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# THE COMMOS AND ME

Article for Persons of Interest  
Edited by the Hon. Meredith Burgmann

## PERSONS OF INTEREST

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### THE COMMOS AND ME

The Hon. Michael Kirby AC CMG\*

#### GETTING 'EM WHILST YOUNG

My long association with the Australian Communist Party began when I was but 3 years of age. Like the Jesuits, the Communists believed in getting them when they were young.

My grandmother, whom I knew as Normie (but who, in the ways of the times, had been christened Alma Caroline), divorced her first husband, Victor Kirby, in the 1930s. A good looking man bit mismatched, he had been the father of my father, Donald Kirby.

Norma worked as a cashier in the *Prince of Wales* hotel in what we would now describe as Sydney's Chinatown. She was a reserved, highly intelligent, thoughtful, and very well-read person who, in other times, would have won a scholarship and gone on to university and professional life. But throughout the years of the Great Depression, in the 1930s, she was the one member of the family who always had a job. In Australia, hotels never go out of vogue. And the biggest stream through hotels, apart from beer, is cash.

Norma's job in the hotel was to count the cash. Invariably she got it right. She was a greatly respected employee. In about 1941, Norma,

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\* Justice of the High Court of Australia (1996-2009); President of the Institute of Arbitrators & Mediators Australia (2009-).

who had reverted to her maiden name of Gray, met in the hotel many of the leading lights of the Australian Communist Party. The party headquarters were in a building nearby. Amongst those leading lights was a man who had been born in New Zealand as Maurice Flynn but who had later taken the *nom-de-guerre* of Jack Simpson. It was as Jack Simpson that he became known to our family.

After 1941, Jack courted Norma in the somewhat more leisurely way of those days. No Twitter or tweet to introduce them and no Facebook. It was an unrushed relationship. Norma was going out at the time with other suitors, some of whom were businessmen and definitely better able to keep her in a style that she had never been accustomed. Certainly not from the subventions of Victor Kirby. However, as Norma described to my father, Jack was “more interesting”. In fact, he was a hero. From New Zealand, Jack had volunteered to fight in the ANZAC Corps at Gallipoli. He did so with courage and, on the withdrawal of the ANZACs from that ill-fated campaign, he was transferred to France where he was gassed and wounded<sup>1</sup>. Jack rose to the rank of sergeant in the machine gun corps. Just before the end of the war, he was awarded the Military Medal “for gallantry”. He also won the 1914-15 Star and the Gallipoli Medallion. So his early life was marked with daring. And nothing much changed thereafter.

During the Depression, Jack Simpson, who had been raised a Roman Catholic, became disillusioned both with his religion and with Australia, to which he had returned from France after the War. So he joined the Australian Communist Party. His intelligence, prudence and reserved

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<sup>1</sup> D.W. Kirby, *Conversations With My Past (An Illustrated Love Story)* (Sydney, Dec 2008), ch7 (“Norma and Jack”), pp161ff at 165.

demeanour soon led to his assignment to take charge of the Party's finances. Indeed, as Stuart MacIntyre points out in his story of the Communists, *The Reds*, Jack Simpson was eventually elected the National Treasurer of the Australian Communist Party.

At first, my father did not know of Jack's political background and offices. He was just one of his mother's many suitors. Jack started to turn up at the Kirby family home in Sydney Street, Concord for Christmas dinner in 1942. That is where I first made his acquaintance. Of course, I was too young to remember our first encounter. But I have it on good authority that we enjoyed a good relationship. He got on well with my mother. My father, who was no doubt possessive and protective of his mother, liked him. Jack tried to reinforce my father's interest in the worldwide struggle of the downtrodden proletariat. At the beginning of the War, the Communists had been out of favour, following the Ribbentrop/Molotov Pact between Germany and the Soviet Union of August 1939. There was also a lot of feeling about the supply of pig iron to Japan but that was a different matter. When the German forces attacked the Soviet Union on 22 June 1941, the Australian Communists suddenly became respectable. Indeed, communism, for a short time, became distinctly fashionable, certainly generally acceptable in Australia. Churchill, after all, had said that he would make an ally of anyone who was at war with Hitler. And Stalin was certainly in such a war.

### **A WARTIME MARRIAGE**

My father says that Jack Simpson's relationship with Norma became serious after Christmas 1942. At the dinner in Concord, my mother always turned on a good Christmas meal although, at that time, the wartime austerity and ration cards would have made things more

difficult. I remember in the later years of the War and immediate post-War period, going with those yellow cards to the local shops to purchase essential goods. The cards had little perforated stamps that were detached when the precious milk, butter or cream was purchased, the latter in a pail. No bottles or packets in those days.

To please his mother (and Jack Simpson) my father would occasionally attend meetings in the Sydney Town Hall which were called by the Australian Communist Party and its “fellow travellers” to support the Russian war effort. There he met the leaders of the Party, including J.B. Miles, who looked rather like J.B. Chifley, right down to the pipe. Other leaders of the Party included Lance Sharkey, Laurie Aarons and Jack Simpson himself.

Eventually, Norma and Jack decided to tie the knot. Their wedding took place on 21 April 1943 at the home in which Norma’s sister Gloria who lived with her Dutch husband, Gerry Boes. This was at 59 Eastern Avenue, Kingsford, which was earlier called “South Kensington” because it sounded better. The name Kingsford was adopted later in tribute to the great Australian Kingsford-Smith. Years later, when I was at university, I was given to calling my home suburb “Strathfield” instead of Concord. Some things, snobbish tendencies, run in the blood.

Everyone who was anyone in the Australian Communist Party attended Norma’s marriage to Jack Simpson. The celebrant was a Congregational Minister named the Rev’d. Pratt. A distinguished looking man named Robinson delivered the principal speech. He toasted the bride and groom and according to my father, spoke very well. Of course, my father attended, and so did my mother who was pregnant

expecting another son who is now Justice David Kirby. David is a judge of the Supreme Court of New South Wales. His office requires him to preside in many big murder trials. Little did anyone image that this was on the way.

The other members of the family who attended Norma's wedding were my brother Donald (whose twin brother, David Charles, had then died on 9 August 1942 of pneumonia) and myself. Glory was thrilled to have the local Bolshevik aristocracy at her home. As my father recalls it, the event was lavish despite the austerities of the War. The Kirby family travelled home by tram to Central Railway and then by train to Strathfield with the rest of the journey to Concord on shank's pony. Norma and Jack were provided with a honeymoon at the Deatons Manly Hotel owned by her employers, the Deatons. The gift of the room, like the salary at the time, was not, munificent. The honeymoon lasted only two days.

Thereafter, Jack and Norma went to reside in a house at 639 Princes Highway, Tempe. It adjoined a church hall that had been converted to a boot factory. The result was that along the highway trundled the Sydney tram. And next door, a machine was heard at all hours of the day thumping out shoes and boots. When I complained to my father of the noise during overnight stays in Tempe, contrasting it to the blissful silence of Concord, he simply told me to "shut up" and to stop being difficult. This was advice that many people later tried to give me in life.

When, often with my brother Donald, I would stay at Tempe with Jack and Norma, I would see aspects of life with which I was not familiar at

Concord. First, they were both smokers. And a glass of beer was never far away. Concord was teetotal.

Secondly, they were avid listeners to Radio Station 2KY, with its seemingly endless broadcasts of horse and dog races that required occasional visits to the local SP bookie.

Thirdly, they displayed in their home heavy paper magazines titled *Soviet Union*. These journals portrayed the suggested life of bliss and plenty that was enjoyed by the peasants and workers in the Soviet Union. The journal used a photographic technique that seemed quite different from that of colour photography with which I was familiar. The apricot toning of the photographs stood out. And all those folk dancers with happy faces seemed determined to show what a workers' paradise existed behind what Churchill was later to call the "Iron Curtain".

Fourthly, on the bookshelves in the rather dark lounge room of the Tempe residence were volumes of the collected speeches of V.I. Lenin and Josef Stalin. I noted at the time that the books seemed pristine, indeed untouched. No corners were turned down to indicate a well-loved phrase or a point of departure where the reader could go no further. There were no side markings to identify precious passages to be learned by heart. Indeed, not to put too fine a point on it, I was not convinced that Jack (and certainly Norma) had ever opened them. But they were on display for all to see.

On the bottom shelf of the bookcase was a large black volume of Boccaccio's, *The Decameron*. When I discovered this later, as puberty was descending upon me, I found it infinitely more beguiling than

anything that Lenin or Stalin had ever written or said. How sombre and melancholy communism always seemed to me. That was also my father's view. It was all so grim and determinately optimistic, between gritted teeth, about a folk-dancing future, portrayed in apricot tones.

## **COMMUNIST PARTY DISSOLUTION ACT**

The first time I came under ASIO surveillance (so far as I am aware) was in about 1951. At my request, Stuart MacIntyre sent me a copy of Jack Simpson's ASIO file which he had procured under legal FOI rights when writing *The Reds*. In the file, reference was made to an occasion, which I have otherwise forgotten, when I visited Taronga Park Zoo in company with Jack. Other participants in this enterprise were recorded. The three young boys were my brothers Donald and David and me. Donald was to go on to be a senior partner in a big Sydney law firm. David, as I have said, is a judge of the Supreme Court of New South Wales. I was the eldest. What the surveillance hoped to discover at the Zoo is a puzzle. Perhaps communists were observed 'talking to the animals', even before Julie Andrews did. If ASIO's anxiety was communist corruption of young minds, they need not have bothered. Donald and David shared the scepticism of my mother. I was more like my father. As I came to understand communism, I could see its attractions to those who were disillusioned with the world. But my aversion to apricot and my dislike of endless folklorica put me outside the messages to which I would otherwise have been susceptible.

Just the same, by 1950-51, I had a child's understanding that something rather serious was going on affecting 'Uncle Jack'. This was the *Communist Party Dissolution Act 1950* (Cth). The enactment of such a measure had been promised by Mr. R.G. Menzies in the run-up to the



federal election held in early December 1949. This was the election that promised to 'put value back into the pound'; to end petrol rationing; and to proscribe communism. The Menzies/Fadden government was duly elected, defeating the Chifley government. I have a dim recollection at the time of lending my considerable support to Mr. Menzies because he had promised to provide child endowment benefits to first-born children, like me. To that time the Labor government had only rewarded parents who had more than one child. So I did not attract the pretty endowment vouchers which my mother cashed at the local post office.

Of course, I did not know the details of the anti-communism law. It was enacted early in 1950, high on the new government's agenda. But I did know that it was not a good thing for Jack Simpson or our family. I now know that, as the National Treasurer of the Party intended to make himself scarce whenever the Act looked likely to come into effect. But that moment was postponed. No sooner was the Act proclaimed, but the Communist Party and a variety of trade unions, challenged its constitutional validity in the High Court of Australia. They secured an order *nisi* from that great judge, Justice Owen Dixon, later Chief Justice of Australia. The implementation of the Act would await the Court's ruling on its constitutional validity.

Doctor H.V. Evatt, by now the parliamentary leader of the Labor Party and of the Federal Opposition, took the brief in the High Court for the trade unions. He led the challenge to the validity of the law. As my father reported it, neither Jack Simpson nor any of the leaders of the Communist Party at the time had the slightest faith that the High Court would invalidate the legislation. So far as they were concerned, the Justices of the High Court (all of them) were simply the 'running lapdogs'

of the capitalist economy. They were all part of the Establishment, symbolised by that biggest lapdog of all, 'Pig-Iron' Bob Menzies.

At last the day came when the decision of the High Court was announced. My father tells me that Jack Simpson went into hiding. Perhaps he had with him, on the train, in his modest bags, the accumulated bullion of the Australian communists. However, that may be, when the newspapers announced the outcome of the High Court challenge, it emerged that the communists and their trade union allies had won by five Justices to one<sup>2</sup>. Only the Chief Justice (Sir John Latham) dissented. The majority, led by Justice Dixon, concluded that the constitutional flaws in the Act were grave and invalidating. All I knew was that a tribunal that I was told was in Melbourne, had lifted the danger faced by my Uncle Jack. According to my father, astonishment was the only word to describe the reaction of Jack Simpson and his communist friends on learning of Dr. Evatt's mighty victory in the High Court.

There followed a referendum throughout Australia in September 1951. Mr. Menzies sought to amend the Constitution to overturn the High Court decision. At the beginning of the campaign Menzies enjoyed an 80 percent backing for this attempt. But the sturdy persuasion by Bert Evatt ultimately saved the day. By the narrowest of margins, Mr. Menzies failed to secure a majority of the electors nationally. He won in only three States, thus failing to secure the double majority required by s128 of the Australian Constitution for formal constitutional amendments.

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<sup>2</sup> *Australian Communist Party v The Commonwealth* (1951) 81 CLR 1; M.D. Kirby, "H.V. Evatt, The Anti-Communist Referendum and Liberty in Australia" (1991) 7 *Australian Bar Review* 93.

Jack Simpson was to be spared any further legislative harassment by the government<sup>3</sup>.

After these events, the Australian Communist Party continued to produce its newspaper *The Tribune*. One day I will visit the State Library in Sydney to see if they file the back issues. It would be amusing to read their reactions to the victory of the rule of law over the lapdogs. One thing is sure. There was no possibility that a similar outcome could have occurred in the courts of the Soviet Union. Australia was another country.

During the Petrov enquiry that followed, and exploited, the closely divided opinion of the Australian people in the communism referendum, Jack Simpson's name came up. The report of the *Royal Commission on Espionage* noted<sup>4</sup>:

“In the course of his evidence it emerged that in 1943, when the Party was under a ban, he had – jointly with one Simpson (the Treasurer of the Communist Party) – signed a contract to purchase the Newsletter Printery for £14,000. The Printery was bought for the Communist Party purposes and is still used by it. Millis said he merely lent his name to oblige a friend. We do not believe him. “

The fact that Jack Simpson is mentioned only once in this report on the activities of the communists rather suggests that he was not really a major player in the doctrine or 'revolutionary' activities of the Party. He was a tried and trusted stalwart who could be allowed the privilege of holding the modest funds of the Communist Party. A glance at his photographs suggests that he was what he appeared to be: a dapper,

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<sup>3</sup> Clem Lloyd, "Evatt, Menzies, Latham and the Anti-Communist Crusade" in *Seeing Red* – Evatt Foundation, Sydney, 1991. See also M.D. Kirby, "H.V. Evatt: Liberation Warrior" (Inaugural Evatt Memorial Address), *ibid*, 1.

<sup>4</sup> Report of the Royal Commission on Espionage (3 May 1954) p214 (Justice William Owen, Chairman).

reliable, prudent keeper of the books. Scarcely a revolutionary, bent on destroying Australia's constitutional fabric.

## **WORKING CLASS WARRIOR**

I have a distinct recollection, on one occasion, of accompanying Jack Simpson, and someone else (possibly Lance Sharkey) around the streets of Tempe near where Jack and Norma lived. The task in hand was to slap paste on electoral posters and to attach them to electric light poles. I think the posters were for the election of Sharkey to the House of Representatives<sup>5</sup>. I dimly recall the red symbol of the hammer and sickle. My job was to carry the glue. Jack and his friend had a small ladder so as to put the signs beyond reach of the Menzies/Fadden opponents. I recall that when I later told my father of this escapade, he was upset because he did not want his children dragged into such communist atrocities. For all I know, there was an ASIO agent peeping behind other lampposts, taking detailed notes of what we were up to.

As I grew up my brothers and I would sometimes debate political issues with Jack Simpson. He was always very gracious and tolerant, although I believe he was astonished of the definite views that my brothers had formed about politics at such an early age. At the time, my father would occasionally host meetings in our home at Concord with an interesting crowd of communist sympathisers. He did this to please Norma and Jack. But it greatly displeased my mother. This must have been evident because, rather quickly, the meetings petered out. I fear that my mother was labelled an "Enemy of the People". My father's reliability would also have been called into vicarious question.

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<sup>5</sup> D.W. Kirby; above n1, 171.

Jack Simpson went up to Queensland in July 1957 to see friends. However, he had some form of turn. He suffered from emphysema. He was told to return home immediately but not by plane. This was because the cabins on regional flights were not pressurised in those days. Ignoring this advice, he flew home. He died in his sleep that night on 18 July 1957. He was given a grand funeral by the Australian Communist Party, its remnants shaken by the post-Stalin revelations. I remember attending the funeral in company with my father. I was 17 years of age. By now, I was in my second year of Arts at Sydney University. I walked solemnly behind the coffin which was draped with the communist flag. At that age, death was so hard to fathom.

In all probability, there were agents of ASIO observing the turnout to farewell this stalwart of the working classes. My recollections of Jack Simpson were of a man who became a little tongue-tied when challenged on his political beliefs. He was no fool. He would not agree if he was agin' it. He was a rational man. There was no way he could have sent critics or opponents to the firing squad. He had seen too much of that kind of conduct in the Great War. For him, communism was simply his new religion. It was his substitute for the Flynn family's catholicism. In the years that followed, whenever I heard denunciations of communists and communism, I thought of my Uncle Jack. I was then robbed of any fear.

Jack's death did not, however, see the end of my interest to ASIO.

## **BRAINY BUT REACTIONARY**

As chance would have it, in 1996, I was appointed to the High Court of Australia, joining the court that had struck down the legislation that spelt

so much civic danger to Jack Simpson and his colleagues. In the course of my service on the High Court, I often referred in speeches to the *Communist Party Case*<sup>6</sup>. Occasionally, in my reasoning in the Court, I invoked the principles expressed in that case. For me, it was one of the handful of greatest decisions of the Court, especially for the libertarian principles that it upheld at a time when that outcome was by no means certain. I would sometimes refer to the decision in the reasoning of my own opinions. In one case, *Thomas v Mowbray*<sup>7</sup>, a decision concerned with anti-terrorism legislation, I had to launch into a defence of the 1951 decision when one Justice (Ian Callinan) doubted the correctness of the *Communist Party Case*, and other Justices also appeared to cast cold water upon it<sup>8</sup>.

In the last year of my service on the High Court of Australia, those who were researching for the television series *Persons of Interest*, made an application for copy of my own ASIO file<sup>9</sup>. This was something I had thought about but a sense of propriety, probably excessive, restrained me from requesting copy of my file whilst I was serving as a Justice of the Court. I knew that it could not have been too bad because nothing I had ever done endangered national security. As well, I did not doubt that, for some of my federal appointments over the years, going back to 1974 to the Arbitration Commission, the likelihood was that some form of clearance would have taken place.

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<sup>6</sup> (1951) 83 CLR 1.

<sup>7</sup> (2007) 233 CLR 307 at 384-5 [222]-[224] per Kirby J; at 454 [430] per Hayne J.

<sup>8</sup> (2007) 233 CLR 307 at 484 [530]ff, 486-7 [533] per Callinan J; cf. at 361 [340] per Gummow and Crennan JJ.

<sup>9</sup> The file on Michael Donald Kirby numbered HQT66/815 is recorded as containing 12 folios, opened with exemption and transferred to NAA and 21 folios otherwise opened and so transferred, making 33 folios in the open access period. No exemptions to access are recorded.

In consequence of the researchers' request for my ASIO file, a notice was given to me. Later, I began to have intensive dealings with the National Archives Authority (NAA) as I sent off to them truckloads of personal papers that had accumulated during my judicial years. As a kind of reward, the NAA offered me my ASIO file. I accepted. It was presented to me in a beautiful NAA folder on the cover of which, ironically, was the royal seal of Queen Victoria showing the Royal Coat of Arms attached to the Queen's assent to the original Act of the Imperial Parliament that brought the Australian Constitution into effect. It was that Constitution that had struck a mortal blow at Mr. Menzies's prized legislation.

In this unlikely covering, then, were thirty pages or so of documents from the file that ASIO had opened in my name. Some of the documents are marked "Secret". This was astonishing to me when I read the papers concerned. All of them were innocuous. Some of them showed how safely conservative I really was. The period covered by the file is 1964 to 1969. Doubtless there will be other treasures in store as future years' collections are released.

The earliest record, marked intriguingly "Non Gratis" (implying perhaps a paid informant) was a note on my Auntie Glory. It records the statement she is said to have made to an ASIO informant sometime in December 1964. It reads<sup>10</sup>:

"GLORIA BOES recently stated that she has a nephew named KIRBY (Michael Kirby NR/NA) who spoke at the Australian Congress for International Co-operation and Disarmament. She said he was very brainy, but was a reactionary."

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<sup>10</sup> ASIO File No.107/65 with cross ref to 13/4/53, dated 21.12.64 headed "Gloria Boes".

On this unpromising note, it seems, my ASIO file was opened and maintained. An entry of about the same time attaches a copy of the text of a speech made by me to the afternoon seminar of “The Citizens’ Conference of the Australian Congress for International Co-operation and Disarmament”. That conference was convened at the unlikely venue of *The Trocadero*, then Sydney’s largest dance hall in George Street, near St. Andrew’s Cathedral. It was a place at which I had organised many a popular Law Ball during my time on the Students’ Law Society of the University of Sydney.

My speech to the Citizens’ Congress was given on 26 October 1964. It is titled “The Malaysia Issue”. ASIO preserved a copy. Far from being any danger to Australia’s security, the speech constituted a rebuttal of the then Indonesian government’s attacks on the creation of the new Federation of Malaysia, by the amalgamation of the former British colonies in South East Asia. Solemnly, in the first paragraph, I warn<sup>11</sup>:

“Liberal minded people in Australia and elsewhere should not fall into the dangerous habit of condoning the Indonesian policy because of affection to the Indonesian people or admiration for their successful struggle for independence. To do so would be to fall into the same error as prompted some liberals in the 1930s to justify the Stalin Trials in Russia. History has shown only too often the danger of spineless liberalism.”

Not too much radical danger there. Even in 1964, I doubt that this constituted the Communist Party line.

In May 1965, a number of pages record my activities in the Council for Civil Liberties. These were the minutes of that organisation listing the various participants, a number of whom (Jack Sweeney QC, Marcel Pile

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<sup>11</sup> M.D. Kirby, “The Malaysia Issue”, unpublished paper for the Australian Congress for International Cooperation and Disarmament”, Sydney, 26 October 1964.



QC, R.J.B. St. John, J. Staples and myself) went on to State or Federal judicial service. In fact, joining the CCL became something of a professional hazard for lawyers. Virtually any lawyer who served on its committee ended up on a Bench somewhere. My brother David was recorded in the *Newsletter* of April 1965 as having joined the committee<sup>12</sup>. Obviously, the CCL was under close surveillance. One entry ominously recorded that I had not only given a lecture on the Malaysia issue, but had signed a certificate for an application for passport made by another ASIO suspect, stating that I had known her for two years. Her file number is recorded as is the fact that she was a CPA member.

Later, for this or some other reason, a “Secret” entry of October 1969 saw details of the passport issued to me. These details were included together with a photograph which the agent was processing.

Another body with which I was associated also brought me under ASIO surveillance. This was the National Union of Australian University Students (NUAUS). In 1966, or was it 67, at the Perth Congress NUAUS, I left that body decorated as an honorary life member. However, seeing that Peter Durack (later Federal Liberal Attorney-General) and (Sir) Gerard Brennan (later High Court Justice and Chief Justice) were similarly honoured, it could not have been too radical an organisation.

The entry of February 1966 recorded that “Brian” had made a telephoned enquiry about a Soviet delegation. It was suspected that “Brian” was possibly Brian David Aarons, a famous surname in the CPA.

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<sup>12</sup> NSW Council for Civil Liberties, 27 April 1965. Also File 3/2/1313.

Brian was told “to contact “Richie” (John Richard) Walsh at the Sydney Students’ Representative Council (SRC). Walsh is recorded as suggesting that the only person who would know about the delegation’s movements other than himself would be “Michael Kirby who had met the delegation at the airport”. My official number in the NSW file records of ASIO was given as K/17/82.

In January 1966, presumably on the opening of this file, a record is made of my name and a search of my birth record. My father’s name is listed with a description “possibly K/8/41”. So is my mother’s maiden name, but apparently (quite correctly) ASIO had not bothered to open a file on her. She is described as “N/T”, presumably “not traced”. A later memo of February 1966 instructed the file keeper to delete all earlier descriptions of me and to place them on the NSW file “K/17/82”.

Repeatedly, during 1965, my name is linked to a female university student whom I only just remember. She was married to a singularly handsome young student who took part in the activities of NUAUS. This was the only connection in which I had known her. Yet for my pains, it led to a furious series of records noting the fact that I had given a certificate that I had known her for two years, which, at the time, I undoubtedly had.

In a record of 1966 from the Deputy Director-General of ASIO, NSW, my name appears under a memorandum headed “Communist Party of Australia penetration and influence in New South Wales universities”. It is there recorded that I was a “member of Sydney University” and “CPA contact”. If “CPA” contact meant anything but the most tenuous links

with the Australian Communist Party, described above, it was completely false. Then the file runs out.

So there it is. A meagre collection of documents that had brought me to the notice of Australia's national security agency. It says much that they came upon me because of their keen interest in university student activities, the Council for Civil Liberties, and a disarmament group which I had lectured on the dangers of the Stalinist trials.

### **NEED AND BALANCE**

In his dissenting reasons in the *Communist Party Case*, Chief Justice Latham justified his opinion, upholding the communism legislation, on the footing of Oliver Cromwell's dictum during the English Commonwealth. This was that "being comes before wellbeing". A threat to the organised polity itself is a danger that must be overcome with priority above the wellbeing of citizens living in the polity. Doubtless, this was the justification that the ASIO agents, Directors-General, informants and others working for ASIO felt in placing me on a security alert.

Every society has people within it who are disaffected with its political system. Even after the law in 1951 delivered to the communists the resounding victory in their litigation in the High Court, there were doubtless party members who believed in the "dictatorship of the proletariat" and the "revolution of the working masses". But in Australia, by and large, those believers, had been seduced by the warm sunshine into complying overall with our society's way of doing things.

This is not to say that every revolutionary organisation will be so pliant or that the communists were pliant in other countries. The advent of

weapons of mass destruction and the capacity to deliver their devastation so as to cause great harm to innocent civilians undoubtedly presented the need to create security agencies like ASIO and agencies for analysis of security related developments, such as the Office of National Assessments (ONA). I do not question the need for such bodies. However, my file shows the critical importance of always rendering security agencies accountable to the civilian government; retaining a measure of scepticism about their occasional over-enthusiasm; and affording remedies to those who are wronged by their collection and use of false or unreliable information.

Any person of common sense who glances at the trivial entries in my ASIO file would have quickly come to the conclusion that I was no threat whatever to the security of Australia. He or she would have ordered the closure of the file and told the agents to get on with activities that were more likely to be productive. In fact, a particularly attentive reader of my ASIO file would probably have come to the conclusion that my Auntie Glory, life-long feminist and probable CPA fellow traveller, had summed me up pretty accurately in her reported assessment of December 1964. I was, indeed, as she described me “very brainy”. But I was also basically (at least from an Australian Communist Party viewpoint) “a reactionary”. Anyone who has displayed such faith in society as to take part in civic organisations of students, civil libertarians and supporters of nuclear disarmament, can only really be called a “reactionary”. Dangerous people are much less inclined to talk. Their tactics go beyond words.

If nothing else, my ASIO file of the late 1960s rekindles memories of long forgotten meetings I attended when I should have been out

partying. It conjures up images of harmless and often tedious occasions. But it also rekindles memories of the fears and obsessions of those times when students and civil libertarians could be seriously perceived as the potential enemies of the people in sunny Australia.

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