I did what I could to persuade some public figures in British Columbia to write their opinions of McKean's character, (not his politics) to the Minister of Justice, and to urge clemency. Several of them did.

Eventually Lapointe's deputy, F.P. Varcoe, wrote to me:

October 1, 1941

Re. Fergus McKean:

Dear Sir:

The Minister of Justice, acting on the recommendation of the Advisory Committee which considered the above party's objection to his detention, has recommended that such detention be continued.

Yours truly,

F.P. Varcoe,
Deputy Minister

I regret that Varcoe, a member of the legal profession, reported that a man's liberty would continue to be denied on spurious grounds, but offered no reason.

Years later, after reading S.T. Wood's essay, "Tools For Treachery," I think I found out why. But even then I could not justify the subordination of an important principle of a learned profession, to the wayward opportunism of a soldier-policeman.



*Brigadier-General Stuart Taylor Wood, Commissioner,
Royal Canadian Mounted Police.
Scarlet & Gold (1939).*

APPENDIX 1

EXCERPTS FROM THE
DEFENCE OF CANADA REGULATIONS, 1939

21 (1)

The Minister of Justice, if satisfied, that with a view to preventing any particular person, from acting in any manner prejudicial to the public safety or the safety of the State it is necessary so to do, may, notwithstanding anything in the Regulations, make an order:-

- (a) prohibiting or restricting the possession or use by that person of any specified articles;
- (b) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his movements or place of residence, in respect of his association or communication with other persons, or in respect of his activities in relation to the dissemination of news or the propagation of opinions;
- (c) directing that he be detained in such place, and under such conditions, as the Minister of Justice may from time to time determine; and any person shall, while detained by virtue of an order made under this paragraph, be deemed to be in legal custody.

22 (3A) (d) It shall be the duty of such Committee to inform the objector within a reasonable time before the hearing of the grounds on which the order has been made against him, and to furnish him with such particulars as are, in the opinion of the Committee, sufficient to enable him to present his case.

23 (4) The term "prisoner of war" used in this Regulation shall include any person detained or interned under these Regulations.

APPENDIX 2

TOOLS FOR TREACHERY

As published in RCMP *Quarterly*, April 1941

Tools for Treachery
by Commissioner S.T. Wood

Upon the outbreak of war, the responsibilities and duties of the Royal Canadian Mounted Police were immediately enlarged, and it was very necessary to take prompt action in the arrest of certain known enemies. The usual methods of civil protection from the criminally-minded class could not be relaxed, and the Force has also to assume main responsibility for the prevention of sabotage, and police supervision over thousands of actual and potential enemy aliens to prevent them from any overt acts, and also to attempt to take care of any other citizens who might be used consciously or otherwise as tools for treachery.

A country such as this — composed of every race and religion and political creed, with perhaps a fifth of the population of foreign birth or extraction — presents an ideal breeding ground in some quarters for what has come to be known as the “fifth column”. For many years the totalitarian governments had been preparing the soil for this occasion. Fortunately, we knew it and, with the authority conferred upon us by the Defence of Canada Regulations and by utilizing the information we had been gathering in advance, we were enabled, so far as the Nazi and Fascist Ringleaders were concerned, to act promptly and effectively.

This, however, was but one and perhaps the easiest part of our problem. As in the case of a contagious disease, segregating a sick patient does not necessarily stop the spread of the disease. The Nazi germ had spread throughout the world threatening to break out into open corruption as soon as war was declared or whenever conditions were ripe. As it was working under cover, we had to go under cover to trace it and where possible to disinfect the spot.

Our peacetime Force, with its highly trained personnel, could not be suddenly augmented to meet this crisis, and every division and detachment and individual and constable was swamped with work. Italy’s entry into the war did not lighten our load. Then, in addition, there were the Communists who, for many years now have been with us, and who attempted to take full

advantage of our difficulties by undermining morale and sabotaging our war efforts. After these "Big Three" came a scattering of smaller subversive groups, such as the National Unity Party, the Technocrats, Jehovah's Witnesses and Youth Councils, some of which, like poison toadstools, sprang up over night to destroy our social structure. Not until Christianity and Democracy had been mightily challenged did the people realize (and then but slowly) the strength, multiplicity and deadly malice of their foes.

This slowness, even amounting to reluctance, of our people to recognize their danger hampered the full operation of protective measures for a time. Blitzkriegs and revolutions could never happen here, they said. We were accused at first of "witch-hunting" and Gestapo methods, when men known by the authorities to be active members of Nazi and Fascist organizations were sent to internment camps. Then came the lightning destruction of Poland, Norway, the Low Countries, due largely to traitors behind the lines; and the Canadian public, reacting to the other extreme, demanded more drastic treatment of traitors. The betrayal of France further increased public fear for a time, but now complacency and mistaken sentiment are again appearing to slow the wheels of justice. These feelings are, of course, cultivated surreptitiously by our enemies through many hidden channels, and only those on the "inside" can recognize the source.

Many may be surprised to hear that it is not the Nazi nor the Fascist but the radical who constitutes our most troublesome problem. Whereas the enemy alien is usually recognizable and easily rendered innocuous by clear-cut laws applicable to his case, your "Red" has the protection of citizenship, his foreign master is not officially an enemy and, unless he blunders into the open and provides proof of his guilt, he is much more difficult to suppress. Since Communism was outlawed, most of his work is carried on under cover of other organizations and associations pretending to be, or in reality, loyal to the Constitution. It is important to remember this for the reason that this type of fifth column activity is least understood by our Canadian people, and yet is doing most harm at the present time. Because of its definite attempt to undermine confidence in constituted authority, to subject our people to confusion and nerve-wracking propaganda, I propose to confine the rest of my remarks to some of its more subtle machinations, in the hope of assisting the Canadian public to recognize the source of these tactics.

Some of the tactics referred to are as follows:—

1. Affiliations with labour bodies and a pretence of being the only champion of the "working class" constitute its main line of attack. Even before we were at war, Communist directives urged Communists to join legitimate trade unions and endeavour to mould them along anti-British and anti-social lines. That labour resents and fears such contamination and has ruled it out of its main organizations, fails to discourage it. It simply changes its coat and enters by another door. Once in, it works night and day to fan grievances to the striking point — not with the hope of bettering working conditions but knowing that labour trouble sabotages our war efforts, engenders hatred of constituted authority and brings, it thinks, "the revolution" that much the nearer. The public and even the majority of the strikers are not aware, of course, of the Red hand pulling the strings.

2. The Communists, always quick to take advantage of human misery in any form, found the unemployed and underpaid easy tools for the spread of their doctrines of hatred. The criminal and weakminded classes were even more dazzled by their promises of gain.

3. Youth by nature is radical and therefore receptive to subversive propaganda promising social and economic reforms. Under the innocent title of "Youth Council," Communism has organized young men and women in every walk of life to protest against war, poverty, all injustice, as the peculiar weapons which "capitalism" uses against "the people," and to agitate for a "new order" modelled on Soviet Russia. The Young Communist League infiltrated into many of our schools and colleges and almost wrecked the Student Assemblies before they were exposed in their true colours.

4. More subtle is their work among the so-called "bourgeoisie" organizations and "progressive" leaders. For instance, one responsible group formed for the purpose of protecting the rights of democracy against injustices from within, has provided at times an unwitting medium for Communist agitation. When a leader of the Communist Party is arrested or interned for his unlawful practices, he thinks he has only to appeal to this group on the grounds of intolerance and persecution to find misguided support.

5. One of his most effective charges is that trade union leaders are being arrested because of their union affiliations. That such a charge can find credence among thinking people seems preposterous. And yet the names of several union men who have been interned are being publicized as victims of political and capitalist persecution and with demands that they be given the right to prove their innocence in open court. The truth of the matter is

that no one has ever been interned through private influence or unsubstantiated charges or on the word of the police alone. Several trade union leaders were also Communist leaders who were using their unions to advance their own and their party's ends by sabotaging industry and transportation. Open trial in such cases would expose our whole system of civil and military protection against such traitors. I may say here that our Regulations were based exactly on those of Britain, being designed to secure the maximum of national security with the minimum of interference with democratic rights.

6. Wherever possible the Communist takes advantage of the public press to air his grievances. On several occasions he has succeeded in gaining the editorial ear as a martyr to religious and political intolerance and has thus temporarily embarrassed a conscientious Government. Fortunately, the great majority of editors place country above party in such times as this, affording a splendid guarantee of good government and the perpetuation of democratic principles, and only through deception can they be so used. For instance, it was largely due to lack of facts that some papers severely arraigned the Government for interning "labour leaders" when these were in reality Communist leaders; for persecuting religion in the guise of Jehovah's Witnesses when, in truth, these are active enemies of Christianity and Democracy; for employing Gestapo methods through the Police in investigating and seizing "harmless citizens," when the Police had ample evidence that these citizens were plotting against the State. The intermittent attack on the Defence of Canada Regulations is almost entirely due to lack of editorial understanding, taken advantage of by extremists and pacifists who are well aware that it is the Regulations alone that prevent them from accomplishing their anti-British designs. It is noticeable, for instance, that cases of "injustice" cited in print are not the "parlour pinks" but the leaders who, in certain European countries, would probably have been shot for treason. The public should be advised, through every possible channel, that its very salvation lies in the Defence of Canada Regulations and in their scrupulous enforcement. The sooner this is realized by the so-called idealist and the man-in-the-street alike, the better.

7. The Defence of Canada Regulations have all along been the focal point of attack by these enemies of democracy. So long as these stand, there is little chance of getting on with the Revolution. So they are subject to continuous attack on the grounds that they are unconstitutional, forbidding freedom of speech, press and assembly — the very foundation stones of democracy. The Communists, of course, are only interested in the "rights"

of democracy as a means of destroying democracy, but the gullible public is easily misled.

It should be added that not only the gullible public, but also some of the more enlightened and well-intentioned people have been and still are being used for subversive ends, apparently without their knowing it. If once this is brought squarely before the Canadian public, and they decide in future to examine carefully conditions and accusations before coming to conclusions and expressing them in public or in print, we shall have taken the first step in measures of defence against this enemy.

8. Communists are quick to glean comfort from public men and women who criticize Government war policies. A few parliamentarians, who are apparently sincere but obviously un-informed or indifferent to facts, are greatly encouraging the subversive elements by attacking the Defence Regulations.

In this connection, it is encouraging to read the recent report of a special committee of the Montreal Board of Trade appointed to consider the procedure governing internments.

The report, unanimously approved by the Board's council, said the committee had been unable to find "any case in which criticism of the actions of the Department of Justice or police on grounds of severity, harshness or unjustified applications of the regulations has been sustained."

It added that if any criticism of "Government or police action is warranted, it is that too much lenience has been shown, both with regard to internments and the release of those interned."

The Committee was of the opinion that police activities have "severely hampered the work of subversive organizations, and that the criticism largely emanates from those sources and from persons misled by such subversive groups."

These eight ways referred to by numbered paragraphs above, are only a few of the many being employed by our internal enemies towards losing the war. While such enemies can never succeed in accomplishing their nefarious designs, they can make our defence of Empire, Canada, and all we hold dear that much harder, and therefore I am anxious to expose them and their methods to help my fellow Canadians more readily to detect their subtleties, and thus make them less prone for use as tools of treachery.

A Case of Criminal Libel

A Canadian coal-miner returned to his home in Nanaimo on Vancouver Island in 1945 after serving for five years in the Army in Europe. There he had fought Nazis and Fascists with such valour that he received a handwritten, personal letter from Field Marshal Viscount Bernard Montgomery, commending him for exceptional bravery.

Mirko Vitkovich was a modest man. He did not, for example, boast of his military record. He simply explained that it was a part of his duty as a citizen to oppose rightwing leaders whom he considered dangerous to his country and his class. His European experiences had fitted him well to make such judgments.

In early 1948 this sturdy man, approaching middle age, fell afoul of an ancient English law designed to protect a generally aristocratic ruling class from social criticism. It was a class with small respect for freedom of speech. This may explain why the law of criminal libel has not enjoyed an honourable history and has largely fallen into disuse. Civil libel is quite a different matter. All libels have certain elements in common: they must be published, usually in written or pictorial form; they must be untrue; and they must hold some person(s) up to hatred, contempt or ridicule. In short, they must be an unwarranted attack on the dearly loved right to an unblemished reputation.

The dividing line between the kinds of libels depends on the severity of the attack. Most libels are civil and can result in an award of damages. Only those libels so potent as to endanger the peace are criminal. Such, at least, is the theory. In practice, a libel is more likely to be criminal if it pillories an important member of the establishment or helps a political cause that is disliked or feared in high places.

One famous criminal libel case occurred in England in 1895, when the playwright Oscar Wilde prosecuted the Marquess of Queensbury for that offence. Queensbury, who fancied himself as the quintessence of "manli-

ness," had taken offence at the relationship between Wilde and Lord Alfred Douglas, Queensbury's son. Queensbury had published a note accusing Wilde of "posing as a sodomite."¹ (Certain homosexual acts were then against the law in Britain.) Unwisely, Wilde charged Queensbury with criminal libel. Queensbury maintained that his statement was true and in his plea of "justification" cited instances of homosexual acts by Wilde. His witnesses convinced the judge, who instructed the jury to rule that Queensbury had been justified, in the public interest, in calling Wilde a sodomite. Shortly thereafter, Wilde was arrested, charged with committing indecent acts, tried, found guilty, and sentenced to two years at hard labour.

The preference of an effete English ruling class for aristocrats rather than literary celebrities was made very clear, although many people, including aristocrats, must have been aware that homosexuality in English high society was not exactly unknown.

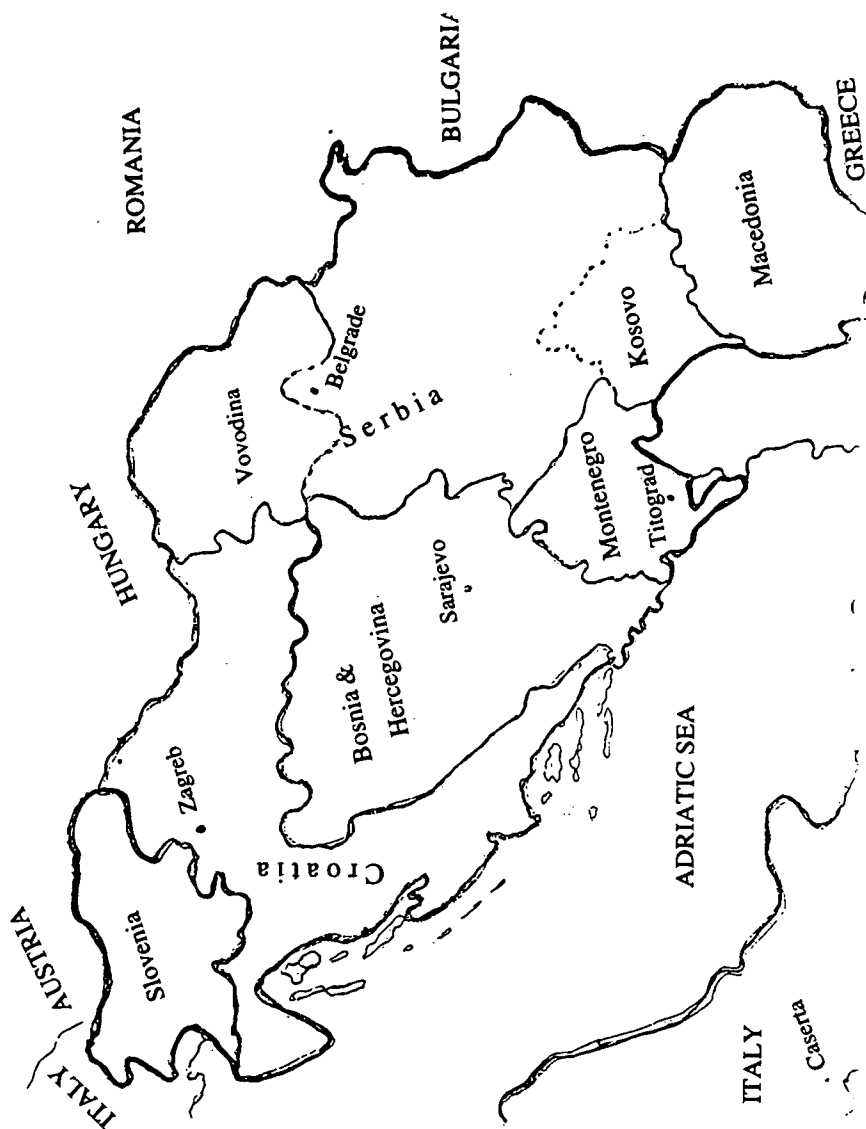
A century earlier, at the time of the French Revolution (1789), a jittery, semi-feudal English ruling group quickly saw that any strong written statement supporting "liberty, equality and fraternity" was a threat to its power. It often used criminal libel charges to suppress freedom of speech. Even the Lord Mayor of London's position did not protect him from this type of political censorship.

Many of the best-known criminal libel cases have involved public figures. It seemed odd to me that, in 1948, in the small working-class city of Nanaimo, a miner would be charged with such an offence, especially one relating to the complexities of Yugoslav politics, far away from Canada. To understand the situation, it is necessary to take a brief look at Yugoslav history, and to recall that, in 1948, the Cold War was speedily developing under US and British tutelage.

In 1918, after the defeat of Austria-Hungary in World War I, a Kingdom of Serbs, Croats and Slovenes was formed, which was named Yugoslavia in 1929. ("Yugo" translates as "South.") The new state had close ties to England, as British businessmen owned important interests in the country. Serbians, who are Slavs and thus have ties to Russians, who are also Slavs, make up the largest segment of the population (35 to 40 per cent) followed by Croatians (20 per cent).² Apart from Serbia and Croatia, the regions of Yugoslavia included Bosnia, Slovenia, Macedonia, Montenegro, and the autonomous provinces of Kosovo and Vojvodina.

¹Richard Ellmann, *Oscar Wilde* (London 1987), 409-19.

²See "Yugoslavia," in *The Encyclopedia Britannica, Micropedia*, 15th edition, (Chicago 1991), 870-1.



This union of very different peoples did not work out well. From as far back as the sixth century, the region had been divided on cultural, linguistic, and religious lines. These persist to this day. For example, towards the east in Serbia and Macedonia the Cyrillic (Greek) alphabet and Orthodox Christianity prevail, while in the west, mainly Croatia and Slovenia, the Latin alphabet and the Roman Catholic religion are dominant. And in Bosnia there are many Moslems.

When Yugoslavia was a part of the Austro-Hungarian Empire, Hungary (the first European country to embrace fascism after World War I) was influential. It was therefore foreseeable that Croatia, which has a long common border with Hungary and many Hungarians among its people, would spawn one of Europe's most vicious, right-wing movements. The Ustasa (pronounced oo-sta-sha) or "rebels" were formed in 1930. They represented an extremist, nationalistic minority that refused to live within a federal state with the hated Serbs. An independent Croatia was their central demand. In 1923, their leader, Ante Pavelic, declared that "knife, revolver and explosives are the instruments with which the [Croatian] peasant will regain the fruit of his labour and the Croat his freedom. They are the musical instruments on which the Croatian people will play the requiem mass of the foreign [Serb] people."³ In 1934 Pavelic's policy bore fruit when Yugoslav King Alexander was assassinated during a state visit to France. The right wing pontiffs Pius XI and XII supported Pavelic.⁴

Far older and larger than the Ustasa was the Croatian Peasant Party. It had sister political parties in several eastern European countries. All had large peasant or small holders' populations; but the nominally "peasant" Croatian party had few actual peasants among its leaders. These positions were commonly held by politicians and members of the professional classes. The Croatian Peasant Party tended to equate the peasantry with the entire population, ignoring industrial workers. When in 1939 that party entered the government, it claimed to represent every single person in Croatia. A clear implication arose that no opposition would be tolerated.

Far more powerful forces would soon bring a much greater "opposition" into Yugoslavia. In early April 1941, the armies of Hitler and Mussolini invaded this badly-divided country without so much as a declaration of war. Within perhaps two weeks the defending armies, lacking popular support

³*The Encyclopedia of the Holocaust*, Vol. 3 (New York 1991), 1551.

⁴*Ibid.*, Vol. 1, 328.

and strong leadership, disintegrated, and the Royal Yugoslav Government of King Peter fled to London, England.

Resistance to the invaders grew rapidly. Only in parts of Croatia were the Fascists helped locally, and then only by Pavelic and his Ustasa who may be compared with today's Central American "death squads." Fitzroy Maclean, the brigadier commanding the British military mission to the Yugoslav "partisans" in 1943, states that on issues of "race," Pavelic went further than Hitler, decreeing that Croatia must be purged of Jews, gypsies and Serbs: "We shall kill some Serbs, drive others out, and the rest will be forced to embrace the Roman Catholic faith."⁵ At that time, Serbs inside Croatia comprised one-third its population.

As might be expected, the German army was not slow in establishing Pavelic as head of a new government of the so-called Independent State of Croatia, proclaimed on 10 April 1941. Nor was Roman Catholic Archbishop Stepanic slow to bless the new government publicly. Pius XII, not to be outdone, received Pavelic in private audience, thus adding his own blessing to Stepanic's. The gesture was not well received in Yugoslavia. In 1946, Stepanic was jailed for sixteen years for his many collaborationist crimes.

Ustasa excesses were not only a byword for cruelty but also helped to generate a large body of public opinion against the right wing and in favour of the "partisan" movement led by Josip Broz Tito, which was emerging as the only force inside Yugoslavia determined to drive the invaders out and to set up a people's republic. Nor was this just a matter of a popular policy. The partisans were growing strong enough to achieve their aims.

As the invaders, with Ustasa help, tried to consolidate their grip on Croatia and elsewhere in Yugoslavia, a twenty-seven year old Croatian lawyer, Mladen Giunio-Zorkin, set out on a course that would lead him through troubled political waters. His "Short Life Summary," (see Appendix I, p.79) states that he immediately took up arms for his country when Yugoslavia entered the war in 1941.⁶

Of small stature and average appearance, Zorkin possessed talent as an organizer, speaker, and politician. After the war he continued his links with the Croatian Peasant Party and with its sister organizations in the United States and Canada. In North America he became active in lecturing about the dangers of communism. His talks were well reported by the media which

⁵Fitzroy Maclean, *Tito* (New York n.d.).

⁶"Short Life Summary," 1. See NAC, RG 76, Vol. 287, File 257554 and Vol. 631, File 963866, both are reproduced in Appendices.

is why Vitkovich got to know about him. And when, early in 1948 he settled in Nanaimo (where he later entered the real estate business and battled in local politics), Vitkovich sensed trouble for the unity and tranquillity of his small Croatian community in Nanaimo. Someone like Zorkin could be a divisive force by pressing the cause of anti-communism, Vitkovich thought. He therefore wrote a letter of warning in the Croatian language, signed it and mailed it to about 100 people. The letter expressed his concerns and explained his reason for them, namely, he alleged, that Zorkin had been politically involved, with a Croatian organization that strongly supported Hitler. Its name was Ustasa whose leader was Ante Pavelic.

This letter found its way to the police and a charge of criminal libel materialized. The nub of the complaint was that Vitkovich had harmed Zorkin's reputation by linking him to the Ustasa.

Later, after trying to defend Vitkovich, I felt the charge was not so much against Vitkovich, the man, as it was against the left-wing of the BC Labour Movement — a kind of warning shot across its bows.

A few years earlier in Yugoslavia, there was a fast growing chasm between those fighting for liberation and those who supported the German and Italian invaders. By 1943, Tito had won the support of Churchill's government because, despite conditions of severe hardship, rugged terrain, little food, and fewer weapons, Tito's left-led partisans were the only forces inside Yugoslavia mounting a real attack on the armies of Mussolini and Hitler. Accordingly, in 1943, massive British aid for the partisans began to arrive by air, much of it from the big Allied supply and intelligence base at Bari, in south-east Italy.

Before Tito had won British assistance, Churchill, under pressure from the Yugoslav government-in-exile, had backed the Cetniks under a Serbian general Draza Mihajlovic. For a brief time late in 1941 the Cetniks had joined with Tito's partisans and a broad popular revolt seemed possible. Unfortunately, the Cetniks' support quickly withered as German pressure (including appeals to the anti-communism of many Serbian officers), reached its mark. But for about a year under the impact of distorted reports "probably embroidered ... by the Yugoslav government in exile, British officials in SOE [Special Operations Executive], the Foreign Office, and No. 10 Downing Street concluded that it was not communists, but royalist officers under Mihajlovic who had produced the revolt."⁷

⁷B.F. Smith, *The Shadow Warriors: O.S.S. and the Origins of the C.I.A.* (New York 1983), 83.

A Canadian Black Watch officer from Nova Scotia, Major William Jones, played a part in convincing Churchill that Tito was the right man to back. After three Canadian workers of Yugoslav origin, including two miners had been parachuted into a partisan area and established a communications base, Jones followed them in May 1943 and for the next year made a thorough investigation as to what was happening, militarily and politically, in the liberated areas. He sent out numerous reports to Churchill's government, showing that the partisans were the truly effective anti-fascist force in Yugoslavia. Those, like Jones, who backed Tito, were not mistaken, for the time came when the partisans had forced no fewer than twenty-two German divisions (plus the Ustasa), to the wall.

Hitler died in May 1945, but Hitlerism did not. Although many found it hard to believe, powerful right-wing forces in the United States were eager to carry on the fight against communism. From 1941 until early 1945 the US and USSR were allies out of necessity. Even then, loud and frequent complaints were heard from US business and military quarters, that "we're in the wrong war, at the wrong time and on the wrong side." In April 1945, President Roosevelt died. His successor Harry Truman saw communism as the main enemy. Such developments should not have surprised anyone, for US ruling circles, uninhibited by a politically effective labour movement, had always been an implacable foe of socialism/communism in general and the USSR in particular. Even diplomatic relations had not been established between the US and the USSR for nearly twenty years, until President Roosevelt, a man with much common sense, decided otherwise in 1935.

As the US returned to her traditional anti-communist stance, the intelligence agencies, the Office of Strategic Services (OSS) and its successor, the Central Intelligence Agency (CIA), were focal points. When the OSS was disbanded, its most important officials were transferred to the CIA.⁸ Part of the new US strategy was to train reliable anti-communist personnel for service world-wide. It was all part of a larger strategy, which later became grossly obvious, to wage Cold War, to "roll back" communism and ultimately to defeat it, leaving the US free to utilize all of Mother Earth in pursuit of the ends of a so-called free market economy.

Returning to Zorkin's doings in Italy, we left him as a patient in a military hospital at Bari.⁹ By early 1944 he was discharged. In his "Short Life Summary," he traces other important events of his life: "During 1944

⁸*Ibid.*, xiv, xvi.

⁹See p.79.

I was in constant touch with the Allied Force Headquarters in Italy ... where I completed several missions with the OSS in Bari." Years later when I was cross-examining Zorkin on 1 June 1948 at Nanaimo (prior to the hearing of the libel case), he provided additional information: "I was just employed as a translator, interpreter and intelligence officer... for the Allies attached to Allied Headquarters in Caserta."¹⁰ Zorkin's salary was paid by the Allied Control Commission in Italy.

On 8 October 1944, Zorkin flew in a US plane to London. His trip was authorized by General Henry M. Wilson, commander of the Mediterranean Theatre of Operations and the senior military officer in that huge area. The boarding permit was signed by a US captain named Rigio.

Zorkin's "special mission" (as he calls it), was to meet Prime Minister Ivan Subasich of the Yugoslav government-in-exile who named him to a War Crimes Commission.¹¹ He served on it till May 1945. By then Subasich had signed over to Tito the Yugoslav King's constitutional rights; in other words, all government power in Yugoslavia was lawfully transferred to Tito and his partisans. Zorkin wanted no part of this. In May 1945 he resigned his "diplomatic relations" (as he calls them), refusing to recognize the Tito government as lawful. He went to work for a firm of English solicitors for a year, during which he renounced his allegiance to the Yugoslav government. In May 1946 he was flown by the Americans to New York to begin a lecture tour of the United States and Canada "mainly" for American-Croatian Peasant Societies. He entered Canada for the first time on 20 May 1946 at Windsor, Ontario.

Zorkin represented himself as spokesperson for Vladko Matchek, once a Yugoslav Vice Premier and Croatian Peasant Party leader. The thrust of Zorkin's lectures, which he delivered in most large Croatian communities across North America was to warn Croatians against being the dupes of Moscow. "The purpose of my lectures was to explain the way of communistic infiltration in the lives of good citizens, giving examples of the meaning of communistic democracy which [leads] to complete enslavement. I was stressing mainly the activities of Tito's diplomats who are helping considerably to impress Americans and Canadians of Slav descent to become the dupes of Moscow."¹² Zorkin presented a political line wholly in step with OSS-CIA policy and with the strivings of the US State Department to establish world hegemony.

¹⁰Official Transcript of preliminary hearing, 53.

¹¹Short Life Summary, 98.

¹²Short Life Summary, 99.

In June 1947, Zorkin appeared as a witness before the [Canadian] Senate Standing Committee on Immigration and Labour. At the time, Yugoslavs in Canada were raising money to help restore the war-torn economy of their former homeland and hundreds of skilled workers of Yugoslav descent were going there to help. Zorkin deplored this trend. He mentioned favourably recent prohibition in the US of any exodus by "American" Yugoslavs back "home" and urged that Canada reverse the exodus by bringing in many Yugoslav refugees. On arrival it was important, he said, to prevent them from becoming "bait" for communists.

One senator, Arthur Roebuck, found it hard to understand why Yugoslavs from Canada would leave here to enter the "communistic hell" described by Zorkin, who explained that "propaganda from the wrong quarters" would serve to mislead the new arrivals. Another senator, Buchanan, found the "peasant" aspect of Zorkin's title strange in Canada where virtually no Croatian immigrants worked on farms. Most had gone into mines or industry, despite a peasant background. Zorkin's reply, that these people would go back to farming once they had saved money to buy land, was unconvincing.¹³

A month later, Zorkin, now in Washington D.C., told the House Un-American Activities Committee, in two secret sessions about Tito's diplomatic fifth column and its agents in the US. He claimed to remain under subpoena by that committee. At the time, he briefly represented the Croatian People's Party on the "International Peasant Union" in Washington.

Zorkin became a Canadian citizen thanks to a special Order-in-Council (PC 881) dated 2 March 1948. (By then he was living at Nanaimo on Vancouver Island.) In the Order, Zorkin is described as follows:

Dr. Mladen Giunio (Zorkin) — Former Yugoslav citizen, now stateless, 32 years of age, married, who last entered Canada under temporary status in October, 1947, and has now made application for permanent admission. He was married in Canada in November last to an English girl and they have since been making their home in Nanaimo, BC. The record indicates Dr. Giunio for the past fifteen years has been one of the leaders of the Croatian Peasant Society, engaged particularly in combatting communism. He was for a time Attaché to the Yugoslav Embassy in London, and also a member of the War Crimes Commission, but resigned for political

¹³The Senate Standing Committee on Immigration heard 60 verbal and written briefs in April and June 1947, but in the *Labour Gazette* of August 1947, only fifteen individuals who presented briefs are mentioned by name. Zorkin is not among them. (See *Labour Gazette*, August 1947, 111.)

reasons in 1946. He then visited various cities in Canada and the United States on a lecture tour, also appearing before the Committee on Un-American Activities in Washington where it was stated he was of material assistance in the investigation of subversive movements in the United States. He would now like to make his permanent home in this country with his wife and the settlement arrangements appear satisfactory.¹⁴

It is apparent that Zorkin had acquired powerful friends in a few short years. It is not your run-of-the-mill professional Croatian "peasant," who, having been wounded and captured on the field of battle in 1941 by Germans, escapes to an Italian-controlled area and using his father's law office as cover, engages in underground activities for the Croatian Peasant Party. Nor is it usual for such a person, after a second wounding, to be sent to the key Allied base at Bari for treatment and to complete "several missions with the OSS." Still less usual was a transfer for three months to the Allied Military Headquarters in Italy at Caserta where he was "employed as a translator, interpreter and intelligence officer." And when Supremo General Wilson authorizes a flight (in a US plane) so that Zorkin can meet the Yugoslav prime minister in London for another assignment — one may be excused for concluding that Zorkin had become a darling of the OSS-CIA. A lecture tour in North America to further the anti-communist cause, and an appearance before a Senate Committee to urge major changes in the Canadian government's immigration policy are also suggestive of strong right-wing American support for a trusted agent.

A final piece of evidence, if one is needed, came in March 1948; it is the fast response by the BC Attorney General's Department to charge Vitkovich with the unusual and serious offence of criminal libel when he dared to speak out against Zorkin who himself had not complained to the police about the libel.¹⁵

Criminal libel is such an unusual charge that one of two defences is allowed. One is the usual plea "not guilty." It was useless for Vitkovich because a prosecutor only had to prove three things to win a conviction:

— Vitkovich's authorship of the letter. As it was in his own handwriting, this was easy;

— The fact that it was sent to one of more other people — also easy;

¹⁴P.C. 881, 2 March 1948, NAC, RG 76, Vol. 2001. Zorkin is No. 30, 53.

¹⁵Official Transcript of preliminary hearing, 77 and 78.

— The gravely derogatory accusation of “Ustasa.” Any professor with knowledge of recent Yugoslav history could give evidence as to just how severe a criticism the word implies. A verdict of “guilty” was assured if there was a simple plea of “not guilty.” Only with an abject apology (not something that Vitkovich could stomach) might he perhaps avoid a long jail term.

The second defence, unique in criminal law, is a plea of “justification.” The Marquess of Queensbury had used it in the Oscar Wilde case. This technical term means that if Vitkovich said, “Yes, I wrote the letter and sent it out, *and what it says about Zorkin is true,*” then Vitkovich would be acquitted if the jury accepted this evidence. The key to the success of this plea was being able to prove that Zorkin had indeed been an Ustasa.

I explained the two options to Vitkovich. Being a fighter, he decided on “justification.” The key problem, of course, was how to prove that Zorkin had indeed been an “Ustasa.” This required witnesses who knew Zorkin at the time and could describe, credibly, any close links he might have had with the Ustasa. There were, at this time, many expatriate Yugoslavs living in London, England. I wrote to a firm of solicitors there explaining the situation and asking for their help. They reported that four men had been interviewed who could give the necessary evidence against Zorkin. Vitkovich then made his formal plea of “justification.”

Arrangements were made to have the evidence of these four men taken in London, along with counter-evidence that the prosecution was entitled to call, and did. The trial was set for mid-October 1948, at Nanaimo. Mr. Justice Alex Manson would preside. Frank Cunliffe was the prosecutor. John Burton and I were defence counsel. The evidence taken in London arrived in good time and was eagerly studied. Frankly, it was disappointing because no clear picture emerged of Zorkin as a card-carrying Ustasa, although there were facts on which such an inference could be drawn. We would have to face the jury, relying on Zorkin making a damaging admission under cross examination (an unlikely event) or on the jury’s ability to perceive the huge difference between Zorkin and Vitkovich: who was more credible?

After several hot and heavy days in court, we lost. The jury found Vitkovich guilty. It remained for me to speak in favour of a mild sentence. This was a subject about which Alex Manson knew very little. Not without reason did people refer to him as “the hanging judge.” However, I did have Field Marshall Montgomery’s letter. I read it out in open court. Manson was

visibly angry. He sentenced Vitkovich to six months in jail and then called me into his private chambers.

There Manson, whose dislike of Englishmen was notorious, vented his anger against "that God-damned Englishman," that is, Montgomery. "If it hadn't been for that, I'd have given that Commie client of yours a year." Then, as an afterthought, he added: "Don't let it happen again." I restrained myself from saying, "I'm not too likely to have another Field Marshall's letter to read in court."

As for Monty's letter, I had filed it in court, but years later when I went to get a copy of it, the letter had disappeared for no apparent reason.

I always had an uneasy feeling about the Vitkovich case and in particular, the court hearing and the events that preceded it. Some doubts about it kept arising but I could never pin them down. All I could say to myself was that the case did not "smell" right.

Not until 1981 did I find out why. I was doing research at the British Columbia Provincial Archives in Victoria. There I was given the Attorney-General's file for the Vitkovich case, and I read it carefully. In the correspondence section I found two letters written before the trial by Judge Manson in Vancouver to prosecutor Cunliffe in Nanaimo. For his part, Cunliffe sent four letters to the judge. The tenor of this correspondence is clear: Judge and prosecutor were speculating on what my defences might be and how to defeat them. In case the reader thinks I am exaggerating this instance of judicial meddling I reproduce all six letters in Appendix 2, which I call "Dear Frank and Dear Alex."

Victory for Zorkin and defeat for Vitkovich seemed very important for Manson and Cunliffe. Do you suppose Uncle Sam may have had some involvement?

APPENDIX I

Short Life Summary of Dr. Mladen Giunio Zorkin

I was born on April 20, 1914 in Kotor, Dalmatia, Croatia, the son of Dr. Silvester Giunio and Zorka Caric Giunio. I studied European languages and culture at Split, Croatia, and I received my Degree as Doctor of Civil, Roman and Canon Law at the University of Zagreb.

In 1939 I started to practice Law as a partner in the law firm of my father. Said firm being established by my grandfather fifty years ago. I was managing director of the firm for two years, as a research officer in the regular Yugoslav army, I immediately took up arms for my country when Yugoslavia entered the war in 1941.

On April 14, 1941 being wounded in Bosnia, I was captured by the Germans and sent to a hospital in Zagreb. From there I escaped, to Split, which was then under Italian occupation.

I am a follower of the peasant movement, the Croatian Peasant Party, lead by Dr. Vladko Matchek, former vice-premier of Yugoslavia at the time of the German attack (who is now living, with his family, in Washington, DC). In September 1941 we started an underground movement for national liberation from Fascist and Nazi occupation. During that time I took active part in these underground actions. It was at this time that I began to use the name of Zorkin, signing all political bulletins, documents and military orders for our underground movement.

After the capitulation of Italy in September, 1943, under pressure from London and Washington and their allied military headquarters at Algiers, we were obliged to sign an agreement with Tito's representative recognizing Tito as the supreme commander in Yugoslavia. I signed that agreement in the name of the Croatian Peasant Party of Dalmatia, under which agreement the peasant fighters, which numbered about 40,000, joined Tito's army.

I held the rank of Captain in Tito's army. Soon thereafter, in defense of Split against the Germans, I was again wounded and transferred by way of the Dalmatian Islands, to an allied hospital in Bari, Italy. In Italy, unable to continue further active military duties due to my injuries, I was approached to join Tito's movement in a political capacity. The intent of this program was to destroy democracy and replace it with communistic dictatorship by the persecution of the Croatian Peasant Party leaders. I, naturally, refused any part of Tito or his communistic policy.

During 1944 I was in constant touch with the Allied Force Headquarters in Italy, working toward the common war effort, where I completed several missions with the O.S.S. in Bari, Italy. Finally, on September 27, 1944, by command of General Wilson I was instructed to fly to London, England, to accomplish an assigned mission. (Allied Force Headquarters, File No. AG 091.714/005/9-27027)

I landed on October 8, 1944 in United Kingdom under the clause "Landed Unconditionally." (Certificate of Registration No. 1144078, issued at 10, Piccadilly, London, England.)

In October, 1944, Dr. Ivan Subasic, then Prime Minister of the Yugoslav government in London, appointed me as a diplomat to the War Crime Commission in London. Dr. Ivan Subasic, a few months later signed an agreement with Tito, transferring the constitutional right of the king to Tito's regent.

In May, 1945, when Tito's diplomat came to the London Embassy, I resigned my diplomatic relations, not recognizing Tito's government as the legal authority of my country.

From May, 1945 to May, 1946, I was practising Maritime Law with an English firm, Messrs. Harris & Dixon, 81, Gracechurch Street, E.C.3. London, England.

In the beginning of 1946, I applied for a British Certificate of Identity as a travel document. On March 29, 1946 I obtained this under No. G.30371 from the Immigration Branch, Home Office, 10, Old Bailey, E.C.4. London. I also obtained a British re-entry visa, expiring October 1947. I left with the Immigration Branch of Home Office my Yugoslav diplomatic passport, also left a signed statement renouncing allegiance to the present Yugoslav Government.

In May, 1946, I came to the United States and Canada, invited by various American-Croatian societies, mainly by American-Croatian Republican Peasant Societies, for lecture tours. I visited all the large communities of American-Croatians in the United States and Canada, lecturing as a representative of Dr. Vladko Matchek, leader of the Peasant movement. The purpose of my lectures was to explain the way of communistic infiltration in the lives of good citizens, giving examples of the meaning of communistic "democracy," which drive to complete enslavement. I was stressing mainly the activities of Tito's diplomats, who are helping considerably to impress Americans and Canadians of Slav descent to become the dupes of Moscow.

On June 24, 1947, as Secretary of the Supreme Committee of the Croatian Peasant Society, I appeared before the Senate of Canada, "Standing Committee on Immigration and Labour," about the communistic organized exodus of Yugoslavs from Canada.

In July, 1947, I was invited (and later subpoenaed) by the Committee of Un-American Activities of the House of Representatives of the Congress of the United States of America, and testified, thereof, in two secret hearings about Tito's diplomatic Fifth Column in the United States and their agents. At this time, I am still under subpoena by the congress of the United States.

I am, also, active in the International Peasant Union. From June to August 24, 1947, I was a representative of the Croatian Peasant Party in the International Peasant Union, 3100 Connecticut Avenue, N.W., Washington, D.C. The Central Committee is composed as:

Bulgarian National Agrarian Union: Dr. George K. Dimitrov

Croatian Peasant Party: Dr. Vladko Matchek

Hungarian Smallholders Party: Ferenc Nagy

Rumanian National Peasant Party: Grigore N. Buzesti

Serbian Agrarian Union: Dr. Milan Gavrilovic

Polish Peasant Party: S. Mikolajzyk

On March 2, 1948 the Canadian Government with an "Order in Council" (No. P.C. 881) granted me Canadian immigration.

APPENDIX II

"Dear Frank and Dear Alex"

August 16th. 1949.

Frank Cunliffe, Esq.,
Barrister,
NANAIMO, B.C.

Dear Frank:

Rex v. Vitkovich.

I have the file in this matter. I would appreciate it if you would ask the Registrar to let me have a copy of my Order of the other day and of the particulars as settled and of the final Plea in justification. I have been looking at the Indictment. I note that the allegation is that the alleged libel "was designed to insult." It does not include the other words in Section 317, e.g. "without legal justification or excuse". It does not include the words "likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule". I take it that the latter words were deliberately left out to avoid a charge in the alternative or duality of charges. You might consider and let me have your comment.

There are several defences which might be raised, and I think that at the trial — if not before — I should ask counsel to specify what defences he relies upon. If I know these in advance, it will enable me the better to prepare my charge, and will eliminate perhaps the necessity of referring to several of the sections which follow 317.

I am rather inclined to the view that the indictment should also cover "the accused published the alleged libel knowing the same to be false". If he did, then the penalty is greater than it would otherwise be — see sections 333 and 334 of the Code. It is not easy to handle a charge of defamatory libel and any assistance you can give me, will be much appreciated. I have more time to prepare in the next two weeks than I will have after the 1st of September.

Very truly yours,

A.M. Manson, J.

P.S. Have you looked at R.v.Unwin 1938 1 W.W.R.339? August 20th, 1948'

PERSONAL

The Honourable Mr. Justice A.M. Manson,
Court House,
Vancouver, B.C.

Dear Alex:-

Re: Rex vs. Vitkovich

I received your letter of the 16th instant.

In the original information which I drew, I included the words "without legal justification or excuse". I also alleged that the libel was "likely to injure the reputation of the said Mladen Giunio-Zorkin by exposing him to hatred, contempt

or ridicule" as it seemed to me that was the intention of the libel rather than to insult him.

As you will recall the Crown Brief arrived on the opening day of the Assizes and when I had the chance to study it I was surprised to find the changes to which you have referred.

I have been going to question Alan Maclean about it but it is just one of those things which so far I have not done. However, I have written to him now asking for an explanation and will write you again when I hear from him.

While you might find it of some help if you obtain from Stanton unofficially an indication of the defences upon which he relies, I should not think it would be advisable to ask him officially at the trial. Furthermore you might find it misleading as you will recall the cases which have decided that it is the Judge's duty to put before the jury any defence which might be open on the evidence, and if Stanton omitted to mention any defence which might be open the evidence you might overlook charging the jury on that defence.

As I see it the defence might be any of the following:-

- (1) That the accused did not publish the document complained of.
- (2) That the translation alleged in the indictment is not correct.
- (3) That if he did publish it and it is correctly translated it is not defamatory.
- (4) That the words used do not justify any of the innuendos alleged.
- (5) That the words used were justified under Section 331 in that the matter contained in the document was true and was published for the public benefit at the time it was published.

I do not think the accused should be charged under Section 333 as we have no evidence at the present time that the accused knew the libel to be false. This may come to light at the trial and could then go to the question of punishment. As I see it I could not be prevented from cross-examining the accused as to his knowledge of the falsity merely because the accused was not charged with publishing the libel knowing it to be false, and in my view assuming that it was established that he knew of the falsity of the libel, it would be open for you to take into account in sentencing, and providing you did not exceed the sentence limits set out in section 334. I have doubt, however, whether the accused will go into the witness box at all. In view of the evidence that he did publish the libel, and the praise which he has received from his own communist friends for his having done so, it is inconceivable that he will deny it under oath. As to the translation he is obviously not sufficiently well educated to give evidence on this point. He could not give evidence as to the intention which he used certain words as no one can know what his intention would be except by the words he had used. Consequently the only question on the translation is "what would the words mean to those who read the libel". It is difficult to understand how he can give evidence of Zorkin's activities in Europe as he was not there, except in the Canadian Army, and whatever he may think he knows of the matter must be entirely based on hearsay.

I know if I was defending Vitkovich I would not put him in the box at all. His acceptance of the applause of the Communists for having published the libel, his failure to withdraw and apologise, the possibility that a cross-examination might disclose that he knew the statements made in the libel were false or at any rate were made entirely recklessly as to whether they were truthful or not, and the possibility that he might disclose under cross-examination that he published the libel under orders from higher ups in the Communist Party would in my opinion make him altogether too vulnerable.

There are two points which I would like to draw to your attention. First the Plea of Justification must allege the truth of *all* the allegations contained in the document relied on, *R. v. Molyan* (1860) 19, U.C.Q.B.521. The Plea is one and entire, and an accused who relies upon such a plea must justify every allegation in the publication complained of. If he fails as to any one of these, the verdict must be guilty. *R. v. Newman* (1852) 1. El. & Bl. 268, 558; 22. L.J.Q.B. 156; *R. v. Wilkinson* (1879) 42, U.C.Q.B. 492.

Secondly you will notice in paragraph (c) of the innuendoes it is alleged that the libel was written in the sense of imputing that Zorkin was a member of "the ustasha." Whereas in the Plea of Justification paragraph (a) you will notice that the defence evades that point and does not justify it, alleging that Zorkin was a member of the ustasha, but sets up that it was meant by the term "ustasha" that Zorkin supported or advocated policies of or similar or leading to those of the ustasha. I will contend at the trial that if the innuendo set out in paragraph (c) of that part of the indictment is correct, the accused can only justify by proving that Zorkin was in fact a member of the ustasha and that it is not a valid Plea of Justification to allege that he supported or advocated policies of or similar to or leading to those of the ustasha. That a defendant, to succeed in a Plea of Justification must justify the *precise* imputation complained of, see *Gatley on Libel and Slander*, Second Edition, page 173 and the cases there referred to.

The Order recently made giving liberty to amend the Plea of Justification and directing the accused to give particulars before September 10th, 1948 has been entered today and I have requested the Registrar to forward a copy to you to go in with the rest of the file and this he is doing. The particulars of course had not yet been delivered nor has the Plea of Justification been amended. As soon however, as these items are attended to I will have the Registrar forward his documents to you.

I have seen *Rex vs. Unwin* and I intend to rely on it if the accused at the trial contends this should have been a civil action and is not properly the subject of a criminal proceeding.

Yours truly,

FSC/cc

PERSONAL

August 23rd, 1948.

The Honourable Mr. Justice
A.M. Manson,
Court House,
Vancouver, B.C.

Dear Alex:-

I am now in receipt of word from Mr. Maclean agreeing that the original allegation in the Information against Vitkovich that Zorkin was exposed to hatred, contempt or ridicule is preferable to the present allegation in the indictment that Zorkin was insulted and he suggests that I apply to amend the indictment. Mr. Maclean states that he was away from the office when the indictment was prepared and that he assumed that the draftsman would follow the Information. I shall, therefore, apply at the trial to amend the indictment in this respect and also by alleging that the libel was published without legal justification or excuse.

I am to-day writing Stanton giving him notice accordingly.

Yours truly,

FSC/bb

Vancouver, B.C.,
25th August, 1948.

Frank S. Cunliffe, Esq.,
Barrister, etc.,
Box 116,
Nanaimo, B.C.

Dear Frank:

Re: Rex v Vitkovich

Thanks for yours of the 20th and yours of the 23rd.

I have not been worrying greatly about the fact that the indictment charges that Zorkin was insulted, instead of alleging that the words injured his reputation by exposing him to hatred, contempt or ridicule. The line of distinction there is hardly discernible. I suppose if a man's reputation has been injured by exposing him, etc.,

a jury would probably find that he was insulted. I am, however, concerned that the words 'without legal justification or excuse' are not included and am rather disturbed too, about amending an indictment after a Commission has been taken. You might give some thought to this and look up the authorities as to the result of amending after evidence has been taken on Commission. That there is a right to amend I have no doubt, but the result might be an application to adjourn and to take a further Commission. If any amendment is to be made I think it should be made at the opening of the Assize and then the case can be stood down to the foot of the list if the accused so desires in order to prepare further.

I am very doubtful indeed, whether I could sentence under Section 333 if the indictment does not allege that the accused knew the words to be false. How could I? The jury could not well be asked to bring in a verdict that the accused knew the words to be false if the accused is not specifically so charged. It is quite true that you may have no evidence at the moment that the accused knew the words to be false and yet that may be well established at the trial. It will avail nothing if it is as I see it. There is an authority — I cannot just quote it for the moment — which suggests that there should be two counts in the indictment, one, that the accused knew the words alleged to be false, and a second one, *simpliciter*. I shall probably come across that authority again and shall mention it to you. If there are two counts then it is open to the jury to convict on either.

I appreciate your other references and I shall look them up and if any more relevant ones come to your attention please write me.

This will probably be a 'cause celebre' and in the event of a verdict of guilty there will probably be an appeal. I am anxious that there should be no error found in our handling of the case nor in my charge.

I do not think the accused can get anywhere by contending that a civil action should have been brought instead of a criminal prosecution. The cases give ample illustrations of words which tend to a breach of the peace.

Very truly yours,

A.M. MANSON

PERSONAL

August 26th, 1948

The Honourable Mr. Justice
A.M. Manson,
Court House,
Vancouver, B.C.

Dear Alex:-

I have yours of August 25th.

I did not suggest that you could sentence the accused under Section 333 without a finding that the accused knew the words to be false and without a charge being laid under that Section and I am afraid you must have misunderstood me. If you will refer to my letter of August 20th I said:-

"As I see it I could not be prevented from cross-examining the accused as to his knowledge of the falsity merely because the accused was not charged with publishing the libel knowing it to be false, and in my view assuming that it was established that he knew of the falsity of the libel, it would be open for you to take it into account when sentencing, and providing you did not exceed the sentence limits set out in Section 334".

In an ordinary case I quite agree that it would be good practice to add to the present indictment an allegation that the accused knew the words to be false, in the anticipation that such knowledge might be disclosed at the trial. I look upon this case, however, as being very different from ordinary cases, and I anticipate the accused's friends, when reporting the decision will use every opportunity to camouflage it or distort it in the event of a conviction. If a count is included in the indictment of publishing the libel knowing it was false and if the jury find the accused not guilty on that count but guilty on the other, the accused's friends would immediately publish the half truth that the accused had been found not guilty. I wish to avoid that possibility and I am anxious there should be a clear cut verdict of guilty or not guilty without any distracting side issues or such verdicts.

The Commission has not been executed in London and I have received a transcript of the evidence, but so far have not had an opportunity of reading it all.

If any further points of law or practice should arise I will write you again.

Very truly yours,

FSC/cc

PERSONAL

September 14th, 1948

The Honourable Mr. Justice A.M. Manson,
Court House,
Vancouver, B.C.

My Dear Alex:

Re: Rex vs. Vitkovich

An important question will arise on the trial of this charge as to the right of an accused person to call evidence to contradict the Crown witness on irrelevant matters. Of course the rule is quite clear that one who cross examines on irrelevant matters is bound by the answers he gets and can't contradict them, but I thought you might like to study the authorities on the point.

At the Preliminary Hearing a great deal of time was taken by the Defence Counsel in cross examining the Crown witness Zorkin, upon a host of irrelevant matters. I have now received the transcript of the evidence taken on Commission at London, England, and it would appear that most of the evidence given by the Defence witnesses was directed to contradict the statements made by Zorkin in his cross examination on the Preliminary Hearing. It is of course most unusual to invite a Defence witness to contradict something which a Crown witness has said on a Preliminary Hearing, as of course such Crown witness may not give at the trial the evidence which it is sought to impugn, and he may not even be called. However, there may be some excuse for this where Defence evidence is taken on Commission before the Crown's case goes in at the trial, but in any event the rule as to the cross examiner on irrelevant matters being bound by the answers he gets and not allowed to contradict them must still apply.

I do not know whether you intend looking over the commission evidence before the trial but if you wish to do so you will see what I have in mind. At the moment I shall feel obliged to object to a great deal of the evidence taken from the Defence witnesses in London.

The Defence has filed the Particulars which you ordered to be delivered and I have requested the Registrar to forward them on to you as you have requested.

Yours sincerely,

FSC/cc

Danny and the Man from Headless Valley

In 1953 with the Cold War raging, I took on a case which demonstrated how right-wing authorities in British Columbia were ready to seize any opportunity to discredit the left and the trade union movement. Danny O'Brien, a man in his mid-sixties, had had a great deal of experience as a union activist, and in 1944, was elected as the first president of the British Columbia Federation of Labour. He held the post until 1949. In his prime, he had been an accomplished speaker, both publicly and in private, and was proficient in the art of union negotiation and politicking. His small stature and natty clothes belied a strength of character that enabled him to stand up to the anti-communist crusade in the union movement. This quality did not endear him to the establishment. On a different level, his overfondness for women was a weakness that left him open to attack.

I learned the details of the situation when I read his file, just after a jury had found him guilty of conspiracy to kidnap a woman. (I had not defended him.) My first task was to try to get him a light sentence, then to appeal his conviction.

For more than two years (1950-52), sexagenarian Danny had been involved with a woman much younger than he. She was a wife and mother in her mid-thirties. Her husband was a professional man and they lived in a middle-class area of Vancouver. How she came to meet Danny is not recorded in any documents that I have seen, but despite their age difference, they apparently had a torrid affair, often making love in the family garage in her back yard.

When the woman broke off the relationship, Danny was devastated. Crown witness John Thornton says that in September or October 1952, Danny asked help to win her back. Danny claimed he "couldn't live without her," said Thornton; "If I can't have her I'd just as soon commit suicide!" This created an impression that Danny had or could easily obtain a gun. Thornton concluded that Danny was madly infatuated by the woman to the

point of having a "fixation" on her and was sufficiently alarmed at Danny's mental state to report it to the city prosecutor.

The Crown's only witness of substance against Danny was Walter John Tully, a wild-looking character, who told the court a rambling, disjointed story designed to implicate Danny in a plot with Tully to kidnap the woman and take her to a house where she and Danny would presumably live blissfully together. According to Tully, Danny proposed this bizarre and brutal plan in the hope of reviving a dead love-affair.

Tully claimed to have known Danny for about twenty years in the context of union activity in which Tully was, at most, a bit player. While Danny had served in various important union positions, Tully had been accused by the Woodworkers Union in 1941 of stealing union funds at a northern logging camp. The Woodworkers' Union publicly offered a reward for Tully's arrest, but he was not brought to justice for that alleged crime.

Early in December 1952, Tully unsuccessfully asked Danny (then a union business agent) for a job. Undeterred, he returned a few days later. Danny still had no openings but asked Tully to discuss a personal problem. Over drinks, Danny unburdened himself about the woman who, he complained, had "walked out" after two years of sexual happiness. Danny just had to get her back and wanted help to rent a house and a car and then to kidnap the lady. If the lady did not want to stay, Danny would force her to do so. He promised to pay five hundred dollars for Tully's help.

The "conspirators" visited a suburban town, White Rock, to see about renting a house. However, Tully saw only the postmaster and a real estate man. Neither could offer a house. They both saw O'Brien but neither had any conversation with him. They had the impression that it was Tully rather than O'Brien who wanted the accommodation and who was willing to accept an apartment instead of a house.

Next, Tully told Danny he had a house in the city and showed it to him as they drove past. Danny said it would be "fine." What he did not know until he came to court was that this house was, as Tully said, "imaginary." Tully had never arranged to rent the place and had not even met the owner. Yet Danny paid Tully forty dollars to cover the first month's rent, apparently believing Tully's story that he would get the key in January when the owner left town to go fishing.

Tully's next play was to press Danny for more cash because, as he emphasized, Christmas was nearing. Danny paid one hundred and fifty dollars and promised five hundred more "when you do what I want you to do," said Tully. Early in the new year Danny introduced Tully to a union

official, George Gee, who procured a job for Tully and lent him ten dollars from the union's funds. Although stating that his family was "starving" and that he was "very hard up and wanted a job," Tully never in fact took the work that was offered and never paid back the ten-dollar loan. (This fact prompted lawyer Harry Bray, who represented Danny at the time, to remark, "You don't believe in work, do you?" Tully did not reply.)

After visiting the woman's house in daylight, Danny and Tully fixed the time for the kidnapping, which was to be after dark on a Friday when her husband was out. The date was 9 January 1953. They would lure her out on a pretext and if she did not come, "she was going to be a very sorry girl," or so Tully reported Danny as saying. Tully himself was to stick tape over her mouth and drive to the "imaginary" love nest. If on the way she raised too much fuss, Tully would knock her out.

By this time, Tully, who, as we will see, had no intention of kidnapping anyone, felt he was getting into deep water. After all, he had only been stringing Danny along for the money. As soon as the arrangements for the next Friday had been made, Tully went to see the woman. He claims to have told her that her life was in danger and also explained the situation to her husband. As a result, she, her husband and Tully met in a railway station. They sat near two men who overheard their discussion and who turned out to be Vancouver City detectives. One reported in court that Tully told the woman and her husband that Danny had arranged to kidnap her the next day. Tully also had said that if the kidnapping failed, Danny might kill her and then commit suicide.

It did not take the detectives long to question Tully. Danny was arrested and charged with conspiring with Tully to kidnap the woman. Conspiracy is a crime. It often involves no harmful or violent behaviour because it is only an agreement, albeit a real one, to do an illegal act or to do a legal act in an unlawful way. Once the agreement has been made the crime is complete. No overt action is necessary. In the nature of things, such an agreement is almost always made by word of mouth as conspirators seldom write their scheme down on paper. An exception sometimes occurs in business circles but then the agreement will be carefully guarded in lawyers' vaults.

Three features are noteworthy about any conspiracy:
— it is a charge the Crown will lay as a last resort when the powers that be really want to "get" someone, but cannot prove any overt crime against the victim;

— it must involve at least two people. No one person can enter into a conspiracy with him or herself;

— the Crown may, however, accuse one person of conspiring with another and use the co-conspirator as a witness. This is a situation wide open to abuse by the authorities; for instance, if they wanted to discredit a man and cripple his usefulness in the trade-union movement.

Danny had engaged Harry Bray, a well-respected Vancouver lawyer, who possessed much skill and experience in criminal cases. In early March Danny had his preliminary hearing where Tully presented his story in his confused and confusing way.

As in all preliminary hearings, the evidence is given under oath. The purpose of this hearing is to give the accused person all essentials of the Crown's case, often months before the trial.

One piece of evidence given by a detective was important for the defence. In the conversation between the woman, her husband and Tully, the latter told the couple that he didn't intend to go through with the kidnapping. This was confirmed by Tully himself at the preliminary, when Harry Bray asked four key questions and got four key answers:

Q: You had no intention of going through with this scheme, did you?

A: No

Q: But you did make such an agreement?

A: Yes

Q: But you had no intention of carrying it out?

A: No

Q: You were just fooling him, eh?

A: Yes

These four questions and answers, coupled with another factor to which we will soon come, were the ultimate reasons why I won the case, first in the BC Court of Appeal and then in the Supreme Court of Canada. But I am getting ahead of myself.

After the preliminary hearing, Danny was committed for trial at the spring assizes where twelve jurors under a Supreme Court judge would decide his fate. Before the assizes began, Robert Bonner, the Social Credit attorney general, had appointed Tom Norris as prosecutor. Tom was a big, bluff, hearty type, completely at home as head of the Vancouver Board of Trade and elsewhere on the so-called rubber-chicken circuit, where back-slapping businessmen and lawyers shared a common fear and hatred of

unions. In those days, unions and communism were often equated in business circles. Tom was also inclined to bully anyone he saw as an inferior.

Tom's first, but not his last, embarrassment in the case came when his star witness, Tully, failed to show up at the spring assizes. Tom had to get the case adjourned until the fall assizes. Tully did show up then and repeated his story to the jury. He and a few other Crown witnesses, plus Tom's crocodile tears for the woman (he took on the tone of a big brother, protector of females, even errant ones), won a conviction. Harry Bray's strong and legally correct argument that the judge must tell the jury, "If you believe Tully only pretended to agree to the kidnapping, you must acquit O'Brien," fell on deaf ears.

The judge's name was Davey. He was academic and got confused between an intention to kidnap and an intention to make an agreement to kidnap. Danny was found guilty on 5 October 1953. The four key questions and the four key answers remained on the record. Also on the record was a large body of other evidence that would have justified two findings: first, that Tully only pretended to agree to kidnap the woman; second, that Danny himself never intended to kidnap her.

Danny was not due to be sentenced for a full month, and during that time he dispensed with Mr. Bray's services and retained mine. Although I had been an active labour lawyer, Danny's path and mine had never crossed until then. When I went to see Danny in jail, I met a man as near desperation as I have ever seen one, a pathetic old fellow who looked at least ten years beyond his actual age. No "fight" was left in the once-powerful union leader, and very little hope. He asked me to address the court on the matter of sentence and gave me the names of a few people who might appear as character witnesses. He also asked me to conduct his appeal. He offered me "everything I have left," five hundred dollars. His wife, he said, was glad to see him in jail and there were no friends or relatives on whom he could rely for help. When the \$500 was gone (much of it on bills already incurred, as I found out all too soon), I'd be on my own, handling a tricky case whose parameters had already been carved in stone. Hundreds of hours of hard work, to say nothing of a man's liberty, were involved. One asset I did have, however, was my law partner, Elspeth Munro, a bright young graduate of the University of British Columbia who had come to work for me as an articling student, and was my partner until 1957 when she left to marry and raise a family. After a great deal of agonizing, I decided to take the case.

A lawyer in this position must steer a careful course between childish hyped-up optimism and gloom-laden pessimism. I therefore told Danny, slowly and carefully, that we had a better than 50-50 chance but not much more. Little did I realize at the time that I was being a minor prophet.

My first job was to try to get character witnesses to speak on Danny's behalf in favour of a mild sentence, but few of his acquaintances were willing to do so. I did what I could on sentence day to persuade a grim-faced Justice Davey not to "throw the book" at Danny. I cited the fact that Danny had lived beyond his middle sixties without any kind of criminal record, but I was wasting my breath. Davey imposed a five year sentence, which a great many people in the legal profession (as I later found out), thought was harsh. Indeed, for a sixty-seven year old like Danny, it could have meant "life imprisonment," a cruel punishment for an old man who seemed to me to have been guilty only of foolish behaviour and wild talk, not of plotting a crime.

My partner and I soon got down to preparing the appeal. Going over the evidence, it was clear to me (and I later tried to make it clear to the three appeal court judges) that there had been no conspiracy, and that certain obvious facts had been ignored or brushed aside at the trial:

— It had been in September or October 1952 that Danny asked Crown witness John Thornton for help to get the woman back and bared his innermost feelings about her. Clearly, the woman had ended her love affair before those months. It is then, rather than in December, that kidnapping was most likely to be discussed; that is, at a time when Danny's upset was at its highest pitch.

— Tully was blind in one eye and had no fingers on one hand. The woman, however, was vigorous and in the prime of life. As a man of the world, Danny, himself elderly and small, would surely have chosen as kidnapper a more physically reliable person, strong enough to cope with a desperate woman.

— If Danny had wanted a love-nest in a Vancouver suburb, why did he not speak to the real estate agent or the postmaster when he and Tully were in White Rock? As already mentioned, both men testified that they spoke only to Tully, who seemed at least as much interested in a suite as in a house. This suggests that Danny had paid for a U-drive to help Tully get a place for his own family.

— Danny was so unconcerned about the "imaginary" love-nest found by Tully in Vancouver that he expressed no worry about the absence of the key.

— Through Mr. Gee, Danny helped Tully to get a job. It was some eighty miles outside Vancouver and 7 January 1953 was firmly fixed as the date of this occurrence by reference to union records and the card signed by Tully. A question arises: Why would Danny help to get his co-kidnapper a job out of town at the very time, 9 January that Tully says Danny was pressing him to do the kidnapping job?

— Tully gives five different stories about the money paid, or to be paid, by Danny. From this welter of confusion arises a single solid fact: Tully did not know if the two hundred dollars he received on 20 December was a payment on account of the kidnap job or payment in full for the job, or a loan.

One could go on for a long time trying to make sense out of Tully's yarns. To me, at least, he was a rather stupid con-man who made up his stories as he went along. The only sure thing about his intentions was a determination to get as much money as he could from Danny; but when he turned down the job offered on 7 January, he could expect no more funds from Danny. This explains why he finally resorted to blackmail in the form of a letter in which he demanded more money "or else."

In preparing our appeal, my partner kept saying, "The name Tully rings a bell, but very dimly. I know I've heard something about him." We kept puzzling over this until she said it had something to do with the north. Now a bell rang in my head. Someone had once talked about a tropical valley in the far north.

To make a long story short, we researched back newspapers in the library. We found the answer in an early 1947 story by Pierre Berton, then a young reporter for the *Vancouver Sun*. Tully had been spouting off about a weird and wonderful place he said he had visited up north, the "Headless Valley," where exotic vegetation supposedly flourished. Berton did a thorough interview with Tully which was published in the *Sun* on 7 January 1947. In it Tully told of having gone to the "Headless Valley" under winter conditions with two other men, travelling in a small boat. Around the valley were mountains that looked like volcanoes with hardened lava on their slopes. Glaciers and ice cliffs could be seen. Somewhere in the Valley Tully found, "the virtually decapitated body of a man," also an area of bright-green vegetation in a warm climate. The valley was obscured by mist even though it was up to fifty miles wide. It had a waterfall at least 2,500 feet high.

Having published the story, Berton took a party of five by air and on foot, into the Valleys of the South Nahanni and Flat Rivers, popularly called "Headless." Russ Baker, a famed northern pilot, and his mechanic Ed

Hanratty went along, as did photographer Art Jones and RCMP constable James Reid, whose duty it was to patrol the whole area including "Headless Valley."

The party found that absolutely nothing in Tully's yarn was true — no volcanic peaks or lava, no ice cliffs or glaciers, no area of bright green vegetation, no low-lying mist, no high waterfall. And the valleys were nowhere near fifty miles wide. As for the almost headless body supposedly seen by Tully, Constable Reid said it never existed, nor had Tully (with or without friends) been in the area at all. Reid knew who went into those valleys and who came out.

Pierre Berton, by now editor of *Maclean's* Magazine, concluded that Tully's yarn was a piece of fiction and a "hoax." Berton was kind enough to set out his recollections in the form of a sworn statement which he gave me, in January 1954, a month before Danny's appeal. I was glad to have Berton's statement to convince the prosecution that they had no business trying to use evidence of such an unreliable person as Tully to lop off five years of an old man's freedom. So I sent Berton's affidavit to Solicitor General Robert Bonner. There were no results, except that Bonner named Tom Norris to represent the Crown on the appeal.

Appeals of this kind differ from the public's concept of a court case. No witnesses are called, there is no jury, there is no ranting by lawyers eager for publicity, and there is not one judge but a panel of three to decide the result. Our court sat for three days to consider Danny's appeal. Presiding was Gordon Sloan, the BC Chief Justice, once an Attorney General. He had a well-deserved reputation as a learned man, a quick thinker and a bon vivant. He would not necessarily be unsympathetic to Danny's fondness for his lady friend. A more severe man, but one who sometimes disclosed a sense of humour, was Henry Bird, who had been my special *bête noire* when, back in 1938, I'd fought hard for a union locked in hopeless combat with a New York corporation represented by Mr. Bird. He later succeeded Sloan as Chief Justice. The third judge, Robertson, had practised law in the world of big business and, so far as I could tell, had a pleasant personality, but little knowledge of the lives of working people.

Norris and I battled away with our legal arguments, conducted strictly within the limits of evidence given at the trial and Davey's charge to the jury. The central point, of course, was whether Davey had, or had not, misdirected the jury about Tully's non-intention to kidnap the woman.

As the hearing ended, I was heartened and amused to hear Sloan, in a stage whisper, tell Bird, "This is something out of a musical comedy." His

reaction was completely different than Judge Davey's grimness. Though I knew Robertson was against me, I figured that Sloan and maybe Bird, were on my side.

And so it happened, a month after the hearing, that the appeal was allowed. Danny's conviction was set aside and he was given a new trial.

The decision was made by Sloan and Bird who outvoted Robertson. The essential difference was this: according to the minority, the essence of the crime is an intent by two men to make the agreement to kidnap. Danny was guilty because he and Tully so intended. The majority disagreed. True, the agreement was made, but that is not the main point. There could be no conspiracy unless both men genuinely intended to do the actual kidnapping. It was not enough for them to intend to make the agreement.

Some will see this as hair-splitting. I do not think it is, nor, do I believe, did the Supreme Court of Canada. After all, if a slick con-man goes through all the motions of making an agreement with me to commit a crime, but had no intention of doing that crime, why should I be punished because a jury believes the yarn? Surely the important thing is the intention of both the con-man and myself to commit the actual crime. It's another way of saying that the agreement must be real and not pretended.

Would Danny go free? Not if Norris had his way. His boss, Robert Bonner, was just as much of an anti-union bigot as Norris himself. So it came about that, instead of dropping the charge, Norris was allowed, at public expense, to appeal the decision to the Supreme Court of Canada.

This presented me with severe problems — more hours of work preparing a fully argued case in writing, to give Norris's case a knock-out blow. It also meant a train trip to Ottawa and back. Many hundred of dollars were needed for expenses — and forget fees.

In addition to everything else, I had to fight Bonner to put up a little expense money. After firm refusals, I had to play my last card. With Danny's O.K., I withdrew from the case. That left Danny without counsel to answer a poor case against him because a stingy Attorney General would not even pay expenses, for a pauper who stood defenceless before the highest court in the land — and all because Bonner went along with Tom Norris' lust for a conviction. When the political danger of the situation dawned on Bonner, his deputy wrote and offered a limited amount of some expense money. I was back in the case.

Norris opened his appeal in Ottawa before a panel of five judges on a muggy afternoon in mid-May. He got a very rough ride as he struggled against barbed questions, but I felt that the far-right wing judge, Locke, was

on Norris' side. Next morning he had an easier time. When my turn came I was able to put forward my main arguments, but then Justice Rand (a terror in the eyes of not a few lawyers) hemmed me in: I could succeed or fail on a single point: had Judge Davey been wrong in telling the jury it did not matter if Tully intended to kidnap the woman? I argued that this was indeed an error.

At the end of any normal case the judges usually announce that their decision will be reserved. In this case a very unusual decision came down: two of the judges, Locke and Estey, called for further written argument on a point that had never been raised before at any stage of the case: did it really matter even if Davey had erred in what he told the jury? Then Rand jumped in to raise yet another issue that was brand new: could the Supreme Court hand down a verdict of "attempted conspiracy" against Danny?

To these really unusual requests, I gave the only reply I could think of: I am not prepared to answer them now; let me answer them in writing by a certain date, and let Norris reply to me after that. The court agreed. I had till 5 June to file my reply and Norris had until 12 June. So it was "back to the drawing board."

The notion that Davey's misdirection to the jury could not have altered the jury's decision was negated by Davey himself. In his report to the Court of Appeal, he frankly stated:

"If my direction (to the jury) was wrong ... it might very well ... have decided to acquit." That was the very point raised by Locke and Estey.

Rand's idea of a finding of guilt for "attempted" conspiracy necessitated a painstaking analysis of the evidence. Only then could anyone say either that Danny had either conspired or tried to conspire, to kidnap the woman. After fifteen dreary pages of analysis, I urged the court to see that a great body of evidence negated any intention on the part either of Tully or of Danny either to kidnap or try kidnapping. In the absence of solid evidence, the law is clear: there must be an acquittal.

By mid-June 1954 the case was in the hands of the five judges. While Danny waited nervously in jail (bailing him out had not proved possible), I experienced growing impatience. Finally Justices Taschereau, Rand, Estey, Locke and Fauteux handed down their decision on 21 October. Danny had won by a vote of 3 to 2.

Shortly after the decision was announced I had occasion to call Tom Norris. I asked him how he was feeling. He said, "Fine," and added, "I see you won your case."

"Yes," I said, "I did indeed win it."

"Well, I have at least one consolation." said Norris, "The only two lawyers on that court were on my side."

The majority's decision is simply stated: if it was true that Tully never did intend to kidnap the woman, there was no conspiracy and O'Brien must go free. It was the duty of the jury to decide if Tully was, or was not, lying. The trial judge's error was in taking that function from the jury. The Court of Appeal decision was upheld. O'Brien was entitled to a new trial.¹

After this decision, Bonner had a problem. His star witness had disappeared. Even if Tully showed up, his credibility would be torn to shreds thanks, in part, to Pierre Berton. An Attorney General who uses such a disreputable witness in pursuing a vendetta against an elderly man could well face political flack.

That's probably why I was invited, all expenses paid, to go to Victoria to discuss the O'Brien case with the Deputy Attorney General. He wanted to know if I could offer assurances that if the charge was dropped, Danny would control his urges. "Of course I can't give that assurance," I said, "but I can tell you that O'Brien has aged prematurely and is scared of legal proceedings. I'm sure you and the woman have no reason to worry."

The Attorney General entered a "stay of proceedings." However, the larger purposes of Tom Norris and the right-wing establishment had been served. O'Brien's credibility in high union circles had disappeared. The man himself slipped quietly into obscurity.

¹See *R. vs O'Brien* — (1955) 2DLR 311. headnote.

An American Aggressor

In early 1950, the big Mine-Mill Local #480 at Trail in south-central British Columbia seemed to have an uncertain future. The United Steelworkers of America (USWA), an aggressive right-wing organization (called "Steel" in this chapter) was raiding Local #480. The purpose was to be "certified" to represent the Local's 4000 members who were employed in one of Canada's largest industries, owned (not unexpectedly) by Canadian Pacific Railway Company. Certification would mean not only that Steel had defeated Mine-Mill, but also that the American-sponsored anti-communist hysteria and malice of the day had triumphed over an effective and uncorrupted Canadian union. The power to "certify" lay with the Labour Relations Board of BC.

Raiding can be unprincipled and divisive. It is not unlike a bitterly fought election campaign in which few holds are barred and deliberate misrepresentations and even violence are frequent. Next to outright strikebreaking, raiding is probably the most harmful of all experiences to befall unions. It damages both raiders and victims; it represents a breakdown of all attempts to resolve problems by reason and negotiation. It is a power struggle usually staged for political purposes, led by men with a fervour seldom seen in more positive union activities.

There are, of course, cases in which "raiding" may be justified, as when workers belonging to one union can no longer put up with poor services or corruption and seek another affiliation in order to improve their conditions. Such cases should not be described as raids. They are not deliberately undertaken to gain power or to destroy a political foe. They are, in fact, an expression of workers' determination not to be exploited both by a reactionary union and by an employer. In Local #480's case the raid was totally unjustified. The Local was a direct descendant of the strong, militant Western Federation of Miners (WFM). As long ago as the 1890s this union had confronted the most brutal employers in the mining industry with

considerable success, bringing an element of civilization and culture into mining camps; for example, libraries. In 1917 the WFM local at Trail struck to enforce the eight-hour day but failed partly because its parent body in the US sold it out. The local was unable to carry on, although its achievements lingered in the memory of workers like Ed Pearce, John McPeake, and Arthur ("Slim") Evans. During 1935-38 these men, with friends and colleagues, laboured hard to revive the local, but this time under a new name: the Mine-Mill and Smelterworkers. By 1944 local #480 had won certification.

The employer had remained unchanged through the years. The Consolidated Mining and Smelting Company of Canada Limited ("Cominco"), was CPR's most lucrative branch plant. Manager Selwyn G. Blaylock's empire included not only Trail's smeltermen but some 1,300 miners at Kimberley, 125 miles east of Trail. They belonged to Mine-Mill Local #651, and they worked the richest lead and zinc deposits on earth. The ore went to Trail for smelting.

Blaylock was renowned as a metallurgist, and also as an astute builder of company unions. The one in Trail was called the "Workmens' Cooperative Committee" and pretended to represent the smelterworkers. Organizing a real union in the teeth of Blaylock's opposition was no small achievement. The 1917 experience had shown that behind Blaylock stood Canadian Pacific and, behind it, the federal government. But by 1944, wartime manpower shortages had taken away Cominco's main weapon against unions, the fear of dismissal or lay-offs.

Steel's raid was a direct result of developments in the US. There the Congress of Industrial Organizations had expelled the American branch of Mine-Mill because of its communist leadership. The late 1940s and early 1950s spawned hysteria over alleged communist infiltration of institutions; the "McCarthy era" took its name from a US Republican Senator Joseph McCarthy, who chaired a committee on alleged subversion:

His hectoring, inquisitional methods and ... charging people with 'guilt by association' raged for awhile, until, in the face of mounting national and international criticism, the U.S. Senate passed a vote of censure on him for breach of constitutional privilege.¹

When McCarthy died he was a hopeless alcoholic.

¹See entry for "Joseph McCarthy" in Barry Jones and M.V. Dixon, *The Rutledge Dictionary of People* (New York 1981), 496.

Even enemies admitted that locals #480 and #651 represented their members very effectively. That, in a sense, was the issue. Steel almost always obeyed the wishes of right-wing employers and governments. In right-wing eyes, Mine-Mill was much too effective to survive. That is why Steel wanted to oust the many Mine-Mill leaders in Canada and the US who had been associated with communists, real or imagined. Mine-Mill faced a formidable alliance of opponents: the top leaders of the CIO, the Canadian Congress of Labour (CCL), and even the CCF (now the NDP).

Employers in British Columbia tacitly supported the alliance for a time, if only because its anti-communist aims and rhetoric were similar to their own. In 1947-48 this alliance began to lead a massive, in-house struggle against "reds" in Canada's industrial unions. The International Woodworkers of America (IWA) became a target. So did the Fishermen's Union. Mine-Mill, a union led on both sides of the US border by communists, was another. So too was its senior officer in British Columbia since 1943, Harvey Murphy. He had proudly used his party membership as a credential of honest, militant leadership and had won many devoted supporters who trusted him implicitly. Over time, he lost his right to that trust, as he developed into an autocratic and corrupt leader. Such was his charisma, however, that early signs of the problems were overlooked or excused.

Another potential storm centre was building up. The government of British Columbia was an unstable coalition of Liberals and Conservatives visibly staggering towards defeat after the 1949 election. The CCF under Harold Winch, supported by wealthy Steel, seemed likely to form the next government. That prospect sent anguished shudders through business circles, among them Cominco, which was therefore in a receptive state of mind to consider an anti-CCF alliance with almost anyone. Mine-Mill, for its part, had good cause to fear Steel and its political mentors because for Mine-Mill, as for Cominco, the classic situation was beginning to take shape: the enemy of my enemy is my friend.

In the early 1950s, Steel's way of attacking red-led unions was by direct assault for which careful preparations were made. Then it mounted a raid to capture enough of its victim's members to win certification and thus the right to replace the existing union as bargaining agent. Against this background, Trail was to experience the full fury of a Steel raid backed by the leaders of the CCF and the CCL. Their purpose was to sever Local #480 from its Mine-Mill affiliation and to turn it into a Steel local. It, in turn, would give important help to the Trail candidate for the CCF in the next

provincial election. Local #651 was left alone, probably because Steel felt it would follow the results of the #480 raid.

The first step in Steel's attack on Mine-Mill local #480 was through the CCL. When the local did not respond to pressure to change its officers, the CCL made Mine-Mill a punching bag by suspending it in August 1948, reinstating it two months later, re-suspending it in April 1949 and finally expelling it, with no debate, late in 1949. After analyzing this tangle of events, and their motivations, labour historian Irving Abella castigates the CCL: "In its haste to be rid of left wing unions, [the CCL] sacrificed both justice and truth and succeeded in neither destroying Mine-Mill nor strengthening the Congress."²

Mine-Mill promptly became more troublesome outside the CCL than it had been inside, if only because no fewer than three major union bodies were fighting among themselves to win Mine-Mill's jurisdiction. Abella describes the unseemly quarrelling over control of a still very lively "corpse":

Silby Barrett, who had been in the forefront of much of the opposition to Mine-Mill, maintained that Mine-Mill was obviously in the jurisdiction of his United Mine Workers [coal miners]; Charles Millard, head of the Steelworkers' Union in Canada, argued that Steel was already organizing in the metal mining industry [and should win the prize]; and (Aaron) Mosher (CCL president), felt that the Congress should do the job itself.³

The victor emerged only after CIO headquarters in Washington, DC ordered their representatives in Canada to support the Steel claim.

This was an instructive example of how US-style business unionism operates in Canada. First there was a totally unprincipled decision by the nominally 'Canadian' Congress of Labour (CCL) for illegitimate political reasons, to expel and then dismember its largest purely Canadian affiliate and a founding member.⁴ The CCL then engaged in a brawl with two

²Irving M. Abella, *Nationalism, Communism and Canadian Labour*, (Toronto 1973), 99-110.

³*Ibid.*

⁴In 1948, 72 per cent of all CCL members belonged to CIO unions and were therefore US controlled. In 1949, the figure was down to 67 per cent, but US control was still dominant. The Canadianization of unions in Canada began seriously in the 1960s and progresses well.

US-controlled affiliates to see who would win entitlement to force members out of the organization which was serving them well and into another organization which was really only interested in receiving dues money and putting members under CCF political influence. It is ironic that the US masters finally had to end the brawl by, predictably, selecting their favourite union, which was also one of the least democratic unions.

The decision itself did not end this disgraceful episode. Mine-Mill's executioner, having been chosen, was required to pay a price for the jurisdiction which the CCL had granted to Mine-Mill in 1940. This sordid transaction came to light some years later in an intriguing if somewhat devious way. In late 1949 and early 1950, there were many rumours about the sale of Mine-Mill's jurisdiction to Steel. They did little to enhance the prestige of either the CCL or Steel, but the rumours persisted, to the continuing embarrassment of both organizations. One union officer who did not believe the rumours was Don Gillis, a CCFer who had once headed the big Mine-Mill local #598 in Sudbury, Ontario. He wrote to Donald MacDonald, a senior unionist, pleading, in effect, "Please tell me it isn't true."⁵ The reply must have shocked poor Mr. Gillis.

MacDonald disclosed that in November 1949, Steel asked the CCL for the jurisdiction then held by Mine-Mill. The request was granted on 19 January 1950. MacDonald went on to explain that Steel, in order to sweeten the deal for the CCL, which had lost its own bid for the jurisdiction, offered to make a payment of money. So that the offer might seem a little less crude, it came in the form of a suggestion that the CCL be reimbursed for expenses incurred in organizing workers under Mine-Mill's jurisdiction during the twelve months ending in November 1948. In fact, the CCL had made no effort to organize anyone in the mines and smelters during the one year period in question. Perhaps for that reason, the parties had trouble in ascertaining what amount Steel should pay, but, as MacDonald reported, "eventually it was agreed that the amount of \$50,000 would be repaid to the CCL by the Steelworkers' Union."⁶ Steel thus purchased permission to destroy Mine-Mill and quickly went to work.

On 9 February 1950, more than eighty executive members and shop stewards of Local #480, including its president, R.C. Billingsley, resigned from Mine-Mill and published a full-page advertisement in the *Trail Daily*

⁵MacDonald was later Secretary-Treasurer and then President of the Canadian Labour Congress.

⁶Quoted in *The Fisherman* (Vancouver) 19 May 1971.

Times. "We're staying with CIO-CCL," it said. All these men had, by an oath of loyalty, bound themselves to the Mine-Mill local and to its international, an oath that required them to "practise the principles of fraternity by giving support to our brothers in time of trouble," and to be "faithful and loyal." Even after membership ended, these obligations "shall be preserved inviolate."⁷

The rationalisation of their betrayal of such solemn obligations was offered by Billingsley and his colleagues in this way:

A motion is before the membership to condemn the Canadian Congress of Labour (CCL) and to endorse Mine-Mill policies. If there is a *yes* vote, it will mean severance of relations with CCL ... If the vote goes *no*, it will violate the Mine-Mill constitution and all those voting *no* can be expelled.⁸

To deal with what they claimed to see as a dilemma, these men called on the membership to "stay united with CIO and CCL by joining the United Steelworkers of America." It was an open invitation to break up the existing local and join its rival, which appeared on the scene both as a raider and a practitioner of dual unionism, a cardinal sin among unions.

Harvey Murphy, meanwhile, issued a call to battle:

This is a most disgusting exhibition of treachery in organized labour. Our Union at Trail has agreements and is certified. Steel is going to try and disrupt a union 100 per cent organized. [It] paid CCL \$50,000 for jurisdiction at Trail, but we are not for sale. We're a tough union and we'll take them on.⁹

Reports in the local newspaper featured the presence in Trail of three distinguished personages: William Mahoney, Herbert Gargrave, and Murray Cotterell. Mahoney was one of Canada's resident experts in exorcising communists from unions for his even more fanatical superior, Charles Millard. The latter headed Steel in Canada and was close to Philip Murray, simultaneously president of Steel and of the CIO. Millard has been called a "sanctimonious, psalm-singing hypocrite."¹⁰ Gargrave had been a CCF MLA in British Columbia who, after his defeat in the 1949 provincial

⁷From the local's *Ritual and Officers' Oath*.

⁸From Steel advertisement published in *Trail Times*, 9 February 1950.

⁹From a press release issued 10 February 1950.

¹⁰Abella, *Nationalism*, 107. The reference to hypocrisy was made by Bob Carlin of the CCF.

election, became the CCL's provincial organizer. Cotterell was a senior Steel official and a dedicated anti-communist CCFer.

Within twenty-four hours after the defections, John Gordon, representing the Mine-Mill international at Trail, called a local #480 membership meeting. Mine-Mill members jammed a hall and elected a provisional executive, headed by Al King, Les Walker, Jerry Carter, and J.A. MacDonald. King is a brother of William King, the NDP labour minister in British Columbia from 1972 to 1975. Walker was an expert in workers' compensation problems. Carter was a founding member of Local #480, described as an honest, solid old-timer, respected by all who knew him and outraged by the fact that Steel wanted to destroy a union which had helped workers in Trail so much within so short a time. MacDonald is a son of the magistrate who in 1938 had inveighed against Art Evans' efforts to organize Trail workers on behalf of Mine-Mill.

The next few weeks must have delighted the shareholders of the local Trail newspaper. Steel published numerous large advertisements, the main thrust of which was to create fear, uncertainty, and division in the community. Being unable to attack Mine-Mill's record as a good, fighting union which represented its members well, Steel resorted to innuendo and to anti-communist ploys. For example, it assured everyone that Steel was "a union pledged to serve the interests of the Canadian people," and contrasted its own supposed excellence with a thinly-veiled suggestion that Mine-Mill was disloyal to Canada.

"Don't be *used* by the Communists," was one headline. The text of the advertisement quoted the *Pacific Tribune*, a tabloid close to the Communist Party, as saying, "The atomic products of Chalk River and Trail can be made

Charles Millard is described by Professor Gad Horowitz as: "simultaneously a labour leader, a C.C.F. politician and a determined enemy of communism in the labour movement. There was no conflict among these three goals: each complemented and gave meaning to the others. Millard's goals ... were to strengthen the Steelworkers' Union in particular and the labour movement in general, to build the C.C.F. as the political arm of labour, and to drive the communists from the labour movement.

Each of these goals was pursued not only for its own good but for the sake of others. What was good for Steel and labour was good for the C.C.F. and vice versa; waging war against the communists was good for both. In 1963, the Communist union leader J.B. Salsberg still wondered about the almost religious fervour with which Millard and his union carried on their campaign against communism and for the C.C.F." See, Gad Horowitz, *Canadian Labour in Politics* (Toronto 1968), 86-7.

to serve the interests of humanity, but only if the jackals of big business within the labour movements are decisively ousted. That is why the fight at Mine-Mill is the fight of every trade unionist in Canada." Steel did not even try to answer this argument. Instead, it attempted to induce fear by commenting: "The operations at Trail are vital to the national security of Canada. Now you can see WHY the communists are waging such a desperate battle here. Why is the CP throwing ALL its resources behind the Mine-Mill Union? Ask yourself WHY!! Every loyal Canadian should read the above carefully and judge for himself."¹¹

This kind of argument was common in the early 1950s and misled so many people that a closer examination is worthwhile. Actually, "argument" is the wrong word. Steel's position was not an appeal to any kind of rational process, but rather a pandering to ignorance and prejudice. Its basic proposition was not stated but was inferred as something that everyone was supposed to know: communists were disloyal to Canada and wanted to remain in control of the union so that if war came they could sabotage an important war industry.

A short answer to such propaganda is that far more mundane things than sophisticated foreign policy forays of the American government and its supporters were uppermost in the minds of those who were defending Mine-Mill. I knew this because I worked with most of these men in preparing the union's case against Steel. To them, Steel was an unwanted and unnecessary interloper trying to wreck the results achieved by many respected union leaders after years of hard struggle. To suggest that these builders and those who accepted their leadership were potential saboteurs of their industry and traitors to Canada were insults that they deeply resented.

Lacking Steel's financial strength, Mine-Mill was not lavish with advertisements. It did run a series of broadcasts and published many mimeographed flyers which were distributed by hand. It stressed its own excellent record of defending the workers' interests and berated Steel for a raid that was disrupting the whole community. As the war of words went on, Steel organizers (many called them disorganizers) were urging workers to sign application forms to become members of Steel. Workers were often told, untruthfully, that Mine-Mill was dead and that unless Steel filled the breach there would be no collective agreement with the company. Mine-

¹¹From one of Steel's flyers published in February 1950.

Mill's interest in defeating the raid and Cominco's interest in avoiding a CCF election victory obviously coincided. Many CCF leaders openly exulted in an anticipated winning of the Rossland-Trail legislative seat and claimed to see province-wide success at the next election.

Harvey Murphy, a tactician of considerable skill, was convinced that the company favoured Steel. Barney McGuire, who worked with Murphy as a Mine-Mill organizer for some twenty years starting in 1946, is certain that Murphy sensed a Steel win and decided on a bold initiative. Early in the raid, Murphy went to see Cominco management on a confidential basis. He put a question to these company officials. "When you are bringing in Steel, you are bringing in the CCF. Is that what you want?" Cominco gave its standard reply to all questions involving a preference for one union over another: "We are strictly neutral." It was not an answer that Murphy believed.

McGuire heard Murphy report this event which was openly discussed. Some Mine-Mill officials later used a similar approach to other employers. Murphy also told his colleagues that, "When we get this company to come to its senses, everything will be all right" (that is, Steel will lose and so will the CCF. Murphy added that, for the present, a vote by Trail workers about which union they wanted, must be avoided. Murphy felt that Mine-Mill would lose an early vote.¹²

Murphy's question sparked a sharp debate inside Cominco management circles and within two months they had privately agreed that Cominco had no interest in a Steel victory. Regardless of Murphy's wheeling and dealing, which became common knowledge, Steel felt strong enough on 11 March 1950, to apply to the Labour Relations Board for certification. If Steel won, then Mine-Mill Local #480 would become a memory.

The scene therefore shifted from Trail to Labour Relations Board hearings at Victoria in April. I represented the union with my partner, Elspeth Munro, and with Murphy. Steel was represented by CCfer Alex B. Macdonald.¹³ The board consisted of J.P. Hogg, Chairman, Fred Smeltz, M.F. McIntosh, G.A. Wilkinson, and H. Strange. They were men who approached problems pragmatically. Fortunately, they did not possess the academic brilliance which is so fashionable and so irrelevant among mem-

¹²McGuire's account was given to me in conversations in November 1985.

¹³Alex Macdonald served as Attorney General in the NDP government of David Barrett, 1972-75.

bers of labour boards today. Sadly, too many academics tend to be remote from real life and to have little concern for the problems of ordinary people.

The Board was not immediately concerned whether Steel had signed up a majority of the workers. It wanted to know if Steel had "jurisdiction" over workers in the Trail smelter, which refined lead and zinc. Without "jurisdiction" Steel was not even entitled to ask for certification. That was the Board's first concern. As with all unions, Steel's constitution was the document by which it defined its "jurisdiction," i.e., the geographic and industrial fields in which it is authorized to operate. The Steel constitution mentioned only workers "in and around iron, steel and aluminum [plants] — or ... any other place now under the jurisdiction of the union." The Trail plant certainly did not fit into this definition, so Alex Macdonald had to rely on another clause which gave the international president authority to "interpret the meaning of the constitution." Philip Murray had apparently decided that "iron, steel and aluminum" really meant and included lead and zinc. It was a decision which metallurgists must have found as distressing as did Mine-Mill. So did the Board, for when Macdonald argued that such a constitutional interpretation could validly be made at any point in time, Chairman Hogg's comment was a terse, "Nonsense!"

The Board adjourned the hearings for two weeks before more than a small part of the case was heard. It was still concerned with the issue of Steel's right under its own constitution to invade a lead and zinc smelter. Harvey Murphy commented: "The chairman demanded proof from the steelworkers that their union's constitution allows them ... jurisdiction in the smelter and base metal mines in BC. All they could produce was a telegram from Murray."¹⁴ This telegram, addressed to the Board, had arrived during the adjournment. It is an interesting document, if only because it shows how, in a time of raiding, common sense departs. Steel's constitution clearly limits the area of its jurisdiction, which it defines as "All working men and working women ... employed in and around iron, steel and aluminum manufacturing, processing and fabricating mills and factories."¹⁵ Yet Murray said, "I interpret the words 'employed in and around' as meaning that all workers in metal and allied fields may be organized by the United Steelworkers."

This, of course, is not an interpretation at all. To interpret means to bring out the meaning of something. Murray did not bring out the meaning of

¹⁴From a press release dated 19 April 1950.

¹⁵Article 16, Section I.

words in the constitution: he dragged in "metal and allied fields," thereby rewriting a key clause, which is something that only Steel's convention had power to do, and did in fact do some time later by adding to the union's jurisdiction what had been missing in 1950: "nonferrous metal and allied mines and establishments." The Board's first doubts about Steel's application were thus admitted to have been valid.

For its part, Mine-Mill decided not to use a nitpicking telegram in defence. Instead, hard evidence would be called, mainly from eight rank-and-file witnesses who were known as reliable and knowledgeable. I spent several hours with them to help prepare them to testify. As it turned out, they taught me more about Trail and Mine-Mill than I thought possible.

We collectively decided that these witnesses would establish three things before the Board: first, that Steel did not in fact have a majority of the workers; second, that the raid was conducted dishonestly, with Steel's organizers making untrue statements and generally resorting to every kind of unfair trick to obtain signatures; and third, that the raid divided Trail as a community quite unnecessarily because Mine-Mill had been doing a good job in protecting workers' interests.

All witnesses, apart from acting president Al King and William Stewart of the Boilermakers' Union, were ordinary members of Mine-Mill: Harry Treneman, George P. Lefort, Robert H. Penner, Clarence Bouthelier, Edwin D. Stott, and Robert Ecclestone, all testified. Each had particular knowledge of a section inside the large smelter.

The Board reconvened on the afternoon of 25 April in a quaint old English-style house on a quiet street near the former home of artist Emily Carr. The house had been somewhat altered for use by the provincial Department of Labour, but the one-time drawing-room, complete with fireplace and bay windows, remained. These gracious surroundings were pressed into service as a courtroom.

I acted for Mine-Mill, supported by Ken Smith and Harvey Murphy. Steel had ten representatives present: Two of these were lawyers: Alex Macdonald of Vancouver and Thomas Harris, who had been brought in from Washington, D.C., to reinforce Macdonald; two others were Steel organizers Herbert Gargrave and Penrod Baskin. Murray Cotterell from Ontario was there, as was M. McKenzie, an executive of the CCL. Four of the local Steel men from Trail, led by R.C. Billingsley, also attended.

The atmosphere was tense. It became more so when letters from four important labour bodies were read, asking that no certification be granted without prior payment of initiation fees. This was a blow to Steel, which

had apparently signed up many members at Trail without requiring payments of dues or initiation fees, the normal practice.

Still more tenseness was generated when a request was made by Alex Macdonald that Harris, a US lawyer and therefore not entitled to represent a client in British Columbia, be allowed to make a statement on behalf of none other than Philip Murray. I entered an objection, enquiring why Steel felt it necessary to bring a lawyer from so far away? Were there no lawyers in BC good enough to represent Steel? Was Alex Macdonald himself inadequate? After some discussion among themselves, the board members agreed to hear Harris. Looking back, I am glad they did, for Harris confirmed certain things about the way important US labour bodies conduct their affairs. For example, he mentioned that the CIO, then headed by Murray, had expelled the 84,000-member Mine-Mill International Union for having refused to fire duly elected officers because of their actual or suspected adherence to communism. If a union denies membership to anyone because of his politics, it not only denies him employment, it also denies him a fundamental civil right which unions have traditionally protected: the right of a citizen to enjoy and practise his own or her own brand of politics. It also denies members of the union the right freely to choose their own officers.

On the issue of Steel's jurisdiction, Harris said that US law put no restrictions on the liberty of persons to join unions of their choice (this I found difficult to believe). Because no restrictions existed in US law, and because Steel's constitution set no specific jurisdictional limits (untrue), the scope of Steel's jurisdiction was as wide as Murray might decide to make it. Therefore, Steel possessed a "catch-all" jurisdiction, admittedly "rather remote" from iron, steel and aluminum, but making it free to organize wherever it chose. As Harris put his proposition, "The constitution enables [us] to enrol workers in mines and mills ... because President Murray has so interpreted the constitution." To this, Mine-Mill replied, "What Mr. Harris is saying is that Steel will raid other unions if, as, and when it decides to do so."¹⁶

Thus, in his argument, Harris confirmed the arrogant imperialistic style of Murray's telegram: We'll do what we damn well please. This position was weakened when, under questioning by the Board, he had to admit two facts. One was that Steel's constitution did not precisely define the limits of its jurisdiction; the other, that no proof had been provided that Steel's

¹⁶From a brief filed with the Labour Relations Board, 1 May 1950.

executive had ever waived payment of initiation fees or dues from those workers who signed up at Trail. Such payments were normally a prerequisite for membership in Steel, as in any other union.

When Harris was through with his submission, Al King produced evidence showing that after the raid, 433 workers thought better of having signed up with Steel and notified the employer of their change of mind. Steel had publicly claimed signing up 55 per cent of the workers involved, or 2,200. Reducing the 2,200 figure by 433 would leave Steel in a minority position and therefore ineligible for certification, quite apart from the issue of jurisdiction.

Following King came witness Treneman, a man commonly known as The Colonel. He had an old-English notion of loyalty and propriety and was a small-c conservative. He was a strikingly handsome man, a great raconteur and also a gambler, who saw Trail as a gold-brick town in which a union should get organized by holding lotteries. He spoke in a booming, authoritative voice, which immediately engaged the attention of all within its reach. To judge by the way he spoke, with great clarity, precision, and resonance, he must have received training as a Shakespearean actor.

He had been a major in World War I, but like so many others, had a rough time in the 1930s. In 1940 he had gone to work as a janitor in the Trail smelter. It was to be his last job; unknown to those at the hearing, he was then suffering from an illness that would soon kill him. But that day, Harry Treneman was sharp and bright. He told the Board of his dislike of Steel tactics, particularly their harping on the communist issue and calling a lot of people by that name. He described events during the raid when his shop steward claimed that the workers would lose their collective agreement unless the union stayed within the CIO, and urged Harry to sign up into Steel. Other witnesses had been told the same thing. It was, as Harry Treneman told the shop steward and anyone else within hearing distance, "a bloody lie."

Harris rose to cross-examine the witness. Before he could ask anything, Treneman beckoned him, smiling gently: "Come closer, counsellor, so I can hear you better." Harris edged closer to the witness box, mystified, but drawn by the strange compulsion which Treneman generated. "Closer still, counsellor. I just love all Americans." Harris, completely nonplussed, now stood beside Treneman, who put an arm around Harris's neck, pulling him even closer. Harris's natty little bow tie started to work up and down, reflecting its owner's anxiety. "You know, counsellor, we've got a little poem up here in Canada. I want to recite it just for you."

By now the faces of the two men were very close. Treneman was calm, but Harris' face betrayed increasing agitation. It reddened and his tie jumped more rapidly. Sensing a dramatic moment, everyone in the room watched in dead silence. Then Harry Treneman spoke, in his best stage voice:

Here's to th' American eagle
A great and noble bird;
It flies on high
In the fine blue sky,
And on Canada drops a turd.

Here's to our Canada's future,
She's beautiful, fertile and rich.
We need no turd
From your bloody old bird.
You American son-of-a-bitch!

The room exploded with laughter. Members of the Board did not even try to hide their guffaws. Even some Steel men couldn't resist a chuckle. Macdonald grunted. Harris retreated in total confusion.

For those who may be curious about the characteristics of eagles, one authority states that they are birds of prey, but "have not the bold spirit, the address in attack nor the iron endurance of the true falcons and hence were called 'ignoble hawks.'" As for the American eagle's feeding habits, it can "dive for fish when necessary but it usually picks them dead from the shore or takes the fish from (smaller birds) by force. [It] is, as a rule, hardly energetic enough to capture the quicker birds, but wounded or hurt ducks or game are eagerly picked up. [It] eats offal without compunction."¹⁷ Surely, such a bird is a most appropriate symbol of American imperialism.

When Treneman left the witness box, Steel's big man from Washington was discomfited. All tension was gone. The rest of the hearing presented no difficulties as the five other Mine-Mill witnesses were heard. The Board promised an early decision.

A bulletin issued later that day by Mine-Mill was jubilant. "Steel trickery exposed," it said, claiming that the rank-and-file witnesses had "exposed one of the biggest swindles in the history of the labour movement." Of the unhappy Harris: "The sole contribution made by Thomas E. Harris, one of Steel's experts and a much bally-hooed one at that, was a

¹⁷P.A. Tavener, *Birds of Western Canada*, 2nd ed. (Ottawa 1928), 184, 203.

string of red-baiting. What a waste of money! He admitted that Steel was a catch-all union." And R.C. Billingsley was severely taken to task for his failure to testify despite three invitations from the Board chairman.

A curious sidelight on the raid was the alleged role of the Roman Catholic Church. A one-page flyer circulated by Steel in Trail during the raid, claimed:

The full weight of the Church's authority was thrown behind Canadian organized labour to rid itself of communist control in a fight which is reaching national proportions. His Excellency Gerald Berry, Bishop of Peterborough, urged Catholic Workers to support the International Union of Electrical, Radio and Machine Workers of America (CIO-CCL) against red-controlled unions. In an unprecedented move the Bishop read on New Year's Day a statement recalling the admonition of the Holy Father [Pope], made the previous July, declaring it a duty for all Catholics in his diocese to give their support to the CIO-CCL electrical workers and refuse to support the communist dominated workers. His support is producing good results."¹⁸

Bishop Berry's stand in Peterborough was quoted approvingly by Steel, presumably because in Trail there were considerable numbers of Roman Catholic workers of Italian origin. Some of these workers supported the Christopher Movement, whose aim is "To put men with high Christian ideals into the key positions of labour management. [Such] men are urged to take such positions as to bar the way for subversives or communists."¹⁹

Early in May the Board's decision rejected Steel's application because it "failed to prove that a majority of the employees ... are members in good standing."²⁰ This defeat did not worry Steel, which soon launched a series of ingenious manoeuvres. First, it asked the Board to review its decision. When the request was denied, Steel had one of its members, James Saunders, commence a friendly lawsuit against his own Steel local at Trail. Saunders was represented by T.G. Norris, one of the sturdiest anti-communist lawyers in British Columbia. Alex Macdonald represented the defendant local. Not unnaturally, they were able to agree to put a question to the court for an opinion: was Saunders a member in good standing of the local? The court answered yes.

¹⁸Flyer circulated in Trail by Steel in February 1950.

¹⁹*Ibid.*

²⁰From the Board's formal decision, dated 6 May 1950.

Norris then asked the court to order the Labour Relations Board to reconsider its decision. In March 1952, John Valentine Clyne, then a judge of the Supreme Court and later a notorious tycoon, directed the Board to hear representatives from Steel as to whether it should reconsider its decision. The hearing took place on 16 April. Norris based his case on anti-communism. The courts, he said, had decided that communism is a conspiracy against the state. It was fantastic, he argued, that the Board would not at least order a vote of the workers at Trail to enable them to decide if they wanted to be the agents of "a bunch of communists."

The Board Chairman pointed out that, by law, the union "may be led by anyone," including a communist and the Board rejected Norris' submission for Steel. Nevertheless, in May 1952 a vote was taken. Of 3,998 eligible voters, 3,697 voted, or 92.02 per cent. These were the results:

For mine-Mill	1,949 votes	53.0%
For Steel	1,669 votes	45.4%
For neither	48 votes	1.3%
Spoiled ballots	13	0.3%

The CCF leaders' optimism during the raid turned out to have been justified, for in 1952 that party missed election as the government by only a single seat. Its candidate in Rossland-Trail lost badly, but its main opponent was not the coalition government of the past but a new coalition of Conservatives and a few confused Liberals. It was named Social Credit and was led by a former Tory, W.A.C. Bennett. It won nineteen seats, including Rossland-Trail, to the CCF's eighteen and the old government's eleven. A Steel win in the raid would surely have given the CCF the extra seat it needed to form the government.

Murphy's approach to Cominco almost certainly led to Steel's loss in 1950, though how company influence against Steel was deployed may never be known. What is known, however, is that the success of Murphy's act opened the door to an unhealthy collaboration between himself and other companies whose employees were raided by Steel.

Failure at Trail caused no change in policy for Steel. To that union it was only a small tactical loss. The main strategy of raiding went on. Indeed, Steel's international convention held in May 1950 pledged itself to a programme which would carry out the directive of the CIO to organize the workers in the metal mines, mills, smelters, and factories. To speak of "organizing" workers who were already well organized may sound irration-

al, but in the crazy logic of the Cold War, “anything goes.” So it was with CIO president Murray and its secretary treasurer David J. McDonald. Murray accused large employers (perhaps Cominco was one he had in mind) of endangering the country by dealing with communist-led unions. He thus reflected the precise views of American Secretary of State John Foster Dulles and other right-wing American bigots. The fact that the law of British Columbia required companies to deal with certified unions regardless of the political views of their leaders made no difference to a Murray — or a Dulles.

McDonald also brushed legal considerations aside by attacking the Labour Relations Board for having decided that the workers at Trail were not in good standing with the United Steelworkers of America. The fact that these workers had been misled into signing up and had, in violation of Steel’s own constitution, been “admitted” as members without payment of dues, was of no concern to the man who later became Steel’s president. All that mattered was that “This key defence plant will be wrenched from the grip of the communist machine.”²¹ That was the voice of US imperialism in the field of labour.

These sentiments were echoed by Murray’s puppet in Canada, Charles H. Millard, who announced that his assistant, William Mahoney, was flying direct from the United States to Trail to discuss “action necessary to insure certification.” Millard added that Steel was “in Trail to stay, and that neither the company, the Mine-Mill union, nor the BC [Labour Relations Board] will enjoy a moment’s peace.”²² For many years it was only a hollow threat, but ugly nonetheless. Mine-Mill at Trail was never successfully raided, but it did eventually fall to Steel by internal treachery engineered, in part, by Murphy himself.

This by no means ends the story of Steel versus Mine-Mill, but enough has been told to indicate the harmful things that working people can be induced to do to one another when highly divisive and emotional issues, such as communism or religion, are injected into situations where they really do not belong, by an aggressive, power-hungry group of union leaders.

²¹From a press release issued on 11 May 1950, by Steel from Atlantic City, New Jersey, USA.

²²*Ibid.*

CHAPTER EIGHT

The Sell-Out of Mine-Mill

The story of the 1967 merger of the Mine-Mill and Smelter Workers' Union with the United Steelworkers of America is sad. It is the tale of a political party and several of its leading members who sold out their own declared principles and manipulated an independent Canadian union, which they had done much to create, into a US-affiliated, business union.

I had been counsel for Mine-Mill in British Columbia since 1938. From its earliest days it had been a radical organization, most of whose officers and many of whose members were keenly aware of the exploitative nature of capitalist society. They therefore approached employers and governments militantly, conscious of the justness of their cause, and determined to wrest as much as possible from those they knew to be exploiters.

Few stories about Mine-Mill can be told without reference to the Communist Party of Canada (CPC). For people who were aware of the need for social change, the CPC had been an active participant in a long tradition of left-leaning organizations across the country. Many had originated well before Confederation. Leaders included workers and a few intellectuals and farmers. Some of these groups preferred a cosy sectarianism to involvement in political action that could be harsh.

After the Russian revolution of November 1917, Communist Parties were formed across most of the world. All were strongly influenced by the program and philosophy of the "Party of Lenin." After all, it alone had made the great breakthrough to an economic order thought to be above and beyond capitalism. Those were heady days. The idea that, "If they (the ordinary people of Russia) can do it, why can't we?" took hold in minds and hearts of millions. Canadians were no exception when, in 1921, at a meeting secretly convened in a barn near Guelph, Ontario, the CPC was formed.

It differed from all earlier parties of the left by its insistence on "democratic centralism." In the conditions under which the Revolution was fought and won, the organization leading that revolution could have suc-

ceeded only if it possessed military-type discipline. This was then defined and justified by "democratic centralism." It demanded that decisions of senior Party bodies were binding upon all subordinate bodies and persons in the party. No more debate: just obey! You can argue at the next convention.

This political philosophy made sense in the course of the revolution, followed by a protracted and bitter civil war and international invasions. Troops from fourteen countries, including Canada, attacked the new republic. In Canada, attempts to compare the Russian experience with the Canadian one, and efforts to replace the capitalist order in Canada with government by the working class, when only a small minority felt the need to do this, were unrealistic. Yet the CPC boldly proclaimed its dedication to democratic centralism and ran its own affairs according to that philosophy. After about 70 years it failed. Democratic centralism has no place in Canada. But in the Great Depression, plenty of people preferred the CPC to the new left-of-centre party formed in 1933, the Co-operative Commonwealth Federation (CCF). Many people felt that the CCF was not radical enough to address the serious human needs which became obvious during the Depression.

At the pinnacle of the democratic-centralist system was the Communist International (CI), whose membership consisted of all Communist parties throughout the world. The CI used democratic centralism to control national Communist parties. They were just as much bound to follow CI decisions as were humble, individual party members to obey decisions made by higher party bodies in their own country. So it came to be that in 1935 a major CI decision had direct impact on the CPC. Before that, communist parties had been under instruction to go head to head with the capitalist order. Never mind alliances, especially with social democrats like those in the CCF. But now, word came through from the CI: "Hitler is on the loose; we need all the allies we can get. Go out and organize the largest possible united front against fascism and war. Bring in anyone who wants to help."

This was the well-spring of that remarkable five-year period in our history when we Canadians established a united front against fascism and war. We sent the second largest contingent (per capita) to fight fascism in Spain; only France sent more. We helped China to fight Japanese imperialism, as Dr. Norman Bethune became a hero to millions of Chinese. We built a strong union movement across Canada in the teeth of dire predictions by right-wing US union leaders in Canada. It was in the 1936-40 period that workers in Canada's basic extractive industries (shipping,

lumber, fishing, and metal-mining) were organized. It was something that US-style union leaders had never tried to do, even in good times.

The Canadian Seamen's Union, the International Woodworkers of America, Mine-Mill, and a consortium of fishermen's unions on both coasts, owe their existence to the impetus given by the united front movement. The road to a new social order not only seemed desirable, but within reach. It was an era of solid achievements and credible, if flamboyant leaders. One of these was Harvey Murphy, who cut a great figure as a fearless CPC and union builder in the early 1930s.

When I knew him, Murphy was the dominant leader and political guru of Mine-Mill in western Canada. He had an engaging personality and was an excellent orator. Stocky, running to fat, and balding, he related well to working people, who enjoyed his gravelly-voiced exposés of the greed and stupidity of certain employers and politicians. He seldom failed to poke sardonic fun at the RCMP's harassment of radical organizations and personalities, taking full advantage of the respect in which the CPC was held by many workers. No matter what difficulties Murphy faced, he always seemed to land, cat-like, on his feet. His more than generous ego and a certain foxiness were so noticeable that one could never be quite sure where one stood with Murphy. He died in 1977, ten years after abandoning his support of Canadian unionism and dishonestly, as we shall see, leading Mine-Mill into a merger with US-controlled Steel. The CPC honoured him with memorial services in Toronto and Vancouver.

Harvey Murphy, along with Ken Smith and William Longridge, had invested 62 years of their lives working in Mine-Mill. They had guided it through the difficult Cold War years following World War II. In high spirits, they did battle against raiding attacks by Steel, whose right wing business-unionism they held in contempt. They attributed their frequent successes to the freedom, after 1955, of their union from US control, to its excellent record of serving members' interests, and to democratic control of the union by its members. Its best win against Steel came in 1950-52 when it defeated a massive raid against Local #480 at the big Trail smelter of the CPR. (See Chapter Seven) Throughout their leadership, Murphy, Smith and Longridge had the support of a strong staff and the CPC, to which all three and also some staff members belonged. By any standards, these men were figures of more than passing interest.

A tall, lean man with a good head of hair, Ken Smith, Mine-Mill's president, was a less mercurial, more solid person than Murphy, but not nearly as good a platform man. He had worked in hard rock mines, suffered

from silicosis, and knew at first hand the harsh realities of the lives of miners in that industry. A good man at internal union politics and in-fighting, he and Murphy sometimes came close to blows. It was usually the responsible, sensible, earnest Smith who won out over his flamboyant opponent. Workers respected Smith more than Murphy, but enjoyed Murphy more. Smith, following a stint in Steel after 1967, became Associate Deputy Minister of Labour in British Columbia under the NDP government of Dave Barrett. He retired shortly after Barrett's defeat in 1975 and died in 1984.

An accountant by profession who had never worked in the mining industry, William Longridge was a well-meaning pragmatist, devoted to the same cause as his colleagues. He gave the impression of being more intellectually inclined than Murphy, though not as serious as Smith. Shrewd and opportunistic, Longridge was the most analytical of the three, presenting a case with logic and clarity as he drew on his own considerable knowledge of the Canadian trade union movement. If Longridge had insight, Smith tended to be a reporter of events, while Murphy was more of a lightweight, contenting himself with off-the-cuff thrusts at his opponents. Longridge died in 1983.

For many years these men had publicly asserted that Steel performed poorly as a union, and that it was necessary to free unions in Canada from US control. They had supported an initiative of the Port Colborne, Ontario, local, urging Mine-Mill's independence from US ties, and claimed credit when independence was won in unique and friendly negotiations with "International" headquarters in 1955. The resulting new constitution of Mine-Mill in Canada offered a fine example for other unions, recognizing in writing that the membership of the union in Canada "has distinct and separate national aspirations." Other provisions eliminated any power of the International over its Canadian members. Mine-Mill had become an international union in name only, a refreshing change from the far too common picture of US-dominated unions in Canada in the 1950s.

By early 1966, Murphy and his colleagues had developed a veritable philosophy of Canadian industrial unionism. It was a strong antidote for the kind of authoritarian business-unionism exemplified by Steel, whose policy toward Mine-Mill was simple enough: to gain monopoly control over all workers in Canada's metal mining and smelting industry. As Steel's president, David McDonald proclaimed: "I don't care how we do it, hotly or coldly."¹ Such a statement explains why ruthless raids alternated with calls

¹*Post* (Denver), 5 February 1964.

for a merger of both unions. Out of the dichotomy, Mine-Mill developed its tactics for dealing with the raids and the blandishments. Both were fought on the practical as well as the theoretical level.

Steel had little success until the early 1960s, when it won important victories in both Eastern and Western Canada. Sudbury and Port Colborne, Ontario, were home to Local #598, Mine-Mill's largest. In 1962, its members succumbed to a prolonged and violent raid which Steel won by an inglorious margin of fifteen votes out of 14,103 cast in a rigged election. The fight continued until final defeat late in 1965.² During these difficult years, the national officers under Smith and Longridge gave all the help they could to Local #598 and its leaders Mike Solski and Nels Thibault. Significantly, the latter did not want the participation of Murphy in the struggle at Sudbury and Port Colborne. However, because Mine-Mill had put in such a long and principled struggle in Ontario, a part of Local #598 survived and is today the union of some 1,800 workers in the Falconbridge Mine at Sudbury. Local #598 became an affiliate of the Confederation of Canadian Unions (CCU). In 1993 Local #598 merged with the Canadian Autoworkers (CAW).

During the early 1960s, opposition to Steel in Western Canada was less consistent than in Ontario. In the large mining operations at Thompson, Manitoba (nickel) and Cassiar, B.C. (asbestos), Steel raids met strong resistance, but Mine-Mill finally succumbed, partly because of membership concern over some of Murphy's dealings with employers.

By late 1964, Mine-Mill's membership had been more than halved from its 1960 level. The remaining bases were at Falconbridge in the East, at Trail/Kimberley in the West, and at several mines in the North. But it was still a viable union of some 13,000 and continued to resist Steel. Its three main leaders in the West appeared to remain dedicated to their cause. Nowhere was their public outlook so well expressed as in eight of the nine issues of the union's tabloid in 1966, *Mine Mill Herald*, edited by Murphy.

As 1966 dawned, Mine-Mill confronted a particularly strong call for a merger, this one from a Steel official in Toronto, Larry Sefton. Ken Smith gave the answer of his union's convention: "We reject your proposition for merger. We shall not abandon the traditional position of our union, dating back to more than seventy years, that the workers of this industry have a

²The story is told by Mike Solski and John Smaller in, *Mine Mill: The History of the International Union of Mine, Mill and Smelterworkers in Canada since 1895* (Ottawa 1984).

right to their own union. There is no reason why we should be an adjunct to your union or any other union in an entirely different industry." Smith added that Canadian miners and smelter workers have "distinct and separate national aspirations" and that his union was "determined to protect our Canadian independence and autonomy."³

An editorial written by Murphy called Sefton's proposal a "trap," but favoured an end to raiding plus co-operation between both unions to:

make gains from the employers by uniting around issues... To threaten us with extinction and expect men who are honoured in the community, who have built this industry, to buckle under — well, it shows how little Sefton and his colleagues really know about us. Among the traditions of our union that we hold dear is the democratic processes in our union: local autonomy, the election of officers by referendum and equally important is that officers can be nominated from the floor of the convention. This is the strength of the union and why it was able to stand up in some of the greatest battles in the histories of organized labour.⁴

The editorial poked fun at Sefton and William Mahoney, another Steel official in Toronto, because they would never allow nominations from the floor at their union conventions. It attacked some particularly undemocratic features of Steel's constitution which forced a member wanting to run for high office to be nominated by four locals. This effectively banned any rank-and-file members. To have any hope of election, one had to have a political machine and lots of money. In contrast, said Murphy, "ours is the union that established Canadian autonomy and developed a Canadian constitution and is responsible to the membership in Canada ... [without harming the close bonds] with our brothers in the United States."⁵

Longridge explained the big, underlying issue: why international business-unionism is bad for Canadian union people and for the country at large: "In the big fight to protect Canada's natural resources and to ensure secondary industries which will develop Canada's minerals, the Steel Union, committed to the United States steel monopoly and to the US government policies, cannot and will not act in the best national interest of Canadian workers, because to do so would be to oppose the plans of US monopoly for complete Canadian control."⁶

³*Mine Mill Herald*, January-February 1966.

⁴*Ibid.*

⁵*Ibid.*

⁶*Ibid.*

Longridge threw light on that largest of all Canadian political issues, more acute under a Mulroney government than in 1966: is Canada to be an independent country, master in its own house? Steel answered "No." Mine-Mill answered, "Yes." Referring to Mahoney and Sefton, Longridge wrote:

These people say, let Canada throw away its water resources, empty its mineral storehouse and denude its forest wealth for immediate US dollars. The Mahoneys say that this is what Canadian workers want. I say that this is not the position of Canadian working people. It is the position of politicians who seek to hang onto power on the crest of immediate prosperity; it is the hope of the US corporations, and it is the objective of the US controlled unionists in Canada in their role as the deliverer of Canadian working people to US policies.⁷

For these very reasons, "The fight for Canadian policies [in mining] must be fought for by all Canadian trade unionists. The so called 'international' unions, like the Steel Union, are committed by their very nature and inclinations to a policy of integration."⁸ After August 1966, Murphy wrote nothing more in the *Herald* about such issues, but Smith was as clear as ever:

We are determined ... to maintain our Mine-Mill union in Canada.... The (1966) convention for the umpteenth time confirmed that the workers of the metal mining industry of Canada have a right to their own Canadian based union; we don't need to be an adjunct to the steel industry or to be second class members of the Steel Union, which constitutionally and every way is controlled from the United States of America.⁹

Longridge pursued a related theme. He saw Steel's aggressive raiding as part of a larger picture: "The highly paid Steel officials have another objective — not to force from the boss wage increases, but to tell workers that the only way to get improvements is by raiding, until the Steelworkers' Union is alone in the industry. Then the boss will be scared and the millennium will be at hand."¹⁰ In other words, a policy harmful to Canadian workers because of raiding was also harmful because it went hand in hand

⁷*Ibid.*

⁸*Ibid.*

⁹*Ibid.*

¹⁰*Ibid.*, March 1966.

with a more general subservience to employers. Longridge found it disturbing that Mahoney saw unions as "administrative centres, run by specialists who are paid to deliver gains to workers." (Sometimes, of course, they deliver losses which can be skilfully disguised.)

This kind of business-unionism de-emphasized workers' democratic control and unity, which are their keys to effective unionism. Thus Steel, for all its wealth and power, lacked rank-and-file unity and allegiance. As a result, there are many plants under Steel contracts with low wages and substandard conditions. Longridge put it this way: "Unity and independence of Canadian unionism will provide for more gains for Canadian workers than the glitterings of 'International' treasures."¹¹ He also showed how Steel was weakening the Canadian Labour Congress' campaign against injunctions.

Not being overawed by Steel's glittering treasury, Smith came upon with a new idea. If, after Mine-Mill's big defeat at Sudbury in December 1965, merger with another union was desirable, and if remaining Canadian was also desirable, there was an acceptable "home." It was the Québec-based Confederation of National Trade Unions (CNTU), which was and is a large, militant Canadian entity. In 1966 Smith went to Montréal to make an appeal at a CNTU convention for Mine-Mill's admission to membership.

There has never been a public explanation why such an apparently promising possibility was not followed up, but in a conversation with me in July 1981, Madeleine Parent, a leading unionist and feminist in Québec and Ontario since 1942, explained what happened. She and her husband, Kent Rowley, a respected union activist and a founder of the Confederation of Canadian Unions, attended the CNTU's 1966 convention with Smith and knew what transpired.¹² All the main leaders of the CNTU were sympathetic except Adrian Plourde, the president of CNTU's metallurgical federation, the very group through which Mine-Mill would have to establish its link with the CNTU. M. Plourde was a right winger, who, with a Roman Catholic priest then active on the CNTU executive, blocked the affiliation. If their act did not actually doom Mine-Mill, it certainly helped the plans of certain forces within Mine-Mill centred on some CPC leaders who were already working for a merger with Steel. Parent also told me that M. Plourde later led a breakaway which was harmful to the CNTU. In November 1966, Smith

¹¹*Ibid.*, April 1966.

¹²For a fascinating biography of Rowley and Parent, see Rick Salutin, *The Organizer* (Toronto 1980).

pressed his attack for the last time on continentalism in all its forms.¹³ The *Herald's* final issue in 1966 was silent on all these issues, presaging a complete reversal in policy by the CPC group.

Headlines in the February 1967 *Herald* announced: "*After Eighteen Years of Division, Active Co-operation a Reality in Canadian Metal Mining Industry.*" The story reported a formal agreement between Mine-Mill and Steel, acknowledging that inter-union rivalry helps only the employers, and calling for a climate favourable to "organic unity" between the unions. The parties had, therefore, decided on no more raiding and on developing joint collective bargaining with the employers. They also agreed to co-operate in seeking beneficial legislation. The twister came at the end: the agreement was subject to instantaneous cancellation by either party. No reason was required.

This agreement was similar to one made some time earlier between the US sections of Mine-Mill and Steel, which had preceded their merger. It was obvious that Mine-Mill in Canada had embarked on the same course. Indeed, merger had been in the wind in Canada since at least as early as 21 September 1967, when the Steel convention authorized it.¹⁴ A question of such importance would not go before a convention unless the leaders knew the merger would probably take place. A turn-down would have been very embarrassing. It is clear that, as Smith and Longridge had gone on writing, Murphy had been dealing with Steel before 21 September. Nothing in his character would make that unlikely, and his silence on Canadian unionism after August is suggestive.

The non-raiding agreement signalled the consent of the Communist Party to the merger and the abandonment of years of pursuing a far more positive policy.¹⁵ It also offered Murphy and his colleagues time to accomplish their most difficult task. They now had to engineer an about-face of the long-established, well-respected, and practical course taken by the

¹³ *Mine Mill Herald*, November 1966.

¹⁴ Article I of the merger agreement states: "On behalf of the Steelworkers this merger was authorized by its 13th Constitutional Convention on September 21, 1966, and by its International Executive Board on April 17, 1967."

¹⁵ The New Democratic Party also seeks control of unions, but in a different way than the communists. NDP influence in Steel has been very strong, and it is noteworthy that this American-controlled business-union has no problems with its close support of the NDP, which has sometimes claimed to espouse socialism. The Americans apparently did not take that seriously. They were probably correct.

union under their leadership, and steer it in exactly the opposite direction. They now had to prepare the members to buy a highly distasteful product. Here they were helped by the democratic centralist policy of the CPC. From now on, its members in Mine-Mill, instead of working to defend their organization from raiding and continuing to explain to workers generally the harmful nature of US style business-union practices, began to talk up "unity" and the advantage of joining Steel.

Winning membership approval of the merger included flogging the non-raiding agreement as a victory, which it was not, and "unity." Here the key ploy was a merger contract signed on 27 April 1967, to come into force on 1 July. It called for a special Mine-Mill convention on 23 June to say yes or no to the merger. It also required a referendum vote of the membership on the same issue.

The dates are important. The convention was to start on 23 June. If it approved the merger agreement, then the merger itself would go into effect on 1 July. There was, of course, no time for a referendum between 23 June and 1 July. The whole idea of a referendum was a piece of window dressing. Nevertheless, in August the farce was played out.

To prepare for the convention, Murphy published a "special unity supplement" of the *Herald*. It proclaimed "Merger Means Unity" and offered "Some answers to many questions ... about merger." It was replete with red herrings, half truths, and untruths. To counter a growing integration of the steel and metal mining industries, he advocated a single "united natural resources union." He failed to mention that such a union would involve mergers of many existing organizations, not just in mining but in lumber, fishing, farming, and hosts of other fields. It was a concept far ahead of its time; nothing has been heard of it since.

Murphy claimed that the non-ferrous section of Steel would be the largest part of that union in Canada. That was true. But to infer that ex-Mine-Mill people would have a strong voice in Steel's affairs because of the size of the non-ferrous section, was untrue. Steel's constitution simply did not recognize such a group as having any authority within the union. There was no basis for Murphy's claim that the non-ferrous section "would guarantee a union which would carry forward the continuance of Mine-Mill militancy and principles."

Murphy proclaimed growing militancy and rank and file activity throughout the union movement. In line with this development, which did indeed take place, "great chances" were said to have happened within Steel following the election of new top officers. They, so Murphy said, "want to

make their union democratic," and in bringing into Steel its own fine democratic and militant traditions, Mine-Mill would advance the cause of all labour. That this was a pipe-dream was soon proven. The new president of Steel, I.P. Abel, who was a continentalist, and his colleagues, did nothing to restore the Steel Union as the progressive force envisaged by Murphy. In fact, things got so autocratic under Abel's presidency that in 1976-77 a sizeable revolt occurred.

Stanley Aronowitz, an American author with expertise about Steel's affairs, comments on that union: "In its organizational style, the Steelworkers' Union had come to bear a close resemblance to the old AFL. Its blatant class collaboration rhetoric rankled many."¹⁶ As an example, he mentions I.P. Abel, who "simply gave a more credible veneer to the union bureaucracy, but provided no more sensitive leadership. He began a concerted campaign in 1970 to persuade union members to co-operate with employers to raise productivity. This resulted in substantial layoffs. The union was becoming an instrument of modernization, speedup and labour discipline for the steel industry. Steel was to become almost unique among CIO unions in the absolutism of its bureaucratic methods of operation, its lack of social vision and its fervent anxiety to please the corporate heads of industry. But business unionism, which had seemed so anachronistic in the early years of the CIO, became more common in the post-war era. The patterns of internal bureaucracy and close collaboration with the employers pre-figured a unionism that was to become dominant later on."¹⁷

On the key question of Canadian autonomy, Murphy pretended to see no problem. What issues the union would bargain about with employers, "will be determined in Canada by Canadians." That, coupled with annual policy conferences and the election by referendum of the four top officers in Canada, "guarantees Canadian autonomy in a very practical way."

Murphy based those claims on a clause in the merger agreement which says that internal union conferences will try to achieve maximum bargaining power through "statements on policy objectives."¹⁸ However, the governing

¹⁶ Stanley Aronowitz, *False Promises* (Toronto 1973), 235.

¹⁷ *Ibid.*, 376.

¹⁸ Article V, Section 3, states:

Inasmuch as the fundamental purpose of this agreement is to unite and strengthen the bargaining power of the workers in the non-ferrous metals industry in Canada, the parties agree that steps will be taken through statements on policy objectives at Steelworkers' National Policy Conferences and other necessary conferences, and

document was not the merger agreement but the constitution, which requires the International to sign all collective agreements and also forbids any subordinate body such as a conference, to bind the International without the president's prior consent.

To those who asked whether the merger agreement could be scrapped by a no vote at the convention on the referendum, Murphy said it could. It all seemed so democratic, leaving the final word with a convention and then the membership. But could the process really work? Could the merger be undone? Of course not.

Members were deluged with pre-merger propaganda, but, with one exception, no effective debate against it was allowed. The *Herald*, for example, did not give equal space to both sides. Officers like Les Walker opposed the merger but were silenced by loyalty to the Communist Party's "democratic centralism."

The fact that any merger agreement was contrary to the 'umpteenth' convention decision did not matter to the Party. That is the reason why the union's debate over its own future was mainly a one-sided pitch by the Murphy group. The only organized opposition came from the Falconbridge miners who succeeded in preserving their standing within Local #598.

The miners at Falconbridge chose an independent course, first by voting against the merger and later by bringing a lawsuit against Mine-Mill and Steel.¹⁹ They claimed that because Mine-Mill's all-Canadian constitution of 1955 was silent on the subject of merging, Mine-Mill possessed no authority to sign the merger agreement. They argued that Mine-Mill should first have amended its constitution so as to establish a procedure for merging, rather than plunging ahead as Murphy and his colleagues had done, by first signing a merger agreement, then calling a convention, and

in co-operation with the Non-Ferrous Metals Conference of the Steelworkers, to achieve maximum unity and effectiveness in bargaining.

Article xvii, Sections 1 and 5 of the constitution states:

The international union shall be the contracting party in all collective bargaining agreements and all such agreements shall be signed by the international officers.

No local union or other subordinate body ... shall have the power or authority to represent, act for, commit or bind the international union in any matter except upon express authority have been granted ... by this constitution or in writing by the International President of the Executive Board.

(From the 1972 constitution. These provisions were the same in 1967 and 1977. Quotations from other sections of Steel's constitution are from the 1972 printing.)

¹⁹ *Astgen et al. versus Smith* (1968), 69DLR (2d) 545.

finally holding a referendum. The court upheld this argument and ruled the merger illegal. As a result of this lawsuit, union halls and other properties acquired by Mine-Mill in the Sudbury area over many years were preserved for the Falconbridge Miners, who continue to control Local #598.

The convention, held in Winnipeg on 23 June, was attended by 126 voting delegates plus a few staff members and observers.²⁰ Small by usual standards, it was treated to an oration by Murphy in which he repeated the substance of the merger agreement. He was in top form, a warm, friendly open-hearted guy, full of jokes and good humour, but serious too, swaying a little from side to side as he spoke, and driving points home with a stubby finger. Murphy was a born actor. He was far too good as a salesman.

It would be difficult for any convention to vote "No" after his exhortations. Yet the Falconbridge delegates, whose local had successfully beaten off three Steel raids in 1964-66 and who were strenuously opposed to the merger, saw to it that there was a debate on the real issues. They posed some awkward questions to which there were, and are, no satisfactory answers unless Mine-Mill's long and honourable policy favouring independent Canadian unionism had been a dreadful mistake, unless some vast though undisclosed change in Mine-Mill's situation had suddenly occurred.

The vote taken at the convention as reported in the July *Herald* was 95 to 31 in favour of the merger, a majority of 75 per cent. It served to discourage those who still opposed the merger from voting in the referendum. Even more discouraging was the fact that a week after the convention, all Mine-Millers became members of Steel because the merger agreement had convention approval. In such circumstances, to vote in the referendum for Mine-Mill could only be seen as an exercise in futility. And so it was. About 58 per cent of a possible 13,000 voters turned out. The vote was split, with almost two thirds favouring amalgamation and one third against. It was no landslide for Steel. Had there been a real debate with equal facilities for both sides and with everyone free to speak his or her opinion, in other words, had there been no "democratic centralism," Steel could well have lost.

From late 1966 to early 1967, Smith, Longridge, and Murphy dismantled much of their lives' work. Within a period of months, under Murphy's leadership and manoeuvres, most of Mine-Mill's membership was delivered to Steel. Misrepresenting the facts and stifling effective

²⁰*Steel Labour*, an organ of the Steelworkers for July 1967, reported only 102 delegates.

opposition were the order of the day. Ignoring the Canadian constitution, of which the three had once been so proud, was central to the scheme.

Whether from a union or a political viewpoint, the timing of the merger was mysterious. Mine-Mill had been damaged but not destroyed and could carry on just as the Falconbridge remainder of Local #598 has done. More importantly, a Mine-Mill union that would continue in its own best traditions was riding the wave of the future. In 1966, the union movement in Canada stood at the threshold of a period, during which the power, prestige and membership of the so-called "Internationals" in Canada was permanently eroded. From 1966 to 1986 the proportion of union people in Canada who belong to US unions has declined by 31 per cent. In early 1986 it stood at a mere 39 per cent. More recent departures from US control, such as the Auto Workers, Woodworkers, and Atlantic Fishermen, have reinforced the trend that Mine-Mill once did so much to initiate.

What persuaded Murphy to lead the sell-out of his union, to say nothing of his own often-declared principles?

As a lawyer for Mine-Mill, and sometimes for the man himself, I observed Murphy's behaviour in situations ranging from triumph to defeat. His great flaw, common among those with overweening egos, was opportunism. Barney McGuire, an organizer with almost as much experience in Mine-Mill as Murphy, mentions the latter's power to hire staff, assign duties and dismiss. Since first going to work for Mine-Mill in 1943, Murphy used this power to make sure no potential rival could rise to threaten his position. McGuire claims that at any given time during the 24-year Murphy regime, the union in Western Canada needed two, or at the most, three organizers; however, under Murphy there were more than thirty, most of whom were employed for periods of between three months and three years. McGuire himself lasted longer than most but was fired or laid off and then rehired five times. What seemed to matter was not to get the best organizers and keep them on the job, but to make sure they became no threat to Murphy.

In the last chapter I noted Murphy's approach to the employer at Trail, seeking its support to prevent a Steel win and also the serious possibility of a CCF government in BC. Cominco made its decision. Steel was defeated, as was the CCF. Mine-Mill survived the raid. But at what cost to union principles?

A union leader who goes to an employer for help against another union has severely compromised himself and is on a slippery slope from which escape is difficult. Murphy knew that. He was now to experience it himself,

according to McGuire, as he increasingly sought employer help against raids.

And raids there were aplenty, not only by Steel but by the "Three Way Pact," an alliance of three unions opposing both Steel and Mine-Mill. Instead of mobilizing the membership, Murphy used administrative (or Stalinist) methods and employer assistance to fight the raids. One ploy involved using a loophole in the law which allowed raiding in the eleventh and twelfth months of a collective agreement. Just before the eleventh month began, Murphy would persuade companies to sign a new agreement, with of course, a new eleventh month. Raiding was staved off for another year. The company would exact a fee for its help, usually wage concessions. This had an adverse effect on the loyalty of Mine-Mill's members to their union. Some employers even welcomed raids, leading Murphy to use another administrative device: to demand the firing of members who would not support Mine-Mill.

One such event occurred at Craigmont mine. In 1962 Murphy had signed an agreement with poor wage rates. Membership discontent was quickly exploited by Steel, which sought certification early in 1963. At a Labour Board Hearing, Steel's witnesses had once belonged to Mine-Mill. Murphy later phoned the Mining Association to demand the firing of certain men, including Jim Rabbit, a Social Credit politician. Murphy's end of the conversation was overheard by his room-mate, Dick Vladetich, a life-long miner and a strong supporter of Mine-Mill and Murphy. Vladetich found it hard to believe his own ears, saying that Murphy turned out to be "the biggest disappointment of my life."²¹

In February 1963, Ken Smith took me to a meeting of the Craigmont miners in a last-ditch effort to persuade them to stay with Mine-Mill. I was surprised and saddened by their hostility. Some thought of Mine-Mill as a company union, and said as much. They voted by a large majority for Steel.

McGuire claims that none of the Craigmont men "fingered" by Murphy was fired, because the company knew of Steel's overwhelming support, but recalls cases where Murphy used similar methods against "Three Way Pact" unions and Steel. At Boss Mountain mine there were actual firings; at Cowichan Copper mine, the men accused by Murphy were told by management to revoke their Steel membership applications or be fired; at Kennedy Lake no one was fired because of heavy support for the "Three Way Pact."

²¹ Vladetich made his comments in conversation with me in April 1986 at his home.

These are examples of what can happen when a union leader secretly turns to employers for help against other unions.

Another powerful motive for the merger was the financial gain it brought to three Mine-Mill officers and to fourteen other leaders. Six other employees also benefited. All were put on Steel's payroll and were given status, according to their length of service with Mine-Mill, on Steel's Staff Pension Plan. Murphy, with the longest service of all (more than 24 years), received a proportionately large pension. The list of those 23 who benefitted is attached as Appendix A.

A final question arises: why was Murphy not ousted from his job? Party loyalty was a factor, for Murphy had once cut a great figure as a fearless Party and union builder. As with any "old boy network," when the word goes out that so-and-so is OK, then he must be, and after all, wasn't Murphy the best union orator anywhere? And who in Mine-Mill could replace him? For these and other reasons, he stayed on but the results of his conduct played no small part in the disappearance of Mine-Mill from Western Canada.

In the east, the struggle to preserve Mine-Mill was led by Nels Thibault, Mike Solski, Mike Kopinek, and Roly Methiot. They were stronger than the Murphy leadership, unmercurial, and did not carry his political baggage. They did go down to defeat, except for the part of Local #598 that survives in Falconbridge, but without making self-defeating deals with employers and without an abject surrender to Steel. In this respect their defeat resembles that of the Canadian Seamen's Union which was overwhelmed by impossible odds.²²

Because of this situation, some see Mine-Mill as two different unions, eastern and western. It was only in the west that the very men and CPC who had toiled so arduously for so many years to make Mine-Mill a strong force favouring independent Canadian unionism, cast that policy overboard and embraced its opposite, pretending that Steel had changed, and justifying the sell-out in the name of "unity."

"Unity" is a much overworked term: in different situations it has different meanings. In 1966, Smith, Longridge, and Murphy used "unity" to mean the end to hostilities between the two unions and the beginning of co-operation. The term did not mean "merger," but that changed with the non-raiding pact in February 1967. From then on, "unity" and "merger" became synonymous, meaning the disappearance of Mine-Mill from the

²²See my book *Life and Death of the Canadian Seamen's Union* (Ottawa 1978).

world of Canadian unions into the maw of US control. Despite some early euphoria about Steel and the CIO being radical, both quickly became conservative. That the Mine-Mill union as a whole was challenged and destroyed, partly by outside forces and partly by internal treachery, shows that even the best traditions cannot in themselves prevent the destruction of a strong union.

APPENDIX A

Staff of Mine Mill	Mine Mill Hiring Dates	Total Years & Months of Service 6.30.67
OFFICERS		
Smith, K.A.	1.1.50	17-6
Murphy, Harvey	3.17.43	24-3
Longridge, William	8.7.46	20-11
EXECUTIVE BOARD MEMBERS REGIONAL DIRECTORS, ORGANIZERS AND STAFF		
Benson, Darwin	4.1.65	2-3
Berezowski, William	12.15.60	6-7
Farrell, William	10.1.56	10-9
Hall, William	7.8.57/4.6.64*	4-
Kennedy, William	8.10.43	23-11
Keuhl, James	1.15.61	6-6
King, Albert	1.15.60	7-6
Levert, Edward	1.18.65	2-5
McLaren, Robert	7.1.66	1-
McLeod, Neil	4.1.62	5-3
Ready, Vincent	4.16.66	1-2
Rudychuk, William	11.1.66	-7
Stevenson, R.L.	7.21.55	11-11
Thibault, Nels	1.1.52/4.16.66*	13-8
OTHER EMPLOYEES		
Anderson, Olive	7.1.55	11-11
Cooper, Nancy	1.4.54/3.1.65*	11-5
Greene, Lillian	7.24.61	5-11
Komarechka, Janet	4.1.62	5-3
Seychuk, Florenz	2.9.61	6-5
Solverson, Jean	1.30.67	-5

*a second date is the date of re-employment following temporary layoff

CHAPTER NINE

Again the Family

After our marriage in 1939, Florence's family and mine became increasingly upset because no offspring seemed to be in prospect. One of my aunts in England went so far as to ask if, in the Biblical phrase, Florence was "barren?" Why, I wondered to myself, was potential blame put on the woman rather than the man? In fact, neither of us was barren, but we had privately decided not to have children until I was reasonably sure of not being interned. The RCMP being what it was, someone as closely identified as I was with union people and the left, could not be sure that today's freedom would continue tomorrow; for "union people," in the minds of right-wingers, translated into "communists."

By 1944, however, there had been a sea change in Canada's internal political scenario. In the world of reality, S.T. Wood's 1941 notion of "treachery" had been buried. Canada's enemies had been clearly and correctly identified and were being hotly engaged by a huge alliance that included Canada, Britain, the USSR, and the USA. Arbitrary internments of left-wing people were a thing of the past. Why not start a family?

It has always been for me a matter of great regret that try as I might in the early days of my marriage, I was powerless to eliminate, or even to weaken, the stultifying influence that Agnes had over Florence. In retrospect, some of the notions she acquired from her mother seem bizarrely comical, though they were not so at the time. I suffered from severe tonsillitis, and in Florence's mind, this might bear on my ability to father a child. I had heard of mumps making a man sterile — but tonsillitis? This was clearly an ancient Scottish wives' tale; however, Florence insisted that my tonsils had to go and go they did. As it turned out, by the time I had the operation, Florence was already a month pregnant and her medieval superstition proved wrong. We welcomed our first son, Brian, early in 1945 and our second, Ralph, in 1947. Ten years later our last child and only daughter, Joan, arrived.



Helena and Tom

As mentioned in Chapter Two, Florence had left her job shortly after we got married. My growing practice allowed little time for recreation. A six-day week was standard. Sunday work became frequent. In summer there was a mere two-week break. My only recreation came some evenings when I could indulge my taste for classical music by playing records. Florence became the children's primary caregiver, a task she found difficult.

During those early years of our married life, and for a long time afterward, Agnes carried on as a matriarch, living on into her nineties. When Henry died in 1948, leaving barely a ripple, Agnes sold the house, took an apartment and lived off a small business block given to her by Henry. Florence did the management work free of charge. Claudia, who had married in 1939, distanced herself from her mother. After Agnes and Florence had skilfully steered Ronald away from an exceptionally charming French-Canadian lass, he married a Manitoba girl. They raised four children. Florence and Agnes remained close. For the 45 years I knew her, Agnes never had a single real friend.

More interesting than Agnes was her brother Tom Oliphant, who had plenty of friends. I had met him casually back in the mid-1930s but I was not on a visiting basis until thirty years later. By then he had teamed up with a wealthy American widow whose husband had been a high official of a US steel corporation. I knew her only as Helena.

I always saw Tom as an unusually big, handsome Scot who wore his kilt with verve and who had just as much of an eye for women as they had for him. He had married an Englishwoman early in World War I and served overseas. They had one child, Peter, who was sent to work in deep sea ships at the age of sixteen. Peter became a marine engineer and later a highly skilled aircraft mechanic employed for years by the Boeing Corporation. Tom's wife, so far as I could tell, lived alone and ultimately divorced Tom; but the marriage had effectively ended long before the divorce and even before Tom met Helena.

As you see from their photograph, they were a splendid-looking couple. They lived in a large mansion in Victoria where Florence and I visited them. With an acre or more of garden, it was far too large for an elderly couple, but they seemed to fit well into a baronial setting. They soon moved away to an even larger house in Seattle. The character of their new neighbourhood may be judged from the fact that a next-door neighbour was aircraft manufacturer Boeing.

Uncle Tom pursued many avocations which included stock-broking, car-selling, soldiering, real estate dealing, and dabbling in politics for the

Social Credit Party. Conversation was difficult because, once family matters and the weather had been discussed, there did not seem much left to talk about.

Helena made no provision in her will for Tom. On her death he was, in fact, penniless. Under pressure from Florence, and with some help from Peter, I spent a great deal of time trying to find Tom a home where he could spend his remaining years. I finally located a quiet place near Victoria. Ironically, after his amorous adventures, he found himself in his last years dependent on the kindness of Roman Catholic nuns.

Florence was an unabashed admirer of her "Uncle Tom." I got an occasional chuckle out of some of his escapades, but I never liked the hypocrisy involved in the Leck women's admiration for this man. In the final analysis it is self-deluding and harmful to claim to possess stern rectitude while all the time fawning upon a relative who had no sense of rectitude at all.

During the years when the boys were young, an impossibly heavy work-load became manageable when three newly graduated law students came to work for me between 1946 and 1949. One was Gordon Martin. He left my office not of his own volition or mine, but because he became victim of Cold War hysteria. In the late 1930s he had lived in Trail and supported Mine Mill's drive to organize the smeltermen. Early in World War II he joined the RCAF where latent skills were trained and put to good use as he became an instrument mechanic. Such men were essential to the proper functioning of war planes.

But Gordon was also a proud, self-proclaimed Communist. After receiving his degree from the new law school at the University of British Columbia, I took him on as an "Articling student" (apprentice) for one year. He could then ask to be called to the Bar. Alas, that never happened. Against the best advice offered by friends, including myself, he insisted upon asserting his self-proclaimed "right" to become a lawyer while also remaining on the public record as a Communist. Such a combination was unacceptable to the BC establishment of the day which had bound itself to the "American Way" as proclaimed by US senator Joseph McCarthy. Gordon's cause was strongly supported by civil libertarians, but they were not powerful enough to secure his admission to the bar. That alone makes a person a lawyer. Court challenges designed to win admission resulted only in six solemn judicial pronouncements that remain on the record in British Columbia as monuments to McCarthy-ism and conservatism.

Although Gordon's loss to my office was a severe blow, I was fortunate that the other two students, Elspeth Munro and Harold Dean, joined me as law partners from the late 1940s until 1955.

Thanks to them I had time to take longer summer vacations. Most of these were in BC where the family got to know at least a little about Vancouver Island, the Kootenays, the Dry Belt, the Selkirks, the Cariboo, the Chilcotin, and the Peace River countries. All are exciting. All were then unpolluted. With such a wealth of beauty on one's own doorstep, I could never understand why people wasted time to see what I perceived as a dangerous, polluted, expensive, and uncultured USA, scenically inferior to Canada. Long visits should take one, so I thought, to more culturally mature places such as European countries. And that is where the four of us went for some twenty weeks in 1955. For me, it was a prize for having won the O'Brien case, a chance to meet my two aunts in England and to see many sights that, until my visit, I knew only as place-names on maps.

We travelled both ways by train across Canada, in itself a worth-while experience, and by primitive English steamships across the North Atlantic. Equipped with a cheap but sturdy Morris Minor we drove ten thousand trouble-free miles, about half in the British Isles and half in France, Germany, Switzerland, and Italy. I do not intend to present a travelogue, but I do recall some people and places that, even decades later, are special. One was my aunt Gertrude, dad's younger sister, in her picture-book cottage in a village about an hour west of London. A warm and gentle woman, she was genuinely glad to welcome us and sad to see us leave. I shall never forget the trip with her to Canterbury and its grotesquely beautiful cathedral, loaded with history. The lovely English countryside was a big bonus.

My aunt Winnifred impressed me as a person whose life had been frustrating, but whose strength of character had pulled her through albeit leaving scars that made her seem sad and a bit withdrawn. We enjoyed a picnic with her on the Wiltshire downs, grassy rolling country with vistas to distant horizons.

The charms of England's countryside soon paled as we drove through France and its overpoweringly rich landscape, its towns and grand cathedrals. No wonder that English kings had tried so hard to conquer France! The "sour grapes" reaction of far too many English people who affect to see the French as inferior "frogs" was unacceptable. It expressed an attitude that remains alive, but unwell, in Canada to this day. It could not hide the reality. France, to me, was Canada, diminished in size, but with all the natural wealth and beauty condensed into a smaller space.

Across this wonderful country and then through Switzerland and its far-too-civilized mountains, we drove into northern Italy where we met friends from Vancouver, Kay and Lionel Edwards and their daughter Kathy. He is a genuine Canadian hero of the struggle against fascism in Spain. A hatred of tyranny may have been inborn, because one of Lionel's ancestors, as a member of the House of Commons in England, joined with colleagues in signing the warrant that authorized the beheading of Charles I in 1649.

Our meeting place with the Edwards' had been described to me only as "the beach at Alassio." It turned out to be long, hot and with far too much soft sand, but we ultimately found Lionel snoozing. Kay and Kathy were close by. We all enjoyed the reunion, and for the next few weeks we travelled together as far south as Rome, then back north across the Alps into France and right up the middle of that country till we parted company near Paris. We returned to England as they stayed on in France. We all met again in Scotland.

Some sights are memorable: on a hot Roman night in early July, under a full moon, we sat on bleachers watching an opera, Donizetti's rarely performed *Poliuto*, performed in the open air within the ruins of Emperor Caracalla's Baths. It still moves me to think of that evening: the audience of at least 10,000; the big stage set between two huge pillars of 2,000-year old Roman tile that had once supported a great archway of the baths, now crumbled; the symphony orchestra playing Donizetti as (so I believe) only Italians can; and most amazing of all, the superb acoustics. Every flawless note reached us in the very back row without a single microphone or loud speaker.

Our introduction to Pisa was also impressive. We had been driving all day: and the seven of us wedged with our baggage into the Morris Minor were more than ready for a safe, green haven. As we passed along a high wall the road curved through a gateway, and there, bathed in the light of the setting sun, was that haven, a huge flat lawn upon which stood three buildings, well spaced, all in white marble with much gold trim. First, was a round structure about three stories high, crowned by a dome in red tile, a baptistry. Beyond it stood a much larger building, the cathedral, also crowned in red tile. As we drove closer, it seemed to be perfectly proportioned in and of itself and also in relation to the baptistry and the third structure which, at the greatest distance from ourselves, was a campanile or bell-tower. It had no red tile but it had a pronounced lean to the left. It was the justly famous leaning tower of Pisa. (Some protestant wag, none too fond of Americans, told us that the Hilton Hotel chain had recently bought

the tower, cheap, from the Pope and would soon be opening the world's first "Tiltin' Hilton.")

Bad jokes aside, the three buildings, so perfect in themselves and in their setting, kept us fascinated for several days. We explored all three and, of course, climbed (by an unprotected internal stone stairway) to the top of the tower. The safety precautions, if such they can be called, consisted only of a rusty, rickety iron rail around the top platform. And inside, one could easily fall to one's death from the stairway. The top was flat and lay immediately above the bells. I screwed up my courage enough to crawl to the low side and look down. It was the spot where, according to a guide book, Galileo had conducted experiments.

A short distance up the Po River from Pisa was the city of Florence. Some recollections remain of this cradle of the Renaissance : the city hall's richly decorated foyer; the statues of David and of the rape of four Sabine women; the chapel of the Medicis with Michael Angelo's four marble figures; Dawn and Dusk, Night and Day; the old Bridge (ponte Vecchio); and the Uffizi Gallery with its enormous store of pictorial masterpieces. There was, as they say, much, much more; but in the torrid heat of an early July week, one can only absorb so much. There were days when cold beer was of no use and I had to retreat to the hotel to lie in a cool bath.

When the time came to start our long return journey, we drove north to Milan for a look at the place of execution of the Fascist dictator Mussolini and his mistress and a side-trip to see Leonardo's "Last Supper." Painted on a wall of a monastery dining room, it was in a deplorable state of repair.

Then by way of Turin, we headed west up Mont Genève Pass and across the French border. A green meadow provided a welcome place for rest and a picnic. From the mountain village of Briançon we made our slow way north through the heart of France. Lionel, whose knowledge of French history was considerable, kept pointing out places where, for several centuries the English and French had clashed in the long struggle for control. I felt glad that the French were finally successful. The English have their own "green and pleasant land" and certainly do not need someone else's.

Three special memories remain. One is of the numberless memorials to the *résistance* during World War II; often a simple plaque: "Ici est tombé," followed by the names; then "Ils sont morts pour la France." Far too often the fact of Nazi torture before death is recorded.

In the Valley of the Loire River near Orléans are what surely must be some of world architecture's loveliest buildings on a "human" scale. They

are the Châteaux or castles built as country residences by rich aristocrats. The setting and the proportions, to say nothing of the gardens, are perfect.

The Edwards family was to leave us at Chartres, south of Paris, as we were heading to the Channel and the ferry to England. We spent our last day together touring and admiring the great cathedral with its disparate towers and its magnificent stained glass: another architectural gem. On our way out of town next morning we were moved as we stopped to see an especially large and powerful monument to the *résistance*. From the inscriptions and the protruding clenched fist we gathered that Chartres had been a major French centre of the fight against Naziism and internal reaction.

En route to the Coast we passed several cathedrals all sporting elaborate exterior decorations as part of their stonework and all bearing the scars of war.

Before leaving for England, I should mention our visit to my only relative on the Continent, Ernst ("Boobie") Dieffenbach, my mother's younger brother. He lived in Darmstadt in retirement, after a lifetime of work in the post office. His second wife's severe appearance belied her sense of humour, and despite their nearly total ignorance of English and French, and ours of German, we enjoyed several meals together, interspersed with trips to a nearby castle and to Worms, my mother's birthplace. There we saw the ruins of her parents' home and her father's leather works where equipment for some German soldiers was made. We also saw the cathedral on whose doors Martin Luther had posted up his challenge to the pope in 1517. Since that time the Roman Catholic Church, so I am told, has never been quite the same.

Boobie conveyed, to me at least, two contradictory impressions. One was total ignorance of anything Hitler's government had done that was wrong. But on one point he was very clear indeed: his only son, a doctor, had died on the Eastern Front, the sad victim of a Bolshevik plot. Boobie, I sensed, knew of my curiosity: why was Dr. Dieffenbach in Russia? From his wife's words, a few of which I understood, and her gestures, I am sure she put the question to him. (The doctor had not been her child.) But "answer came there none."

Florence and I concluded that Hitler and Co. must have had a relatively easy time controlling a nation of "Boobies."

We arrived back in London in time for the so called "Empire & Commonwealth Law Conference." It was mainly an occasion for consuming rich food and drink and hob-knobbing with one's elders and, supposedly, betters at receptions. These took place in exalted places: The Lobby of the House of Lords, The Fishmongers' Hall (headquarters of the wealthy owners of the British fishing industry), an Oxford College specializing in law where two out of three years were spent studying the English classics. (It was important, one professor explained, for English lawyers to be masters of their language; any such master could then learn law in the third year. I have always thought that he had a good point.) There was also a visit to London County Hall, the seat of London's municipal government. Years later, Margaret Thatcher rubbed it out: it had been "labour" far too long for her liking.

The show-piece, however, was the Lord Mayor's banquet in "The City" where the capitalists were supreme. Even a reigning monarch could not enter this most holy square mile without permission of the Lord Mayor. Each place at the tables was set with many knives, forks, spoons, plates, and glasses. Each course had its own wine, poured by skilled waiters who never tolerated an empty glass. Neighbours at our table were not too interested in "colonials." We were glad if only because their conversations as we overheard them, were not enthralling, being mainly about stock prices and bedroom capers of a few naughty aristocrats.

At last the main speaker was announced: Anthony Eden, the Tory Prime Minister, who said little of substance and whose upper-class jokes I soon forgot. But his magisterial appearance and his skill in speaking well, despite prominent buck-teeth, remain in my memory. Then it was back to our humble apartment near the British Museum.

Short of writing a whole book about them, our adventures from July to September cannot be described in any detail. I do recall with special pleasure our visit with my old friend Gordon Gray in Manchester and our rambles along Roman roads in moorland country. I also remember our long tour through Western and Northern Scotland's severe landscapes which, some say, are more like moonscapes. A final week at Edinburgh where we met the Edwards family again, saw the famed military tattoo and took the train for our ship to Montréal.

The vessel, of 20,000 tons, was relatively new but was no match for a three day battle in mid-Atlantic with the tail-end of a hurricane. The ship was grossly uncomfortable inside, and outside. The fury of the gale and the mountainous waves were frightening. Have you ever seen a wave higher

than the ship's mast with tons of spume blowing off the top? I do not recommend it for people, like myself, who are easily scared.

For some unexplained reason, I was one of very few passengers who wasn't sea-sick, but Florence and the boys had a hard time, though not as hard as two unfortunate passengers who were hurled bodily into walls or furniture and died from broken necks.

The ordeal ended as we passed through the Strait of Belle-Isle. Kay and I, normally unemotional, were moved to sing O Canada. I'll never forget the neat, clean homes along the North Shore of the St. Lawrence. We were home at last!

An ugly welcome, however, awaited us on the dock in Montréal where an RCMP officer insisted that we had attended a peace conference in eastern Europe. It was a lot of nonsense; our only conference (as I told this cop) had been the one in London addressed by Anthony Eden. What he really wanted was to search our luggage for left-wing literature. We had some, to be sure, but diverted him by explaining that those heavy ruck-sacks were filled with the boys' school books, which was partly true; did he really want to check out school books? He hummed and hawed but decided "No."

By late September we were home again and I was back in the office where things were in good shape business-wise. But the firm dissolved to permit Elspeth Munro to marry. Harold Dean and I, to my surprise and disappointment, did not get on well and by year's end I was on my own, having to rebuild a practice. It was not as difficult as I had feared and I was glad when a bright young man, Glen Buckley, joined me in a partnership that lasted for a long time.

The character of my practice was changing, just as the labour law system was itself changing. Union issues, once so stark — win recognition and live, lose it and die — were now entering a phase of sophisticated complexity in which several trends are noteworthy. One is the on-going encrusting of what is fundamentally a simple process, called "collective bargaining." Bargaining must by law be conducted in good faith. This is a cornerstone of modern labour law. Originally seen as a straightforward procedure whereby employer and union representatives meet, identify areas of agreement and dispute, and reach a point where decisions are taken either to settle, or to start a strike or lockout. It is vital to understand that direct, simple bargaining permits a union to deploy its full strength effectively. Diversions drain off a union's human and financial resources. Employers

are seldom affected in this way. The last time I was involved in a relatively simple case took place in 1958 when the longshoremen's union won a brief waterfront strike in British Columbia. The union was fairly successful in avoiding intervention by parties not directly involved. It was a major factor in the victory.

Nevertheless, the forces against effective collective bargaining were gathering strength: conciliation, mediation, arbitration (sometimes of only a single issue), and court cases, to say nothing of back-to-work legislation, were all used singly or in combination. All have the basic purpose of delaying and obfuscating the bargaining process. Unions are compelled to hire an array of experts including accountants, lawyers, actuaries, and economists. With each expert, costs go up; so do union dues; and so also does the separation of the union's members from having a direct voice in their own vital business, that is deciding the conditions under which they earn their living. Union members feel under pressure to do what the experts say. This cuts them off from meaningful participation in union affairs. This can lead to bureaucracy and even corruption. Finally, a situation can develop when, in a House of Commons that once supported collective bargaining, a pudgy Gilles Loiselle on behalf of a Mulroney government was trying to trash the collective bargaining rights of a 100,000 federal employees in late 1991.

As I have mentioned, an effective shortcut back to real collective bargaining would be to permit strikes during the term of all collective agreements. There is nothing like the real possibility of a strike to encourage employers to bargain in good faith.

My family's next major trip came in July 1965. Brian was then 20, Ralph 18, and Joan 8. This time our destinations were in Eastern Europe. A long, dull flight in a propeller-driven plane took us to a frigid United Kingdom. We happily left London aboard a new Russian liner which called at ports in Norway, Sweden, and Finland before docking at Leningrad, as it then was.

There we came under the wing of a university student employed by "Intourist." She took us to the Astoria Hotel, early 20th century vintage, and told us of Adolf Hitler's plan to level Leningrad except only for the Astoria where a German victory banquet was to be served. In May 1945, so the student said, there was indeed a victory banquet at the Astoria, but Hitler was not there. He had just committed suicide in a Berlin bunker.

Intourist introduced us to a pleasant middle-aged woman who was a professor of English at a local university. We and she related well. She arranged for us to visit two places of great historic interest, "The Smolny Institute" and "The Treasury."

In prerevolutionary days Smolny was a school for daughters of the aristocracy. In 1917 it became the headquarters of the Petrograd Soviet which, under the direction of V.I. Lenin and Leon Trotsky led the socialist revolution to victory. The slogan "Peace, Bread, Land," perfectly attuned to popular feelings played an important part. We were shown the small, spartan room where, so we were told, Lenin worked and slept. We were also shown into the school auditorium where Lenin addressed the Second All-Russian Soviet of Workers' and Soldiers' Deputies. His opening words were heard beyond Russia: "We shall now proceed to construct the Socialist Order."

When we saw it, Smolny looked much like any large high school. During World War II it was headquarters for the defence of Leningrad where 600,000 men, women, and children perished from belligerent activity, mainly famine. For 900 days the city had been cut off from rail and road contact with the rest of the country. Survival was little short of miraculous.

We saw the immense cemetery where the victims sleep. Granite stones are in place on mass graves, with 1941, 1942 and 1943 engraved but no names. Overlooking the cemetery is the huge bronze figure of Mother Russia. In her arms she is holding out the body of a dead child as if offering it to the whole country.

"The Treasury" is an enclosed place inside the Hermitage Museum, formerly the Winter Palace. Special articles of jewellery are there. The one I remember best was a set of earrings made of gold. The guide explained that, some 4000 years before Christ, Scythians who live in Southern Russia, were noted for exceptional skill as crafts people. They had made the golden earrings. No longer than three cm the earrings would have hung from the lobes of a woman's ears, just as modern earrings do. The amazing thing about these ancient pieces of jewellery could only be seen through a strong magnifying glass. It showed the main pendant as a globe made up, hundreds upon hundreds of threads of gold, crossing and recrossing each other in intricate patterns. At many crossing-points is a thin golden "blob" on which appear intricate designs, all different. The individual threads, the guide said,

were far smaller in diameter than a human hair. Czars had been fascinated by these wonderful works of art and did what they could to have them reproduced. Europe's most honoured jewellers were canvassed. After inspecting the earrings, the experts confessed their inability to copy these masterworks. The art of producing gold threads so tiny as the Scythians once did, had apparently been lost.

Other adventures awaited us. Joan began to run a high temperature and the Intourist people soon sent a chest specialist. Pneumonia was diagnosed. Joan was nursed by relays of doctors, night and day, for more than a week. Each doctor impressed me as kind and competent. Each was a woman in her middle years. Each seemed pleased to have helped our daughter back to health.

Hardly had this happened when our big evening in Leningrad arrived. We had tickets to Swan Lake. At dinner Brian became ill. Intourist called an ambulance. I helped him into it but could get no idea of what was wrong. The rest of us went to the theatre where I heard Tchaikovsky's music played and the ballet danced as I had never thought possible. When we got back to the Astoria, Intourist told us that Brian was recovering in hospital from the removal of his appendix. It had been an emergency procedure.

Next day we visited him. He was sitting up in bed, eating what looked like beef stew, happy to have as his neighbour in the ward a young English-speaking engineer from India. It was kind of the medical staff to put together two people who spoke the same language. Later Brian told us that, under a local anaesthetic, he had watched the surgery.

Florence and Joan stayed on in Leningrad to support Brian, while Ralph and I went by night train to Moscow. Our cabin had four berths, two for us and two occupied by women who were complete strangers, an accepted way of travelling in Russia.

In a late night walk across Red Square, I looked forward to hearing midnight being boomed out by the Kremlin clock, imagining it to be more "masculine" than London's *Big Ben*. I was pleasantly surprised that the Moscow clock was low-key and musical. In general, I found Moscow a less compatible city than Leningrad. It was bigger, busier, and much less relaxed, but swimming pools, ballet theatres, cinemas and libraries were plentiful. And the Kremlin is a treasure house of architecture, works of art, various modern facilities, flower beds and, of all things, acres of apple trees in the ample grounds.

Before long Brian and the others reached Moscow, and we did the tourist circuits that included a Romanian and a Russian ballet, but not the Bolshoi. Without enough time to digest Moscow properly we had to leave. The train took us through Warsaw, Berlin, and finally to a filthy Belgian ferry for England. A few days later we were back at home.

In light of these shared experiences, the reader might take for granted that Florence and I were a happily married couple with well adjusted children. The appearance of a normal marriage was there but the sense of intimacy that we once possessed had eroded. My needs were simply incompatible with her wishes. Just as I saw her as more and more coldly indifferent, so, I am sure, she saw me as grossly demanding. Discussion was fruitless, as also was a trip to a psychiatrist. We existed on two different levels.

Part of the problem may have been associated with the difficult childbirth Florence experienced in 1947 when Ralph was born feet-first. The baby was hale and hearty and developed well physically. Florence herself suffered no physical after-effects. Ten years later at age 48 she gave birth to Joan (1957) who was just as healthy as her brothers. Nonetheless the mode of Ralph's birth must have preyed on Florence's mind as she described it far too often to family members and friends. I am no student of psychology, but I have wondered when I look back if this conduct was not a way of expressing fear or dislike of the reproductive processes.

Why did I not seek a divorce? It was a question that my doctor asked. There were two reasons. First was Florence's abhorrence of the social stigma of a separation. Her proud Scottish sense of propriety would not permit this, particularly as she and I had become publicly active in educational affairs. Later she helped to lead the Voice of Women, a peace organization, and I became president of the British Columbia Civil Liberties Association. The second reason arising from these considerations led her to tell me in no uncertain terms: "I'll never give you a divorce." Social appearances, it seemed, were more important to her than domestic realities. As well, "broken homes" were considered more damaging to children than a loveless marriage. I buried myself in work and sought a solid relationship with a compatible woman. But I still think a clean break would have been preferable to the type of home life that Florence and I were leading.

Florence encountered a health problem in 1970 when breast cancer was diagnosed. Radical surgery was the then-in-vogue answer. One breast and many lymphatic glands were removed. For the rest of her life, she lived in

fear that the cancer would flare up. When she died early in 1986, everyone assumed that cancer had been the cause, although the autopsy report indicated a blood clot.

CHAPTER TEN

Rights and Freedoms

I have noted in the first two chapters the powerful influence on my leftward political orientation made by Mr. Diebler's book, by my discussions and reading at Victoria in the winter of 1933-34, by J.S. Woodsworth and by his party's *Regina Manifesto*, to say nothing of Dean Quainton.

More such influences awaited me. After I moved to Vancouver in fall 1934. I lived in a student boarding house near the UBC campus. This was in one of the few periods in the life of the university when even smallish groups of students were searching outside their courses for maturity and culture. They hoped, through discussion and action, to gain a political philosophy above and beyond the standard philistinism of learning only what would be useful to graduates in the "real world out there," that is, the world of capitalists, determined to make lots of money very fast.

George North, later to be editor of a union paper and a valued friend of mine, headed the Young Communist League (YCL) on campus. Along with a dozen or more other students, I joined the League. In the absence of a viable CCF youth club at UBC, the YCL offered a practical channel for reform-minded young people to work against the injustices of capitalism and towards a better kind of society. We tried to figure out ways to force government action to alleviate unemployment which by now had become a personal threat for most of us. We felt that our fate would probably be no different from that of the 20 per cent of the population who were already without jobs. We discussed federal and provincial politics and kept asking why Tories and Liberals always seemed to follow the same path. Under different labels were they not simply supporters of capitalism? We thought they were. We also tried to keep track of events in Europe as the drive to war became ever more menacing. We took part in some demonstrations in support of strikes and the cause of the unemployed and against cuts in education. There was always more to be done than people who were active.

Before 1935 was half-way through, I had experienced the *Karlsruhe* affair, taken part in a huge, 35,000 person May Day parade, and witnessed the beginnings of the On-To-Ottawa trek. I had also seen the results of the post-office riot and witnessed the Battle of Ballantyne Pier, both deliberately caused by the police, as was the Regina riot of 1 July 1935 where the RCMP once more disgraced itself by brutal violence against unarmed demonstrators who were trying to seek redress for Canada's scourge of unemployment. Even in medieval times, "subjects" of the Crown were entitled to approach the "foot of the Throne" to obtain justice. It is one of the most important of all civil liberties. It was trashed by the RCMP at Regina.

It is not surprising that each of these events contributed to my leftward political development.

In the fall of 1935 came the long-delayed federal election. The ex-CPR lawyer R.B. Bennett and his Tories clung to power until the last possible moment. It was now the turn of the people of Canada to do their own trashing — this time of a government and a Party that had no socially useful part to play in the life of the country. The people did a good job. It was almost a quarter of a century later before a Tory federal government could once again be elected; and then only because a prairie populist beguiled people who were fed up with Liberal arrogance. The Diefenbaker regime did not take long to self-destruct. A similar end will, I expect, befall the Mulroney cabal.

By fall 1938 I had left behind my links with the Youth movement, including the YCL. As my labour-law practice was growing rapidly it seemed natural to join the Communist Party. I did so surreptitiously. Membership never became more demanding than an occasional meeting and donation. Except for about a year (1944) when I chaired the Vancouver City Committee and a neighbourhood club, I never held office.

In my law practice a great deal was happening. My main client, the International Woodworkers of America (IWA), went on a general strike in 1946 to enforce payment of decent wages. That was after a long wartime wage-freeze, during which the employers made repeated financial killings. The strike was a success, but unity among the membership weakened as vicious infighting developed. A CCF-led caucus was intent on taking over leadership of the province's largest union from the Communists and their allies who had done much to build that union since the early 1920s. It took about two years (1946-1948) for the Communists with their mechanical adherence to "democratic centralism" to help destroy their own handiwork, in the venomous atmosphere of the Cold War. It was a leadership that had

won respect by reason of its honesty, its hard work, and its militancy. Right-wingers like Jack Munro ultimately took over what better men had built. Their nominal membership in the CCF/NDP has always been a most inadequate fig-leaf to cover the nakedness of their conservative policies. Munro himself is now (1992) a leading spokesman for the employers trying to justify the loss of thousands of jobs.

It was this defeat that led me to ask myself some serious questions about the CPC philosophy which, so I thought, sprang from the twin doctrines of "democratic centralism" and "dictatorship of the proletariat." Why had the Party, supposedly armed with these unbeatable "tools," goofed so badly and so unnecessarily? The answers came slowly and uneasily. I am not adept at coping with theoretical-political issues, still less with philosophical matters; and my own particular rat-race offered neither time nor inclination for me to indulge in theorizing about whether the twin doctrines had a place in Canadian political life. It was to take twenty years of occasional readings and discussions before I was comfortable to say a firm no to democratic centralism (mostly centralism and damned little democracy) and proletarian dictatorship (whose chief emphasis lay on the second word which apologists tried to convert into merely another word for "rule," which it is not). Canada, I thought, had no need at all for such concepts. Democracy, in its myriad forms, was good enough for me.

Quite possibly these twin doctrines helped to defeat themselves. Recurring in the CPC I saw the big gap that existed between theoretical preachments praising them, and the day-to-day practical work being done by Party members, particularly in unions, who ignored the theories. These, it seemed, were not the "guides to action" they were supposed to be, but genuflections towards an altar that might once have been there, but no longer was. I left the CPC in 1968. I cannot name anyone who helped change my thinking on political fundamentals but was honoured to know, much later, that I had followed the course taken by such respected figures as Norman Penner and Stanley Ryerson.

Trying to grapple with political theories took far less of my time than legal work and my efforts to do something useful in the fields of education and civil liberties.

When our sons were going to elementary school (1951-1961) Florence and I were active in the Parent-Teacher (now Home and School) organization, and she risked public attack as a Communist sympathizer when she

ran as a candidate for the Vancouver School Board. My skills lay elsewhere. I put in four years as chair of the provincial federation's resolutions committee, an interesting job that kept me in touch with as many as fifty local Parent-Teacher groups all over British Columbia. They were keen to send in their ideas about the strengths and weaknesses of our system of education and how it might be improved. These ideas were formulated into resolutions. I "vetted" hundreds of these, sorting them into topics, amalgamating some, and rejecting a few that already expressed the Federation's policy. I discussed the results with my committee. We put them into final form and sent them out to all Associations for discussion, asking them to send delegates to the provincial convention and to tell their delegates how to vote on each resolution.

After the convention I prepared a brief embodying all the approved resolutions. Along with senior Federation officers, I presented this brief to the provincial government. Sometimes we were received by the whole Cabinet, sometimes by the Minister of Education and his Deputy. Most sessions went reasonably well despite differences in opinion, but one occasion was different. As often happened, we asked for improved services such as smaller classes, and more generous funding. This was something of a red rag to a bull in the person of Premier W.A.C. Bennett. Seated on a throne-like chair at the head of a huge table, down each side of which sat his ministers in order of seniority, Bennett launched himself on a perilous course. He declared he would explain how the BC education system was financed. By any standards, this is not an easy topic; but for a man so gravely deficient in his knowledge of the English language as Bennett, who was unable to utter a single grammatical sentence, it was a foolhardy exercise.

To the acute embarrassment of everyone in the room, except the man himself, he floundered on for about twenty minutes. I am sure we all felt sorry for him. In a sense he himself, although by now a multi-millionaire, was a victim of what was probably the poorest education system in the country, New Brunswick's, where Bennett had spent his childhood. When the ordeal ended, I thanked him and went on to present the rest of our brief. Happily, no one offered any comment or asked any question.

I valued greatly my experiences with the Parent-Teacher Federation. The people with whom I worked were sincere about wanting to improve their children's time at school and went about it in a mature way. Their single most frequent demand was for smaller classes as the best way to provide superior education. This was no flight of fancy. It has support among those who have professionally researched the issue.

Parents, rather than teachers, were the most active members and were always generous with fund-raising for school projects that often involved library improvements.

I found it sad that in the late 1960s the Parent-Teacher movement virtually died. Within two or three years, membership that once stood in the ten of thousands, dwindled to a few hundred. The practice of community self-help was dying. People, it seemed, could no longer work together for something as important as the education of their children. One of Canada's strengths had been sacrificed to the illusion that highly trained, and highly paid, experts could do a better job than ordinary people, even in areas where no special expertise was needed. In retrospect, I wonder if this was a part of the growing Americanization of Canada.

I was often so involved in detailed legal work that it would have been easy to lose sight of such larger issues as civil liberties. These are of basic importance to the legal and political systems. Without them, both systems lack a reliable foundation. Take, as one example, freedom of speech. It is perhaps, the most important of all rights. If you and I cannot freely communicate with one another by whatsoever means, we are crippled, we lose a major attribute of civilized society. We no longer enjoy full membership in the human race.

I am glad to have lived to see certain individual civil liberties find their way into the constitution when the Trudeau government rejected the shop-worn English concept of an unwritten constitution which could mean anything — or nothing. These rights can now be enforced by the courts. More recently, libertarians have realized that, important as the civil rights are, there other rights of equal importance which must still win formal recognition and protection in law. These are the social as distinct from the individual rights; for example, the right to an adequate education, to full health care, and to decent housing. Of what use, libertarians now ask, is the right to free speech if coping with severe poverty takes all one's efforts? In my day the focus was winning individual rights; social rights had to wait. This focus is now changing, but in common with many, I foresee many struggles.

Search warrants are an important part of the criminal law. An ordinary search warrant issued under the Criminal Code has several built-in safeguards against abuse: the things to be searched for must be described on the warrant, as must the suspected offence. The person seeking the warrant, usually a police officer, must declare that he has reasonable grounds for thinking that the "things" are in a certain place which must be clearly identified. And the grounds for the belief have to be spelled out. All this information must be verified by the person's oath. The document itself has to be produced before or during a search, and is later open to public inspection. The warrant must be promptly acted upon and all items seized brought before the court as soon as possible. Search warrants are in force for only a limited time and may be struck down if they do not comply with the rules. And if the grounds of belief as to the location of the "things" are untrue, damages may be awarded to an aggrieved person. The thrust of the entire exercise is to protect the public against illegitimate searches, including those which are mere "fishing expeditions" by the police to obtain information to which they may or may not be lawfully entitled.

In the late 1960s when I was president of the *British Columbia Civil Liberties Association*, a very different kind of search warrant was frequently used by the RCMP. It is the *Writ of Assistance* which differs in important ways from the normal search warrant:

- it is a feudal anomaly whose ancestry can be traced directly back to seventh Century English legislation;
- its use is authorized, not by the *Criminal Code* but by four federal statutes (Customs, Food & Drug, Excise and Narcotics Control). Accordingly, the writ can only be used in situations falling within the context of one of these four Acts;
- it is nominally issued by a judge of the Federal (formerly Exchequer) Court, giving the impression of judicial approval. This impression is false because the judge has no discretion whether to issue, or not to issue, the writ. He is strictly bound by law to do so upon the mere request of an enforcement officer, usually from the RCMP, acting under one of the four statutes. In the world of reality, it is the officer, and not a judge, who issues the writ;
- it remains in force so long as the named officer to whom it is issued keeps his job, which can well be a period of years. During that time it can be used repeatedly;

— it places no restraint upon the degree of violence that police may use during a search. The beating of people and the destruction of doors, windows, walls, floors and ceilings are all allowed. And there is no financial compensation.

Needless to say it is an open invitation to abuse. Small wonder indeed that Writs of Assistance have been called “Gestapo warrants.” (1971) 19 *Chitty’s Law Journal*, per P.G.C. Ketchum, 90-92.

Our Association was understandably unhappy about these writs and began a campaign to have them banned. We wrote to organizations and the press explaining why we wanted the writs eliminated. As support grew, we prepared a brief for the Minister of Justice and publicized it. The minister promised “earnest consideration.”

The campaign had limited success although police abuses were curbed. I certainly do not attribute this result to our efforts alone; many people took a hand. We had struck a responsible chord among Canadians who favoured equitable law-enforcement methods.

“Equitable” in the late 1960s was a quality of conduct that was constantly absent in the vicious war being waged in Vietnam by the USA. Since 1966 I had belonged to a committee headed by a specialist, Dr. A.M. Inglis, dedicated to raising funds for medical aid to Vietnam. Despite non-support by the media, the committee did effective work, ultimately raising hundreds of thousands of dollars. Late in 1968 we arranged a large public meeting in Vancouver to hear René Lévesque speak out against the war and US atrocities. At that time he was recognized as leader of Québec’s “Quiet Revolution.” Some saw him as a future premier which he did become in 1976.

René refused any fee. Before the meeting he came to my home for dinner. I still remember wondering how so small a person could put away three large helping of roast chicken and stuffing, to say nothing of soup, dessert, and wine. He chain-smoked throughout the meal. Then it was off to a big downtown theatre where René was greeted by a well-known local singer who performed his favourite song, “Mon pays c’est l’hiver.”

After it, René and I walked to centre-stage where there were two chairs, one podium, and one large ashtray. This last was a special concession by the theatre manager to a respected guest, despite severe “no smoking” rules.

After my brief introduction, René, smoking continuously, reviewed the events leading to the war. He stressed something that was sometimes forgotten, namely the great value to the US of certain abundant natural resources in Vietnam. He felt confident that, given the unity and spirit of

the Vietnamese, the US was bound to lose the war, but meantime all decent people should do what they could to alleviate suffering. A collection and a question period ended a successful evening. Then it was back to the airport to catch the Montréal plane. René left a feeling of warmth and encouragement.

In chapters 3 and 4 I explained the origins of the Defence of Canada Regulations and gave examples of how they worked in wartime. I should now deal with the use of these Regulations in peacetime. To do so I must go to their source, The War Measures Act. It became law throughout Canada in 1914, soon after World War I began. Parliament in Ottawa chose to copy a British statute intended to give extraordinary power to its own government.

The title is misleading if only because the “measures” it authorizes are by no means confined to times of war. It can be, and has been, used when Canada was at peace. Even the sub-title is untrustworthy: “An act to confer Certain Powers upon the Governor in Council in the event of war, invasion and insurrection.” This is misleading because there does not have to be a real war, invasion, or insurrection. It is enough if any one or more of them is “apprehended” or feared by the Governor in Council, that is, the federal government. In practice it can and does mean the prime minister acting alone or with one or more of his/her cabinet colleagues.

What is more, a mere proclamation by the government that war, invasion, or insurrection exists or is apprehended is enough to prove that such a situation exists. Neither the legality of the proclamation nor whether it has a sound basis in fact, can be challenged in any court. Apart from the government itself, only both Houses of Parliament can revoke the proclamation by adopting an appropriate resolution.

The War Measures Act is loud and clear when it shows just how authoritarian the federal government can make itself without prior debate in Parliament. It is no exaggeration to say that it can legally convert itself into a military dictatorship. The government’s only obligation is to place the proclamation immediately before both Houses if Parliament happens to be in session; and if not, then within fortnight after it reconvenes. Parliament’s only role looks suspiciously like window dressing.

The Act shows up the deeply pro-property and anti-human bias of our rulers. Property owners adversely affected by governmental action taken under the Act may claim financial compensation; but men and women

whose freedom is taken away and who are instantly converted into enemy aliens in their own country have no redress other than a limited form of appeal that can be a waste of time. (See McKean's case.)

It was this monstrously unjust law that was unleashed in October 1970 by a "liberal" prime minister, Pierre E. Trudeau. He had cultivated a radical image as a union lawyer during the Asbestos strike of 1949 and as a powerful voice raised repeatedly against the clerical fascism of Maurice Duplessis. Trudeau's main sounding board was the intellectually oriented paper *Cité Libre*. He also gained stature when he toured the Peoples Republic of China in 1960 and was subsequently barred from entry into the USA because of supposed Communist connections.

Trudeau's publicly stated reasons for putting the War Measures Act into force was his apprehension that an insurrection in Québec was imminent. (In practice, enforcement of the Act was confined mainly to Montréal). Many, including myself, could not accept this. True, mailboxes had been blown up, a minor English official had been kidnapped, and an allegedly corrupt Québec Liberal politician had been murdered. (Of course, I do not suggest that corruption can justify murder.) Also, a group (later found to consist of about sixty youths) calling itself the *Front de Libération du Québec* (FLQ) kept issuing inflammatory statements.

Surely all such goings-on could be dealt with by the police, already armed with ample powers under the Criminal Code. Should the Army be called out for acts of vandalism, a kidnapping, a murder, and some florid rhetoric? The negative answer is obvious, but the whole situation points up the severe limitations that Trudeau had placed upon his own political agenda. His brilliant struggle against Duplessis (1949-1959) was a struggle to bring Québec out of the dark backwardness induced by a semi-feudal clerical-fascist church in alliance with a phoney right-wing nationalist in the person of Duplessis. After his death in 1959, various political possibilities opened up. One of these was the growth of a native Québec capitalism which Trudeau favoured. Another was a left-wing nationalism allied with groups wanting the outright separation of Québec from Canada. That trend was anathema to Trudeau.

Out of these struggles and trends emerged in the early 1960s, the "Quiet Revolution" led by Québec Liberals Gérin-Lajoie and René Lévesque under Jean Lesage. Immense reforms such as the government's take-over of hydro-electrical energy and the creation of a provincial ministry of education, were speedily introduced. The church withered as did Duplessis' party. Even the Liberals looked too mousey and late in 1968 Lévesque helped to

form the new *Parti Québécois*. Its program was to the left of the Liberals and resembled that of a social democratic party in many ways. Was Québec, of all places, going socialist? And of more immediate urgency, was the new party going to reflect the separatism of most of its component parts? Trudeau was well aware of the situation. He had already won the mid-1968 federal election, in good part because many "Anglos" saw him as the man who could curb Québec's separatist drive under Lévesque. From a Québécois point of view Trudeau probably did not look unlike a Trojan horse. At all events it was not an insurrection, whether Trudeau perceived it as real or imaginary, that sparked the events of October 1970. They came because of the combined effect of the subjugation of Bourassa and his party to Trudeau and the threat of the ever growing power of the PQ.

Trudeau had no wish to strengthen the PQ. He had done much to defeat the semi-feudal, semi-fascist trends of Duplessis' nationalism but then stopped dead. It was his purpose to use this defeat to encourage a well-educated and rapidly growing middle class to establish and lead a native Québec capitalism, but never to let it go any further, least of all towards bringing Québec to full nationhood, whose attributes it had developed for over 200 years.

So on the surface, Trudeau's October 1970 ploy was to use the army to fight a minuscule FLQ. In reality Trudeau was fighting to behead the legitimate nationalism of the Québec people who were looking to establish their own country. This reality is shown by the numbers and identity of those who were jailed. Lévesque estimates them at more than 450. Of these, 400 were released without charge but only after being photographed and fingerprinted. There were also 3000 searches without warrant.¹ The arrests and searches were conducted with considerable brutality, reflecting no doubt the superiority felt by "Anglo" soldiers towards "the frogs." The people jailed were in fact respected leaders of the cultural and working-class life of Québec: poets, novelists, musicians, dancers, intellectuals, union activists, film-makers. These are the people that Trudeau (and the RCMP) feared. They were to be brutalized and intimidated in an ignoble, and also an unnecessary, foray by frightened politicians on an illegitimate rampage.

Just how frightened a politician can become was driven home to me a few years later. It was in October 1976 during a important Québec election. A friend and I were staying at a Montréal hotel and we were going down in an elevator. My friend and I commented to one another about a fellow

¹René Lévesque, *My Québec* (Toronto 1979), 176 and *passim*.

passenger: "Oh, that's Mr Bourassa" or similar words. He was premier of Québec at the time.

The moment he knew he had been recognized, Bourassa sank down into a sitting position on the elevator floor. He was in a condition of abject fear if one is to judge by the look on his face. Several burly men surrounded Bourassa, probably body guards, but whoever they may have been, I could see no reason for this man to fear anything unless it was his pending defeat in the election. In fact that happened two or three weeks later when René Lévesque and his Parti Québécois defeated Bourassa's Liberals in a major landslide.

If an expected defeat at the polls could produce such terror in Bourassa, what was needed to provoke a similar reaction, six years earlier, to the October 1970 events? It may be that he and Trudeau, one acting out of cowardly fear and the other from aristocratic disdain of the rights of his fellow Québécois for political independence, both badly overstepped the mark when Bourassa asked for War Measures Act protection and Trudeau granted it.

I do not intend to sketch the well-known results, some farcical and some sinister; but I am proud of a bit of help that a few libertarian colleagues and I were able to give to several Québécois who found themselves in criminal court, thanks to Bourassa-Trudeau. After conferring with defence counsel in Montréal, I was able to arrange for two Vancouver lawyers to attend some of the trials as observers. The chief value of this move for the defendants was the publicity it generated because members of the Bar in far-off British Columbia were concerned enough to travel a long way in an attempt to see justice done.

I claim no credit in this idea. It was generally well known that when a reactionary government uses show trials to harass dissenters, the prosecution can be curbed and their effects modified when trained people from another jurisdiction observe the trials in person. This has a deterrent effect on the offending authorities, particularly if the observations are well publicized.

One man who told me that he had found the tactic beneficial was Michel Chartrand, a well-loved and respected union leader who had been president of the CNTU's Montréal Labour Council and a public figure for many years. Completely warmhearted and spontaneous but also shrewd and clear-thinking, Chartrand had natural leadership ability coupled with great mental and physical courage and political "savvy." These qualities were enhanced by

a strong voice, and a deep love for “my people,” the Québécois. Michel Chartrand could be a formidable opponent.

Chartrand had been arrested and kept in jail without bail soon after the War Measures Act was imposed. He and four others were charged with seditious conspiracy. On 7 January 1971, Chartrand asked presiding Justice Roger Ouimet, a son-in law of Ernest Lapointe, to disqualify himself as judge in the case. The law permits such a request.

The ensuing dialogue between Chartrand and Ouimet must be unique in Canadian jurisprudence:

Chartrand: I want you to withdraw from this case ... I do not want you on the Bench, because you are prejudiced, partial and fanatic.

Ouimet: [pointed out that the trial would be by judge and jury].

Chartrand: I do not want the jury to be bothered by a judge who is prejudiced, partial and fanatic. That's clear. Now the only decent thing for a judge to do, when someone is morally convinced that he will not be impartial, is to withdraw, which you have not done.

Ouimet: [finds Chartrand guilty of contempt of court]

Chartrand: Oh you comic, you, you're a real comic. You are much smaller and much lower than I thought. Are you going to withdraw or aren't you?

Ouimet: [second conviction of contempt]

Chartrand: [starts using “tu” instead of “vous”] Ah! Ha! you'll see that I shall not be appearing before you, my friend. I guarantee you that.

Ouimet: Third contempt of court.

Chartrand: I guarantee you that. Give us another. Come on a fourth, a fifth contempt of court. Judge Ouimet is fanatic, partial.

Ouimet: [At this point imposed a one-year sentence on Chartrand]

Chartrand: Another year, my boy if that makes you happy. You stinking, lousy character.²

At the trial, over which Ouimet presided, Chartrand was found not guilty of seditious conspiracy, but appealed his one year sentence for contempt. A panel of appeal court judges, voting 3 to 2, decided late in 1971 to lift the jail term and, in its place, impose a fine of \$1000. The main reason was to avoid elevating Chartrand to martyr status. Another reason: his already long jailing which could have explained why a well-balanced person lost his sense of proportion. It seems to me that Chartrand's high standing

²Quoted from Reasons for judgment of Mr. Justice Rinfret, then of the Québec Court of appeal, in 21 Criminal Reports New Series, 56-7.

in his community was well known, even if not well loved, by the Québec Court of Appeal.

Some will be curious why, in my 75th year, I came to live permanently in rural Ontario after spending my adult life in urban British Columbia. There are several reasons, some of them painful to recount.

From childhood days on a farm near Port Hope, Ontario, and then for some years at Shawnigan Lake, British Columbia, I got to like country living. Cities were fine, but I always had a soft spot for the countryside and the closer contact with animals that it offered. Then too I had travelled extensively in Canada and found myself at home in many places, rural as well as urban.

Over time, I identified two of these that were special for me. One is my birthplace, Port Hope, a friendly and beautiful town no longer plagued by Orangemen. It is a short train ride from where I now live. At about the same distance but in another direction, is my other favourite place. I think of Montréal, not as a potential home, but as a marvellous cultural centre where, without US "assistance" one can recharge one's batteries. It is also home to some of my best friends, people I have known almost all my life.

By contrast, it had become all too clear in the two or three years after Florence's death, that I had few real friends in British Columbia. There were plenty of spongers. There were even more acquaintances who could scarcely conceal their active dislike of me and my close friend, Toni White. She put up with more than her share of insults. Every single person, from whom this type of conduct flowed, had been close to Florence. Members of the immediate family were, in varying degrees, just as much involved as non-members. Florence herself appeared in the role of a near-martyr.

The tongues of fire, severe and prolonged gossip, feed upon such situations. They do not yield to any rational process. They just go on flaring or smouldering. I came to the reluctant conclusion that I faced an endless and futile uphill battle to do what was inherently impossible — to prove a negative: in this case, the negative was that I had not been such a bad husband and father.

Then so be it. A chance for a happier, more relaxed old age would be easier to achieve where we are now than in British Columbia. I decided to make the move and am delighted that Toni found herself able to come with me. We enjoy our comfortable new home in its peaceful lakeside environment where we can see many different kinds of animals in their natural

settings. I hope the rest of my life is spent in such a place as this where my peace of mind is untroubled.

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MY PAST IS NOW



In this further volume of autobiography, BC labour and human rights lawyer John Stanton returns to his career in the law. After reviewing his childhood, education, and early political experiences in Vancouver, during the Depression years, he discusses some of his most important

cases. These include: the defense of Fergus McKean a BC communist leader who was interned during World War II; an exceptional criminal libel suit prosecution in Cold War BC; and an account of his relations with the Mine Mill and Smelter Workers. A must for all interested in labour and the left in Canada.

Preface by Bryan D. Palmer.

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