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SYDNEY'S BURNING

~~RATIONALIST ASSOCIATION OF N.S.W.~~

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P.O. Box 238, Darlinghurst,
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SYDNEY'S BURNING

IAN TURNER

ALPHA BOOKS SYDNEY

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To Ann

Contents

| | |
|---|----------|
| PART 1 THE TRIAL AND IMPRISONMENT OF THE TWELVE | 1 |
| <i>The War</i> | 3 |
| <i>The Wobblies</i> | 6 |
| <i>Tom Barker goes to War</i> | 14 |
| <i>Backdrop 1916</i> | 20 |
| THE SUPPLY OF HEROES . . . THE MYSTERY OF THE 'GREEK CAFE' MURDER . . . THE ESCAPE OF FRITZ GEORGIE . . . FIRE DOWN BELOW . . . FIVE THOUSAND FIVERS . . . FOUR FIVERS IN A BROTHEL . . . MURDER IN THE TOTTENHAM POLICE STATION | |
| <i>The Twelve: The Arrest and Preliminary Hearing</i> | 28 |
| <i>Backdrop 1916</i> | 41 |
| SABOTAGE . . . THE TOTTENHAM MURDER: THE TRIAL . . . THE FORGERS SENTENCED . . . CONSPIRACY IN THE WEST . . . AN ANARCHISTIC CIVIL SERVANT . . . CONSCRIPTION POLLING DAY . . . FRITZ GEORGIE AND THE CASE AGAINST THE TWELVE . . . THE NEW INDICTMENT . . . MORE ARSON | |
| <i>The Twelve: The Trial</i> | 51 |
| <i>The Release Campaign: Stage One</i> | 60 |
| <i>Backdrop 1916-1917</i> | 68 |
| AN INSURANCE FIRE . . . THE FIRST REACTIONS . . . ILLEGALITY . . . THE POLICE: SATISFACTION AND REWARDS . . . THE WESTRALIAN TRIAL . . . THE 'GREEK CAFE' MURDER: THE SEQUEL . . . THE TOTTENHAM MURDER: PLEA FOR COMMUTATION | |
| <i>The Twelve: The Appeal</i> | 80 |
| <i>The Release Campaign: Stage Two: The Suppression of the I.W.W.</i> | 83 |

| | | |
|---------------|--|-----|
| | <i>Backdrop 1917-1918</i> | 90 |
| | THE GENERAL STRIKE . . . THE COLEDALE SHOOTING . . . THE FORGED FIVERS: A LAST FLUTTER . . . ARSON AGAIN? | |
| | <i>The Release Campaign: Stage Three</i> | 96 |
| | <i>After the Trial: Harry Scully</i> | 102 |
| | <i>After the Trial: The Goldsteins</i> | 110 |
| | <i>The Government Agrees to Inquire</i> | 114 |
| | <i>Preparing for the Commission: The Goldsteins</i> | 119 |
| | <i>Preparing for the Commission: Harry Scully</i> | 131 |
| | <i>The Street Commission</i> | 133 |
| PART 2 | THE CASE AGAINST THE TWELVE | 141 |
| | <i>The Witnesses</i> | 146 |
| | <i>The Prisoners</i> | 165 |
| | <i>The Fires</i> | 192 |
| | <i>Some Confessions</i> | 200 |
| | <i>The Real Conspiracy</i> | 204 |
| PART 3 | THE RELEASE OF THE TWELVE | 213 |
| | <i>Backdrop 1918-1920</i> | 215 |
| | TOM BARKER DEPORTED . . . A WOBBLY PLOT TO BOLSHEVISE THE PACIFIC . . . A FEW MORE FIVERS . . . THE UNLAWFUL ASSOCIATIONS PRISONERS . . . JUDD AND BROOKFIELD IN TROUBLE WITH THE LAW . . . A 'CONSPIRACY' AGAINST THE POLICE . . . THE TWELVE IN GAOL | |
| | <i>The Release Campaign: Stage Four</i> | 224 |
| | <i>The Ewing Commission</i> | 232 |
| | <i>The Gates Open</i> | 240 |
| PART 4 | TAILPIECE | 251 |
| | <i>Sources</i> | 259 |
| | <i>Index</i> | 261 |

Illustrations

Plates 1-15

(between pages 128 and 129)

- 1 The 'Wobblies' on the Sydney Domain, May Day 1914
- 2 *Direct Action* greets the outbreak of war
- 3 The *Direct Action* cartoon which earned Tom Barker a sentence of twelve months' hard labour
- 4 The Twelve
- 5 Mr Justice Robert Darlow Pring
- 6 A recruiting sergeant, his propaganda, and two converts
- 7 Norman Lindsay's reaction to the 'No' victory
- 8 Henry Ernest Boote
- 9 The special May Day issue of *Direct Action* calling for the release of the Twelve
- 10 A 'Wobbly' picnic
- 11 Monty Miller campaigns for the release of the Twelve
- 12 W. A. Holman is confronted with a demand for an enquiry into the case of the Twelve
- 13 Mr Justice Phillip Whistler Street
- 14 Mr Justice Norman Kirkwood Ewing
- 15 Ernest E. Judd

Text Figures

| | <i>page</i> |
|--|-------------|
| 1 Walker C. Smith's pamphlet <i>Sabotage</i> | 11 |
| 2 A 'Wobbly' release poster | 84 |
| 3 Davis Goldstein | 147 |
| 4 Louis Goldstein | 147 |
| 5 Mr Richard Windeyer, K.C. | 162 |
| 6 Henry Christopher Scully | 162 |

Introduction

This is a rich and tangled tale. Murder, arson, sedition, forgery, conspiracy tumble and twist, combining with breathtaking speed and complexity. It is more than a crime story; it is a story of the politics of crime, and, if you like, of the crime of politics — of why men who dream of a better future become criminals, and of how society makes a political issue of their crimes.

I have recorded the events roughly as they would have become known to a contemporary observer, each event contributing to the atmosphere of the next. This has meant that one story is sometimes left suspended — interrupted by the happenings of the following — but all the loose ends are, I hope, eventually tied.

To provide some signposts for the reader, these are the principal cases discussed, in order of their appearance:

The 'Greek Cafe' Murder, which though not directly related, contributed significantly to the Arson Case (the core of this book); The Forgery Case, which led directly into the Arson Case; The Tottenham Police Station Murder, also not directly related, but of significance to the Arson Case; The Arson Case, being the trial and conviction of twelve members of the Industrial Workers of the World (originally charged with treason) for conspiracy to commit arson, seditious conspiracy, and conspiracy to pervert the course of justice; and the prolonged campaign of the labour movement to have the convictions over-ruled and the men released; The Westralian Conspiracy Case, in which other members of the I.W.W. were charged with sedition; The Coledale Shooting Case, and The Miller-Wallace Conspiracy Case, both of which involved some of the detectives who had been concerned in the Arson Case.

It may also help to provide in advance a list of the principal characters in this story:

| | |
|------------------------|---|
| Anstey, Frank M.H.R. | Labor politician who supported the release of the I.W.W. prisoners |
| Astor, Norman | Artist involved in the forgery case |
| Barker, Tom | Leading I.W.W., imprisoned for obstructing the war effort and later deported |
| Bathgate, D. G. | Officer of the Crown Law Department, concerned with the forgery and arson cases |
| Beatty, William (Bill) | Convicted in the arson case |

xii Introduction

- Besant, Bernard Bob
Besant, Bernard Bob
Bevan, Mr Justice Walter
Boote, Henry Ernest
Bradbury, Henry W.
Brissenden, Dr. E. Mayhew K.C.
Brookfield, Percival John (Jack)
M.L.A.
Brown, Joseph (Joe)
Burnside, Mr Justice Robert
Bruce
Cattell, Charles
Cohen, Ernest R.
Connolly, Roy
Coxen, Charles *pseud.*
(Elmer Robert Emerson)
Crook, Meyer
Cullen, Sir William
Dooley, James J. M.L.A.
Duncan, Constable George
Joseph
Ewing, Mr Justice Norman
Kirkwood
Fagin, Morris Joseph (Joe)
Ferguson, Mr Justice David
Gilbert
Ferguson, John
Fergusson, Detective George G.
Franks, Albert
Franz, Frank
Fuller, Sir George Warburton
Gannon, James Conley K.C.
Convicted in the arson case
Presided over the Broken Hill cases
Editor of the *Worker* and a leading
campaigner for the release of the I.W.W.
prisoners
Convicted in the forgery case
Counsel for the I.W.W. prisoners at the
Ewing Commission
Labor politician and a leading cam-
paigner for the release of the I.W.W.
prisoners
Private detective, engaged by the police
to investigate the I.W.W.
Presided over the Westralian conspiracy
case
Convicted in the forgery case
Solicitor for the Goldsteins
Journalist with the Sydney *Daily Tele-*
graph who heard Scully's confession
Passer of forged notes, concerned with
the 'Greek Cafe' murder
Davis Goldstein's bondsman
Chief Justice of New South Wales; tried
the Tottenham murder case
Acting-Premier of New South Wales on
the death of John Storey
Murdered in the police station at Totten-
ham, New South Wales
Presided over the second Royal Com-
mission into the arson case
Convicted in the arson case
Presided over the trials of Charles Thor-
burn and Ernest E. Judd
Convicted in the forgery case
Involved in the arson case and the
Miller-Wallace conspiracy case; a friend
of McAlister
Boarding-house keeper, host to several
of the I.W.W. prisoners
Convicted in the Tottenham murder
case
Chief Secretary of New South Wales at
time of the Street Commission
Counsel for the Goldsteins in the forgery
case and for some of the accused at the
arson trial

| | |
|--|--|
| Garden, John Smith (Jock) | Secretary of the Sydney Labor Council; a leading campaigner for the release of the I.W.W. prisoners |
| Georgie, Fritz (also known as 'German Charlie' Miller) | Escaped German internee |
| Giffney, Edward Albert (Ted) | National Secretary of the I.W.W. |
| Glynn, Thomas (Tom) | Convicted in the arson case |
| Goldstein, Davis | Accused in the forgery case; principal Crown witness in the arson case; an I.W.W. |
| Goldstein, Louis | Brother of Davis; accused in the forgery case; Crown witness in the arson case. |
| Grant, Donald | Convicted in the arson case |
| Grummitt, Leslie | Convicted in the forgery case |
| Hall, David Robert M.L.A. | Attorney-General in the Holman Government |
| Hamilton, John (Jack) | Convicted in the arson case |
| Holman, William Arthur M.L.A. | Premier of New South Wales at the time of the arson case and the Street Commission |
| Hooper, Detective T. | Involved in the forgery, arson and Miller-Wallace conspiracy cases |
| Horrocks, Alex | Convicted in the Westralian conspiracy case |
| Hughes, William Morris M.H.R. | Prime Minister of Australia 1915-23 |
| James, A. K.C. | Counsel for the I.W.W. prisoners at the preliminary hearing of the arson case |
| Judd, Ernest E. (Ernie) | Member of the Socialist Labor Party, who became an investigator for the Sydney Labor Council in the arson case |
| Karpinsky, Simon | Friend of the Goldsteins |
| Kennedy, Herbert | Accused in the Tottenham murder case |
| Kennedy, Roland N. | Convicted in the Tottenham murder case |
| King, John Benjamin | Convicted in the forgery and arson cases |
| Lamb, Ernest K.C. | Prosecuting counsel in the arson case |
| Larkin, Peter | Convicted in the arson case |
| Lazarus, Abraham (Little Tich) | Publican; bondsman for the Goldsteins in the forgery case |
| Leary, Detective Arthur | Involved in the 'Greek Cafe' murder, the arson case and the Coledale shooting |
| Lowden, Fred | Accused of the Coledale shooting; an I.W.W. |
| Lynch, Eva | Campaigner for the release of the I.W.W. prisoners; an I.W.W. |
| Lynch, Detective T. J. | Involved in the forgery and arson cases |

xiv *Introduction*

| | |
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| McAlister, F. J. (Mac) | Crown witness in the arson case |
| McEnaney (McInerney), James | Accused of the Coledale shooting; an I.W.W. |
| Mackay, Constable (later Sergeant) W. J. | Police shorthand reporter; involved in the arson case |
| McPherson, Andrew | Early member of the I.W.W. |
| McPherson, Donald (Don) | Convicted in the arson case |
| Matthews, Detective F. | Involved in the arson case |
| Matthias, Betsy Hamilton | Responsible for the formation of the Industrial Labor Party and publisher of <i>Solidarity</i> |
| Miller, George | Accused in the Miller-Wallace conspiracy case |
| Miller, Detective J. | Involved in the forgery and arson cases |
| Miller, Montague (Monty) | Convicted in the Westralian conspiracy case; a campaigner for the release of the Twelve |
| Mitchell, James | Inspector-General of the New South Wales police force |
| Mitchell, Detective S. | Involved in the forgery and arson cases |
| Moore, Detective-Sergeant N. | Police expert on subversive activities; involved in the arson case |
| Moore, Thomas (Tom) | Convicted in the arson case |
| Morgan, Frederick (Fred) | Leading I.W.W.; accused in the forgery case; named in the arson case; jumped bail |
| Mutch, Thomas Davies M.L.A. | Labor politician; heard Scully's confession; campaigner for the release of the Twelve |
| Pappageorgi, George | Victim of the 'Greek Cafe' murder |
| Pauling, Detective T. | Involved in the forgery and arson cases |
| Pope, Tom | Involved in the arson case; an I.W.W. |
| Pring, Mr Justice Robert Darlow | Judge in the arson trial |
| Pura, Lazarus | Tailor; witness against the Goldsteins at the Street Commission |
| Rancie, Norman | Editor of <i>Direct Action</i> |
| Reeve, Charles (Charlie) | Convicted in the arson case; named in the Westralian conspiracy case |
| Robertson, Detective-Sergeant T. | Involved in the arson case and the Coledale shooting |
| Robson, Detective Stuart | Involved in the forgery and arson cases |
| Sawtell, Michael (Mick) | Convicted in the Westralian conspiracy case |

| | |
|---|---|
| Scully, Henry Christopher (Harry) | Chemist; Crown witness in the arson case; an I.W.W. |
| Shand, Alexander B. K.C. | Counsel for the Crown at the Street Commission |
| Siebenhaar, William | Civil servant; involved in the Westralian conspiracy case |
| Sly, Mr Justice Richard Meares | Presided over the 'Greek Cafe' and the Miller-Wallace conspiracy trials |
| Storey, John M.L.A. | Premier of New South Wales at the time of the Ewing Commission |
| Street, Mr Justice Phillip Whistler | Presided over the first Royal Commission into the arson case |
| Surrige, Detective Arthur | Involved in the forgery and arson cases and the Coledale shooting; a friend of Scully |
| Teen, William (Bill) | Convicted in the arson case |
| Thorburn, Charles | Crown witness in the Coledale shooting; later convicted of conspiracy |
| Tighe, Emerald Louis | Turned King's Evidence in the forgery case |
| Turbet, Detective C. | Involved in the forgery and arson cases |
| Walker, Inspector (later Superintendent) J. | In charge of the investigation into the forgery and arson cases |
| Wallace, Robert | Accused in the Miller-Wallace conspiracy case |
| White, P. K. | Solicitor for the I.W.W. |
| Wilson, James | Convicted of the 'Greek Cafe' murder |
| Wilson, Jock | I.W.W. propagandist |
| Windeyer, Richard K.C. | Counsel for the Twelve at the Street Commission |

INTRODUCTION TO SECOND EDITION

In the first edition of this book, I commented that my research had been hampered by my inability to find a copy of the Minutes of Evidence of the Royal Commission presided over by Mr Justice Street in 1918. Since then, the Mitchell Library has acquired a copy of the Minutes of Evidence and a typescript of almost all of the exhibits put before Mr Justice Street; I have now had an opportunity to study these, and have made some alterations to this book as a result.

Wherever possible, I have checked quotations from the Minutes, and I have generally preferred to quote directly. (However, I have occasionally retained a quotation from a press report where this

provided a convenient summary of the evidence being given; such quotations can be recognised as they appear in indirect speech.) I have corrected some errors of fact. And, having read the long addresses to the Commission by Mr Windeyer (representing the defence interests) and Mr Shand (for the Crown), I have reconsidered, and in some (though not major) respects qualified, my own conclusions. I have also taken the opportunity of making some corrections and clarifications suggested by reviewers and private critics.

Ian Turner,
April, 1969.

PART

1

THE TRIAL
AND IMPRISONMENT
OF THE TWELVE

'The I.W.W. not only preach but practise sabotage. Nor do they stop even here; but, for reasons that will be obvious to every citizen of the Commonwealth in the course of the next few days, I will not now catalogue their crimes, except to remind the people of the Commonwealth that they are to a man anti-conscriptionists. They are all anarchists and enemies of society. I invite those with whom I have been associated for twenty years to consider what company they keep.'

William Morris Hughes

'When the workers resent the everyday violence perpetrated upon them the horrified and sanctimonious crew and their lickspittle toadies lift their blood-stained, profit-mongering hands in the air with horror. But, oh, Hughes and my masters. Beware of what you do! Prisons, and hunger, and gallows, will not save your ruling class. Nor stifling human thought. Nor limiting human actions. Organise! organise! organise! ye toilers all.'

Tom Barker

The War

For Britain! Good old Britain!
Where our fathers first drew breath,
We'll fight like true Australians,
Facing danger, wounds or death.
With Britain's other gallant sons
We're going hand in hand;
Our War-cry 'Good old Britain', boys,
Our own dear motherland.

Frank Johnstone, "Sons of Australia", in the *Bulletin*

'Let those who own Australia do the fighting. Put the wealthiest in the front ranks; the middle class next; follow these with politicians, lawyers, sky pilots and judges. Answer the declaration of war with the call for a GENERAL STRIKE.'

Tom Barker in *Direct Action*

The fourth of August 1914, the outbreak of Britain's war with Germany, and 'Australia will be there. . . .' It was a fervent, whole-hearted response to the motherland's call, and the nation spoke almost with one voice.

Not that there was much choice: London conducted external affairs for the whole of the Empire, and the British declaration of war automatically involved Australia. But the nature and extent of that involvement were matters for local decision.

Australia was in the middle of an election campaign. The retiring Liberal Prime Minister, Joseph Cook, offered the Imperial Government the Australian Naval Squadron and an expeditionary force of 20,000 men. The Labor leader, Andrew Fisher, capped the Government's bid with the promise that Australia would stand by the 'old country' to the last man and the last shilling. Labor won the biggest victory it had yet enjoyed.

The patriotic, pro-Empire stance of the politicians reflected popular sentiment. The enthusiasm was huge. Aero Club, Rifle

4 *Sydney's Burning*

Club, Motor Cycle Club members offered their services; the wealthy retailer Samuel Hordern offered 'himself and his cars'. Light horsemen and infantrymen of the Australian militia, Boer War veterans, all volunteered to serve. Thousands of would-be recruits besieged the army barracks, anxious to get overseas before the fighting ended. 'It is our baptism of fire,' wrote the *Sydney Morning Herald*.

Commercial interests, too, began to display a patriotic sentiment. Automobile advertisements advised the public to 'Buy English, French, and American Goods'; the distributors of the Metz 22 (a suspiciously German name) announced that their car was 'Built in America'. Advertisements for the Berlin Piano Company disappeared; a digger extolled John Brinsmead's pianos — 'John Bull and Young Australia both agree. . . .' Wholesale houses, anticipating shortages, withdrew their price lists and quoted on their stocks from day to day.

For the workers, the first obvious consequence of the war was unemployment. Trade with Germany stopped immediately. Wool sales were suspended and the clip was put in store. Mines at Newcastle and Broken Hill began to close. Factories began to retrench. The Millions Club requested the Lord Mayor of Sydney to call a patriotic demonstration. The Labor Premier of New South Wales (W. A. Holman) warned that wage awards might have to be suspended. The *Sydney Morning Herald*, referring to the 'somewhat artificial standard of wages', declared that 'the worker quite conceivably may have to decide whether half a loaf is not better than no bread at all.' The *Worker* wrote:

'Australia will suffer much in the struggle that seems ahead. . . . Thousands of unemployed will be created; unscrupulous greed will seize the opportunity to raise the necessaries of life to famine prices. . . .

'We must protect our country. We must keep sacred from the mailed fist this splendid heritage. For that our Army of Defence was formed, and our Navy built.

'But we hope no wave of jingo madness will sweep over the land, unbalancing the judgement of its leaders, and inciting its population to wild measures, spurred on by the vile press, to which war is only an increase in circulation, and every corpse a copper.

'God help Australia! God help England! God help Germany! God help us!'

Only on the extreme radical fringes of the labour movement was there opposition, and here there was confusion. Many famous European socialists had declared for their countries, right or

wrong, and some Australian socialists found it hard to decide. Besides, there was the problem of their relations with the mass Labor Party—was that party's endorsement of the war sufficient cause for socialists to withdraw their critical support?

But the Industrial Workers of the World—the 'Wobblies', as they were popularly known—were quite clear about their stand:

'Down all the stretch of that blood-red tragedy . . . which is the history of the working class, men have been crucified and gaoled and tortured for their class, but our present day representatives of Labour must howl cheek by jowl with the capitalistic carrion for "Blood! Blood! Blood!" If the politicians of Australia want war, let them take their own carcasses to the firing line to be targets for modern machine-guns and food for cholera. . . . If they want blood, LET THEM CUT THEIR OWN THROATS. . . . WORKERS OF THE WORLD, UNITE! DON'T BECOME HIRED MURDERERS! DON'T JOIN THE ARMY OR NAVY!'

The Wobblies found themselves small voices in a great chauvinistic wilderness; anti-enlistment propaganda fell on stony ground. Indeed, so great was the popular enthusiasm that the Government had not yet even begun a recruiting campaign. But, as unemployment grew, prices soared, and the war dragged wearily through Middle Eastern desert and European mud, as casualties mounted and the supply of ready volunteers dried up, as the Government first applied recruiting pressures and later threatened conscription, so did more and more listen to the Wobblies' call.

The Wobblies

Come with us, you workingmen, and join the rebel band,
Come you discontented ones, and give a helping hand,
We march against the parasite to drive him from the land
With ONE BIG INDUSTRIAL UNION!

In factory and field and mine we gather in our might,
We're on the job and know the way to win the hardest fight,
For the beacon that shall guide us out of darkness into light
Is ONE BIG INDUSTRIAL UNION!

Hurrah! hurrah! we're going to paint 'er red!
Hurrah! hurrah! the way is clear ahead—
We're gaining shop democracy and liberty and bread,
With ONE BIG INDUSTRIAL UNION!

“Paint 'Er Red” by Ralph H. Chaplin,
from *Songs to Fan the Flames of Discontent*

Who were these Wobblies? Where had they come from? What iron had entered their souls that they turned their backs on the cause which the nation had made its own?

At the turn of the century, the copper bosses made the mines of Cripple Creek, Colorado, U.S.A., a living hell for the men whose labour they bought. The hours were long, the pay was low, the daily toil destroyed body and soul. When the dust got them and their lungs gave out, men were tossed aside like the slag from the mines.

For ten years, the miners worked patiently and peacefully to lighten their burden by securing an eight-hour working day. They won legislation, but the Supreme Court of Colorado declared it unconstitutional. They won a constitutional amendment, but the copper bosses bought the legislators and the new eight hours bill was defeated. The Western Federation of Miners struck work on July 3, 1903.

The mine-owners persuaded the officials of Colorado to make the State militia available to break the strike. A thousand armed men moved into Cripple Creek and martial law was proclaimed. The elected officials of the county were removed from office. Hundreds of strikers and sympathisers were gaoled. Agents of the mine-owners ran the county, censored the local newspapers and news despatches, directed the operations of the State militia and their own private army of thugs.

The miners were beaten, but their leader, 'Big Bill' Haywood, carried their organisation into the conference of industrial unionists and socialists which met in Chicago on June 27, 1905, and founded the Industrial Workers of the World.

The I.W.W. grew straight out of the bitter experience of the western miners. But the theoretical basis of the new movement was provided by Daniel De Leon, secretary of the Socialist Labor Party.

De Leon had concluded that political struggle was not sufficient to win the world for the working class—for this, the workers must organise on industrial lines into one great union (the Industrial Workers of the World). Political action was necessary to ensure that the forces of the State should not be used to crush the aspirations of the workers. The I.W.W. was to be the 'sword' of the revolution, to 'take and hold' the means of production; the Socialist Labor Party was to be its shield.

The I.W.W. was, at its moment of birth, an alliance of industrialists and socialists, but the alliance was unstable. A large section of industrialists regarded political action as a fraud and a delusion; the place to wage the class war was at the point of exploitation, the place of employment.

In 1908, the I.W.W. convention split between the followers of De Leon and the 'direct actionists'—the 'Bummery' as they were known because of their addiction to the famous hobo song, "Hallelujah, I'm a Bum". At the membership level, the split was between the more settled workers and the single, itinerant workers who moved easily between unskilled jobs—the 'blanket stiffs' who 'beat their way from Frisco Bay to the rock-bound coasts of Maine, to Canada and Mexico, then wandered back again'. The De Leonites set up their headquarters in Detroit, the 'Bummery' in Chicago. Both claimed the title 'Industrial Workers of the World', but, increasingly, the reckless determination of the 'Bummery', or 'Wobblies', made Chicago the centre of American industrial unionism.

The principles of the Chicago I.W.W. were simple and straightforward; the Preamble to their constitution contained the essence of their belief:

'The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life.

'Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production, and abolish the wage system.

'We find that the centering of the management of industries into fewer and fewer hands makes the trade unions unable to cope with the ever-growing power of the employing class. The trade unions foster a state of affairs which allows one set of workers to be pitted against another set of workers in the same industry, thereby helping to defeat one another in wage wars. Moreover, the trade unions aid the employing class to mislead the workers into the belief that the working class have interests in common with their employers.

'These conditions can be changed and the interest of the working class upheld only by an organization formed in such a way that all its members in any one industry, or in all industries, if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making an injury to one an injury to all.

'Instead of the conservative motto, "A fair day's wages for a fair day's work", we must inscribe on our banner the revolutionary watchword, "Abolition of the wages system".

'It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for the every-day struggle with the capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.'

The Chicago Wobblies set out to prosecute the class war. First they had to bring the message of revolutionary unionism to the workers. Their roving agitators moved in on a likely locality and set up their soap-boxes; if they struck trouble with the local 'bulls' (as they mostly did), they sent out the call for more agitators, until they jammed the courts and the gaols and won their right to speak. Then they formed a Local Industrial Union—an organisation which set out to bring together all the workers, regardless of their particular skills, who worked in the same industry. And then they called a strike.

Generally they sought out the toughest places, where the ruthless violence of the company police had smashed previous attempts

of the workers to organise, where conditions were worst, where unskilled migrant workers predominated. Sometimes they won; mostly they lost. But they kept on fighting.

In the end, the Wobblies believed, the working class would come to learn that their wrongs could only be righted by the social revolution and the establishment of industrial democracy. This was the new society they were forming, by their agitation and struggle, within the shell of the old.

Along the way, the Wobblies acquired more sophisticated tactics, largely from the French General Confederation of Labour (the C.G.T.). They wasted no time on bourgeois morality:

'As a revolutionary organisation, the I.W.W. aims to use any and all tactics that will get the results sought with the least expenditure of time and energy. . . . The question of "right" and "wrong" does not concern us.'

They asserted that only 'direct action'—that is, the direct confrontation of workers and boss at the point of production—was of any use to the working class in the class war. They believed that direct industrial action would culminate in the apocalyptic general strike, the simultaneous withdrawal by all workers of their labour power, so that industry would grind to a halt, government become impossible, and the Industrial Workers of the World come into their own. And more and more they came to accept 'sabotage' as a weapon.

Sabotage, as defined by the American Wobbly, Arturo Giovannitti, in an introduction to the American edition of *Sabotage*, a booklet by the French syndicalist, Emile Pouget:

'What, then, is Sabotage? Sabotage is:

A Any conscious and wilful act on the part of one or more workers intended to slacken and reduce the output of production in the industrial field, or to restrict trade and reduce the profits in the commercial field, in order to secure from their employers better conditions or to enforce those promised or maintain those already prevailing, when no other way of redress is open.

B Any skilful operation on the machinery of production intended not to destroy it or permanently render it defective, but only to temporarily disable it and put it out of running condition in order to make impossible the work of scabs and thus to secure the complete and real stoppage of work during a strike.'

Pouget claimed a long history for sabotage, concluding:

'The workers' sabotage is inspired by generous and altruistic principles. It is a shield of defence and protection against the usuries and vexations of the bosses; it is the weapon of the disinherited who,

10 *Sydney's Burning*

whilst he struggles for his family's existence and his own, aims also to better the social conditions of his class and to deliver it from the exploitation that strangles and crushes it. It is the ferment of a better life.'

The American Wobbly propagandist, Walker C. Smith, in another pamphlet, also titled *Sabotage*, made some practical suggestions:

' . . . the destroying of raw materials destined for a scab factory or shop . . . the spoiling of a finished product . . . the destruction of parts of machinery or the disarrangement of a whole machine where that machine is the one upon which the other machines are dependent for material . . . working slow . . . poor work . . . mis-sending packages, giving overweight to customers, pointing out defects in goods, using the best materials where the employer desires adulteration, and also the telling of trade secrets. . . .'

'Note this important point, however. Sabotage does not desire to take human life. Neither is it directed against the consumer except where wide publicity has been given that the sabotaged product is under the ban. A boycotted product is at all times a fit subject for sabotage. The aim is to hit the employer in his vital spot, his heart and soul, in other words, his pocket book.'

And Smith offered the workers a simple slogan—FOR POOR WAGES, POOR WORK!

The I.W.W. was a fighting organisation and it had its casualty lists. Thousands of its members were gaoled, hundreds injured and dozens killed—by private lynch gangs or by public authority. Of these, the most famous was the Wobbly song-writer, Joe Hill.*

Hill migrated from Sweden to the United States in 1901, bummed his way to the west coast, worked as wharf labourer, miner, wheat-lumper, seaman—and, from 1910, as unpaid organiser, soap-boxer, and minstrel for the Wobblies. In January 1914 he was arrested in Salt Lake City, Utah, on a charge of murder.

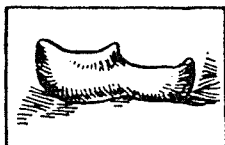
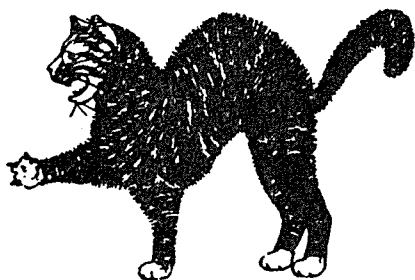
The Wobblies said it was a frame. For nearly two years, through the courts, before the public, they kept the fight going—and Joe Hill alive.

Finally, despite appeals—one by President Wilson himself—the State of Utah set a date for the execution, November 19, 1915.

On the day before he was to die, Joe Hill sent two telegrams to 'Big Bill' Haywood of the I.W.W.:

* Hill's songs include "Casey Jones, the Union Scab", "The Tramp", "The Preacher and the Slave" and "The Rebel Girl". A number of them may be found in John Greenway's *American Folk Songs of Protest* and in *Rebel Voices*, (ed.) Joyce L. Kornbluh.

SABOTAGE



Printed and Published by The Australian Administration of the
Industrial Workers of the World, at 330 Castlereagh Street, Sydney.

Walker C. Smith's pamphlet *Sabotage*

By courtesy of the Mitchell Library, Sydney.

12 *Sydney's Burning*

'Goodbye, Bill. I will die like a true blue rebel. Don't waste any time in mourning. Organize. . . . It is only a hundred miles from here to Wyoming. Could you arrange to have my body hauled to the State line to be buried? I don't want to be found dead in Utah.'

At the appointed time, Joe Hill was blindfolded and strapped to an unpainted kitchen chair in the gaolyard, and shot. Hill died, and at the moment of his death became a legend:

I dreamt I saw Joe Hill last night,
Alive as you or me—
'But Joe,' I said, 'you're ten years dead.'
'I never died,' said he.

'The copper bosses killed you, Joe,
They shot you, Joe,' said I.
'Takes more than guns to kill a man,'
Said Joe, 'I did not die. . . .'

His body was taken to Chicago. Thirty thousand people attended his funeral service; a procession eight or ten people wide and a mile long followed his coffin to the cemetery, where his body was cremated.

The Industrial Workers of the World had existed in Australia since October 1907, when a society was formed in Sydney by the followers of Daniel De Leon, to propagate I.W.W. principles. But, as in America, the workers who were attracted to the I.W.W. by the promise inherent in the reorganisation of the trade unions along 'scientific' lines grew impatient with the doctrinaire restrictions of De Leonism. From late in 1908, when the news of the American split reached Australia, there were rumblings of discontent in the local clubs. As radicals grew more and more hostile to the timidity and compromise of the mass Labor Party, and disheartened with their own failure to make political headway, they turned towards the beacon that was shining from Chicago.

Finally, in May 1911, a handful of Adelaide socialists discussed the rival I.W.W.s and resolved to write to the Chicago 'direct actionist' headquarters requesting a charter to form an Australian Administration. The charter was granted.

The local De Leonites were 'disgustingly disappointed' that this tiny group of 'muddle-headed, prejudiced and ignorant pseudo-socialists' should join hands with the 'I-am-a-bum anarchistic hobo crowd', in disregard of their I.W.W. But from this small band grew the strongest and most significant revolutionary movement the Australian working class had yet known.

Six months later, in Sydney, a group of dissident De Leonites and orthodox socialists formed themselves into a Sydney Local of the Chicago I.W.W. and asked Adelaide for a charter. The Local made slow progress; by May 1912, it had only fourteen members and was still confined to propaganda work. Among those who had been admitted were Joseph Fagin and Donald Grant.

The new organisation set about defining its position: it was absolutely non-political, and its members could not hold office in the conventional 'craft unions'. But, by the end of 1912, divisions were already appearing over the tough, all-out Chicago tactics. The Adelaide headquarters, asked by the Sydney secretary for advice, wrote:

'Re Physical Force Advocacy. The Executive at no time countenances the preaching and advocating of physical force as a weapon to be used on behalf of the Industrial Workers of the World or its members. To preach physical force is to declare that the organisation is . . . too intellectually weak to carry out its mission viz. the overthrow of the Capitalist System and along with it the Abolition of the Wages System.'

This was too slow for those who had avidly absorbed the Chicago influence. They were now led by Tom Glynn. Early in 1913, Glynn (along with Joe Fagin, John Benjamin King, Andrew McPherson, and several others) had the numbers to take over the Local. The more moderate members promptly left, denouncing the 'physical force element' which had supplanted them.

The Australian administration in Adelaide at first refused to recognise the take-over by the direct actionists. But it was these men whose vigour and courage made the I.W.W. in Australia an organisation which, within three years, would cause the comfortable to turn pale and tremble in their seats.

Tom Barker goes to War

Should I ever be a soldier,
'Neath the Red Flag I would fight;
Should the gun I ever shoulder,
It's to crush the tyrant's might.

Joe Hill

Tom Barker was born in the Lake District of England in 1887, the son of a farm labourer. At fifteen he ran away to Liverpool; at seventeen he joined the 8th Hussars, an Irish cavalry regiment then stationed at Aldershot; it was while in the army he received most of his education, at night school. Boarded out of the army after a bout of rheumatic fever, he worked for a while in Liverpool, and then, in 1909, headed for New Zealand.

In Auckland, Barker got a job on the trams, joined the union, became Secretary of the Socialist Party, and left the Socialists for the Chicago wing of the I.W.W. when it reached New Zealand in 1912. Organising for the I.W.W., he agitated through the great New Zealand strikes of 1912-13, was arrested for sedition and released on bond. To escape the bond he left for Sydney in February 1914.

Barker, at twenty-six, was an experienced writer, speaker and organiser, well tempered in the class struggle. At the I.W.W. headquarters, an old gospel hall in Castlereagh Street, he found an active Local, oriented towards Chicago-style direct action and sabotage, and Tom Glynn editing the organisation's monthly paper, *Direct Action*. Barker threw himself into the work.

In June, the New South Wales Labor Government endeavoured to halt the sale of the I.W.W. paper in the Sydney Domain, the open air forum, on Sunday afternoon. The Wobblies accepted the challenge, defied the law, and Barker and a number of others were arrested and fined ten shillings or seven days. They took the seven days.

As patriotic fervour swept through the nation with the outbreak

of war, Tom Barker's revolutionary enthusiasm increased. In August 1914, he dipped his pen in acid:

'In the New South Wales Parliament the Labor brigade don't even plead patriotism as an excuse, for when the war was mentioned after some Liberal member from nowhere started the "Grovel Anthem, Gorsave" the Labor Party rose to the occasion, and lent their dulcet tones to enhance the effect. . . . As for George Wettin, the writer has no time for him as a King, and precious little for him as a man, but for character, stamina, intelligence and principle he has the political duck-shovers of Australia well-skinned. . . .'

And again, under the heading, 'Fire Escapes Association "Preys" for Peace':

'Last Sunday in the Domain, an open air service was conducted (D.V.) by the patriotic members of the Superstition Vendors, Guessers, Skypilots, and Fire Escapes Association, in order to bring pressure on God to bring about a state of perfect peace in the European cockpit. . . . Let us prey!'

By the end of 1914, Barker was editor of *Direct Action* and secretary of the Sydney Local of the I.W.W., replacing J. B. King, who had gone to Western Australia.

THE 'TO ARMS' POSTER

In July 1915, Tom Barker wrote and printed what was perhaps the most famous Australian poster of World War I:

TO ARMS! !
Capitalists, Parsons, Politicians,
Landlords, Newspaper Editors, and
Other Stay-at-home Patriots.
YOUR COUNTRY NEEDS YOU IN
THE TRENCHES!
WORKERS,
FOLLOW YOUR MASTERS! !

Barker records in his memoirs:

'It wasn't long put up on the hoardings round Sydney before the police were sent to scratch it off, and we had the sight of a police sergeant going round scraping them off walls and a bloke waiting on the corner with some more ready to post them up the moment he'd gone on.'

During August, the New South Wales Parliament concerned itself with the question of 'German sympathisers' at large in the community. In the Legislative Council, a minister of the Labor

Government found Tom Barker's poster 'a more serious matter than the presence of Germans in our midst'.

'I am told that copies of it are stuck up throughout the Government [railways and tramways] workshops. . . . Not a moment ought to be lost in having every one of those infamous posters pulled down, and in taking all steps the authorities possibly can to bring home to the disloyal ruffians who printed that cowardly and lying document their crime. It is acts like this that do most to injure recruiting by instilling false suspicions into the minds of the workers and by putting before them the gross and egregious falsehood that what one may call the more well-to-do classes . . . are not doing their duty. I venture to think that there never was a time when the well-to-do classes were doing their duty more nobly and more wholeheartedly than they are today.'

The Chief Secretary (George Black), a former radical socialist and republican who was now a devoted supporter of the war, instructed the police to find the man responsible for the poster.

Two detectives arrived at the I.W.W. headquarters on September 3, 1915, with a warrant for Barker's arrest. He was charged under the N.S.W. War Precautions Regulations with publishing a poster prejudicial to recruiting.

Barker was held in gaol for a week before he was admitted to bail. His case came up in the Central Police Court before Mr William M. Macfarlane, S.M., on September 14. Counsel for Barker opened by arguing that the regulations under which Barker was charged were in conflict with Commonwealth law. The magistrate over-ruled him.

The Crown stated that Barker had admitted publishing the poster on behalf of the I.W.W. He had exhibited the poster at the Domain, saying: 'I don't tell you not to go to the war, but I'm not going. The organisation I belong to doesn't believe in war.'

Counsel said that he did not intend to call any witnesses for the defence. Barker admitted that he had published the poster—with the object, as he told the detectives at the time of his arrest, of stimulating recruiting. There was no evidence to show that it had had any other effect.

The magistrate said that, to his mind, a poster which contained the words 'Workers, follow your masters, stay at home' was prejudicial to recruiting. He convicted Barker, sentenced him to £50 or six months (despite the Crown's request for gaol without the option), and ordered him to enter into bonds of £200 'to observe the regulations of the War Precautions Act

during the currency of the war in which Great Britain is at present engaged', in default another six months.

Barker gave notice of appeal, and the I.W.W. swung their organisation into action. A Defence Committee was set up (with Fred Morgan as secretary); it raised over £100 for the legal expenses, and appealed to the labour movement generally to protest to the Labor Government of New South Wales. Some Labor members of the Federal Parliament, including the radical Frank Anstey, sent messages of support; these were later used against them. Many Labor and trade union organisations protested.

Barker's appeal was heard in Quarter Sessions on October 13, 1915. His counsel renewed the plea that the regulations under which Barker was charged were State regulations, and this was a field in which Commonwealth law prevailed. The judge upheld this submission and quashed the conviction.

Tom Barker drew his own conclusions:

'The pinheads who masquerade as ministers of the crown . . . evidently thought that when they captured the editor of *Direct Action* . . . the paper would die. And they were right, the paper did die—as a fortnightly. A council of war was held. Editors blew in from all parts of the country. It was decided that *Direct Action* should celebrate the second gaoling of the editor, by getting into short clothes and becoming a weekly.'

Discontent was rising among the working class—discontent over pegged wages, rising prices, unemployment, even the war itself. For the moment, the I.W.W. thrived on this discontent, and on its own persecution.

THE ASHES OF JOE HILL

The body of the Wobbly minstrel, Joe Hill, executed for murder, was cremated; the ashes were distributed to the Wobbly organisations throughout the world. Tom Barker recalled in his memoirs the fate of the portion which reached Sydney:

'One Saturday morning, to my astonishment, I got a parcel from the [American] I.W.W. organisation. . . . We decided that we would have a ceremonial depositing of the ashes on the following Sunday in the garden near the Domain [presumably the Sydney Botanical Gardens], so that we could say that we had Joe planted firmly in Australia. The plan would have worked except . . . the police raided us. We were all thrown out, and the police took away Joe Hill's ashes. . . . I went to Central Police Station and asked the Chief about them. "Oh," he said, "you're too late. I threw them on the fire." So that was

the end of Joe Hill's ashes. . . . But that didn't cut down the status of Joe Hill in our minds. . . .'

THE 'WAR PROFIT' CARTOON

Syd Nicholls, a talented young artist, had made an auspicious debut as cartoonist for *Direct Action* in the first week of the war. It was one of Nicholls' attacks on war profiteering which led Tom Barker, in March 1916, to his second prosecution for publishing matter likely to prejudice recruiting. The Commonwealth had issued a prospectus for a £10,000,000 War Loan, calling upon investors to 'show a patriotic spirit . . . especially as no sacrifice is entailed . . . the rate of interest being far higher than in normal times'. Nicholls depicted a soldier crucified on a cannon, his blood dripping into a 'War Profit' skull held by 'Fat', who jubilated: 'Long Live the War! Hip, Hip, 'Ooray! Fill 'Em Up Again!'

Since the I.W.W. had acquired its own printing press, the name of Jack Hamilton, a miner who had contributed most of the money for its purchase, had appeared in *Direct Action* as publisher. Accordingly, it was against Hamilton that the original warrant (under the Commonwealth War Precautions Act) was issued. But when the police arrived at the I.W.W. headquarters, they found Tom Barker in possession. Hamilton had been up the country for some months, Barker said; he was now printer and publisher, and would take full responsibility. So the police altered the name on the warrant and served it on Barker. He was bailed out by one Davis Goldstein.

The War Precautions Act required that the consent of the Minister be obtained to launch a prosecution. Barker fronted in the Central Police Court on March 16, 1916, but the prosecuting counsel announced that the police procedure had been incorrect and the Crown wished to withdraw.

Barker's solicitor, P. K. White, applied without success for costs. During many cases, White worked hard and honorably—even beyond the call of duty—for the I.W.W.

A fortnight later, the police had straightened out their procedure. A new warrant was issued, and Barker again faced the 'prejudicing recruiting' charge. The prosecution thought Syd Nicholls' cartoon, and the accompanying caption, 'pitilessly cruel'; White pleaded, rather contradictorily, that the cartoon merely urged people not to go to war—it did not prejudice recruiting; the magistrate had no doubt why the offending words had been used, and fined Barker £100, in default twelve months' hard

labour. Barker appealed and was allowed bail; his appeal was rejected; he refused to pay his fine, and was sent to serve his sentence on May 4, 1916.

The Wobblies sent out the call; Norman Rancie wrote in *Direct Action* in April 1916:

'We are determined that Tom Barker shall be freed. We will use any tactic, adopt any weapon, do anything in our attempt to release our fighters for freedom. . . . We are desperate men, and with time our desperation grows, and no one knows what may happen if the powers that be do not relax.'

And again in May:

'The "sab-cat" brigade* throughout Australia certainly won't forget. If the shoal of protests which have rolled in are ineffectual then action must be tried. The liberty of one member of the working class is more sacred than all the surplus value in Australia.'

* 'Sab-cat' was Wobbly argot for saboteur. The black cat and the wooden shoe were symbols of sabotage.

Backdrop 1916

THE SUPPLY OF HEROES

The war was not going well. In France, the Western Front was again bogged down in the foul Flanders mud. The British High Command had finally agreed that the Dardanelles campaign was a tragic failure. Casualties had been appallingly high and reinforcements were urgently needed.

Already in 1915, Prime Minister Hughes had stepped up the recruiting campaign. A 'War Census' had uncovered 600,000 fit men of military age. The Government had asked each of them three questions: Are you prepared to enlist now? Are you prepared to enlist later on? If not, why not? And a growing body of opinion, organised in the Universal Service League, was pressing for conscription.

The labour movement was in uproar. In the first weeks of 1916, Melbourne wharfies, Illawarra coal-miners, Broken Hill metal-miners were on strike. The I.W.W. and the socialists were denouncing the Government's recruiting pressures and the proposals for conscription.

In January 1916, Prime Minister Hughes, departing for England at the invitation of the Imperial War Cabinet, denounced the Wobblies, who, 'posing as lovers of liberty, do what they can to prevent men from joining the expeditionary forces'. They were 'foul parasites who have attached themselves to the vitals of Labour'. He sounded a final threat: 'It is no use treating these people like a tame cat. . . . They must be attacked with the ferocity of a Bengal tiger.'

While Hughes was abroad, the labour movement hardened against conscription. Party and trade union conferences declared overwhelmingly their opposition; a national trade union congress only narrowly defeated a motion for a general strike.

By the middle of the year, conservative and much Labor opinion was aghast at the spread of I.W.W. influence. Direct action, 'go slow', and sabotage were reported from the N.S.W. railway workshops, the Commonwealth Clothing Factory in Melbourne, the Trans-Australian Railway construction jobs in the central desert. An alarmed correspondent wrote in the *Sydney*

Morning Herald: 'I.W.W.-ism has obtained a firm hold upon the trade unions of New South Wales, and, through these unions, a good grip upon the helm of the Labour ship of this State.'

When Hughes returned to Australia on July 31, 1916, the bloody battle of the Somme was at its height. German guns and bayonets had torn great gaps in the Allied ranks, and victory was in the balance. In England, a war leader declared that 'the supply of heroes must be maintained at all costs'. The British Government had introduced conscription; Hughes resolved to do the same.

Confronted with the determined opposition of most of the labour movement, Hughes was unable to persuade his cabinet to act. But, after days of argument, he finally won a narrow majority for a popular vote on compulsory enlistment. An Act for a referendum was passed in August 1916, and the fight was on.

THE MYSTERY OF THE 'GREEK CAFE' MURDER

Early on the morning of April 5, 1916, two waitresses arrived for their day's work at the Allies' Cafe at the south end of George Street, Sydney.

On the kitchen floor they found the murdered body of the proprietor, a Greek named George Pappageorgi. The waitresses called the police.

Detectives searching the premises found the cash register had been broken open and rifled. In the living quarters upstairs, Pappageorgi's trunk had been opened and his papers scattered about the room.

The police investigations revealed that Pappageorgi (one of several names by which he was known) was a single man of about forty with a reputation for homosexual activities.

Police suspicions ranged widely but the evidence collected pointed to no one suspect.

In the coroner's court, Detective A. Leary said that the police could proceed no further. The coroner brought in a verdict of murder by a person or persons unknown. The only clue the police had to work on was an unidentified finger print on the rifled cash register. This print was later to connect the murder with the I.W.W.

THE ESCAPE OF FRITZ GEORGIE

On the night of Thursday, July 20, 1916, seven German internees tunnelled forty feet out of the maximum security section, known as Sing Sing, of the internment camp for enemy aliens at Holdsworthy, south-west of Sydney.

Their freedom was short-lived. Six were captured the next day. The seventh, still at large, was Fritz Georgie*, known to be an associate of the Sydney Wobblies.

The authorities were confident that they would also recapture Georgie. Distinctive tattoos on his arms were to be a landmark for the hunters.

FIRE DOWN BELOW

On the night of June 1, 1916, almost a month after Tom Barker was committed to gaol, a fire broke out in Simpson's Free Bond Store on the Sydney waterfront. The warehouse was privately owned, but it contained a large stock of copra, and supplies of copper cable and wire belonging to the Commonwealth. It was completely destroyed; the damage was estimated at £150,000. The pungent smell of burning copra spread for miles.

A fortnight later (June 16), the manager of the mercery department in Mark Foy's retail store found some burning cotton waste in his department. The fire was in a position where it could do little damage; it was extinguished and the police were called.

The next day, a fire broke out at Mark Foy's bulk store, but was quickly extinguished.

A week later (June 24), Winn's retail store, in Oxford Street, was burnt out; damage was estimated at £40,000.

The confectionery factory of James Stedman Ltd., in Clarence Street, was gutted by fire on the night of July 27. Stedman's had had fires before. On this night, George Stedman, the company secretary, noticed a glare in the sky, and 'something impelled [him] to satisfy [himself] as to the exact whereabouts of the fire before going home'. He found the factory ablaze. The fire threatened the neighbouring Grand Central Hotel. Damage was estimated at £150,000.

* Georgie (by which name he appears in the N.S.W. *Police Gazette*) was also known as 'German Charlie' Miller; he was referred to thus in the Arson case.

Tom Barker was released from gaol on August 3, 1916—nine months before his sentence was up.* But by now the threat of conscription was in the air.

The Government's decision to hold a referendum was announced on August 30. Early in the morning of the next day, a fire was discovered in the building occupied by the Public Supply Co-operative Company in Pitt Street. The premises were partly burned, and the neighbouring buildings (including the unfortunate Mark Foy's) were damaged. The loss was estimated at £50,000.

Between September 8 and 12, no less than twelve acts of attempted incendiarism were reported. A salesman at Nock and Kirby's store found and extinguished some burning, kerosene-soaked cotton waste. The manager of Riley Brothers, drapers, discovered some burning newspapers and chemicals. A workman at Saxon and Binns' timber yards found a newspaper parcel containing cotton waste and chemicals; when the parcel was opened, the waste burst into flames. 'The attempts to fire business premises are supposed to be the work of a gang,' reported the *Sydney Morning Herald*. 'It is thought that the chemical is the same as was suspected of having been used to start a couple of fires that did serious damage in the city several months ago,' added the *Sun*.

On September 15, Inspector-General J. Mitchell of the N.S.W. Police announced that a £500 reward was offered for 'information leading to the arrest and conviction of those responsible for the outbreaks'.

Later, responsibility for these fires was laid on the doorstep of the I.W.W.; they were the basis for an accusation of arson.

FIVE THOUSAND FIVERS

On August 11, 1916, the police announced that forged five pound notes were being passed to Sydney business houses. Within three days, thirty fivers had been handed in; it was, said the police, 'the biggest success of any attempt to counterfeit money' in New South Wales. A reward of £100 was offered for information leading to the conviction of the forgers.

Information obtained from a taxi driver led the police to a process engraver named Leslie Grummitt. The police confronted Grummitt, who admitted passing two, which he said another

* Mr Justice Street later commented on this: 'The explanation . . . appears to be that his sentence was reduced by His Excellency the Governor-General to a fine of £25, or imprisonment for three months in default of payment. . . . I do not know—and I am not concerned to inquire—what the reasons were which justified . . . this considerate treatment.'

process engraver, H. W. Bradbury, had given him. Bradbury admitted helping to print some three thousand notes, but said that he 'was practically forced to do it at the point of a gun'. He was to be paid £5 a week and £250 when the job was finished. The man who had threatened him was a linotype operator named John Ferguson.

Ferguson was arrested at his workshop, along with his partner, Fred Morgan. Both were Wobblies; they did the type-setting for *Direct Action*. Ferguson admitted that he had had some part in the forgeries, but denied having forced anyone to help and claimed that he had made nothing out of them.*

Bradbury also pointed out the cottage, 'Iona', at Maroubra Point, where the printing was done—Fred Morgan had had a rent receipt for 'Iona' on him at the time of his arrest—and showed the police the place where he had thrown the engraved plates into Cook's River; a diver later recovered one of them.

The four men appeared in Court on September 1, and the Crown Prosecutor sought a week's remand. He said that some five thousand notes had been printed and that inquiries were continuing; he opposed bail. The magistrate demurred: there had been several remands already; he would grant a further week, but if the Crown was not ready to go ahead by then, bail would have to be considered.

The police questioning of Bradbury also implicated two engineers, Charles Cattell and Emerald Louis Tighe, and John Benjamin King, who was at the time the registered publisher of *Direct Action*. These three were arrested. Tighe turned King's evidence.

The seven accused appeared before the magistrate on September 8, when the prosecution sought a remand for another ten days. This was granted, but the magistrate allowed bail of £400.

The statements of several of those arrested identified two young Russian-Jewish tailors, Davis and Louis Goldstein, as having financed the forgeries and having been present during the printing of the notes. They were arrested. Davis Goldstein admitted that he knew Morgan, but both Goldsteins denied any part in the forgery. In Davis' notebook was written one of the serial numbers used on the forged notes. The Goldsteins were released on bail.

Eight of the accused appeared in the Central Police Court before Mr Macfarlane, s.M., on September 18, 1916, charged with 'having,

* This was perhaps the basis for the later widespread belief (in radical circles) that the forgeries were not for personal gain, but were an attempt to undermine the currency.

between March 1 and August 11 last, forged £5 banknotes with intent to defraud'. Morgan failed to appear; his bail was estreated and a warrant issued; four days later the government offered a reward of £200 for information leading to his arrest. (Morgan, a 28-year-old Welshman with a talent for organisation, was well known and liked among the Wobblies. A few days later, one of the detectives reported that a hat and coat belonging to Morgan had been found on the rocks at Maroubra beach: however, surviving I.W.W. belief is that he had been smuggled out of the country by sympathetic seamen.)

At the outset, the Crown Prosecutor (Mr Bathgate of the Crown Law Office) announced that he had no evidence to offer against Tighe, who was discharged.

Tighe told his story. He worked in the same engineering workshop as Cattell. In mid-March, Cattell had enlisted him to help with the forgeries. With money supplied by Cattell, he bought the paper for the notes and took it to 'Iona'. There he met King and a Melbourne artist named Astor, who was working on the drawings of the five-pound note. At the cottage, Bradbury told him that Morgan was getting money from the Goldsteins to finance the forgery operation.

On another occasion, he attended a meeting to arrange the distribution of the notes which Cattell chaired. Morgan and Ferguson were present, as well as five others (including Astor) who were not on trial.

Tighe also gave evidence of the dismantling of the plant.

Several detectives (including A. Surridge, C. Turbet and T. Pauling who later figured prominently in the I.W.W. conspiracy trial) gave evidence of the arrest of the forgers and their replies to questions.

Several of the accused had allegedly identified the Goldsteins as participants, but Tighe failed to identify them. The magistrate found that there was insufficient evidence to commit Louis Goldstein for trial; he was discharged. Against Davis Goldstein, however, was the additional evidence of the banknote serial number in his notebook.

The charge against Grummitt was altered to uttering counterfeit money; he was remanded and allowed bail of £400. King said that he had taken no part in the forgery and knew nothing about it. Nevertheless, he and his co-defendants (including Davis Goldstein), who all pleaded not guilty, were committed for trial. Their bail was set at £800. The price of temporary liberty had risen since Morgan skipped.

FOUR FIVERS IN A BROTHEL

Robert Roberts, a thirty-one-year-old Adelaide man with a long string of prior convictions, was tried in the Melbourne Court of General Sessions on September 14, 1916, on charges of uttering and being in possession of forged five pound notes—some of the Sydney series.

The police stated that, on the night of August 14, Roberts and an unidentified friend had arrived by chauffeur-driven car at a brothel in Palmerston Street, Carlton.

Roberts gave one prostitute a fiver with which to buy some beer from a nearby pub; she returned the change. Then in the course of the evening he went to bed with another lady of the house, and gave her three more fivers, which she changed with the madam. (These the madam passed on to the woman who owned the brothel, who in turn gave one fiver to her nephew who used it to redeem a pledge at a local pawnshop.)

The prisoner had made some effort to disguise himself—at the brothel he had worn a patch over his squinty eye, and since being there, had shaved off his moustache—but the whores recognised him.

His defence was a flat denial, which the jury didn't believe; he was convicted and sentenced to seven years—in view of his prior convictions? or was it because the magistrate was a moralist who particularly disapproved of passing forged notes in brothels?

MURDER IN THE TOTTENHAM POLICE STATION

On the night of Tuesday, September 26, 1916, a 25-year-old constable, George Joseph Duncan, was shot twice in the back as he sat at his typewriter in the police station at Tottenham, a small mining town in western New South Wales. The shots were fired through an open window, and the local police found tracks 'seemingly of two men' leading away from the window. On the constable's table was a warrant, ready for the magistrate's signature, for the arrest of one Roland Kennedy on a charge of insulting language.

Four days later, three men were arrested for the crime. They were Roland Kennedy, his brother Herbert, and Frank Franz

(he was Australian born, but the German name was emphasised). All were members of the I.W.W.

The inquest on the dead constable was held on October 9. Police witnesses testified that Franz and Roland Kennedy had both admitted their part in the crime, but that Herbert Kennedy had denied it.

In the Coroner's Court Herbert Kennedy reserved his defence, and Franz and Roland Kennedy refused to give evidence. All three were committed for trial.

The Twelve:

The Arrest and Preliminary Hearing

On September 3, 1916, a wharfie named F. J. ('Mac') McAlister told Detective George Fergusson that four days earlier he had heard of a plot, involving members of the I.W.W., to burn down buildings in Sydney.

McAlister was in his middle forties. Like many wharfies, he was attracted by the militant idealism of the I.W.W. He believed that the Wobblies 'were going to make the people of the world understand the way to live . . . they were going to open the people's eyes if people would only follow them'. He attended I.W.W. propaganda meetings regularly.

McAlister's story was that an old I.W.W. friend of his had told him that a Russian Wobbly named Androvitch was preparing fire-dope for wholesale arson. As well, a Wobbly acquaintance named Andrew had invited him to take part, and he had accepted, hoping to find out more. After thinking the matter over, he had brought his information to Fergusson.

On the following night (September 4), McAlister gave Fergusson a bottle of fire-dope which he said he had got from Andrew. He claimed that Andrew had told him that the Wobblies were responsible for Winn's, Stedman's and other fires.

Three days later, McAlister told the detectives of a ceremony at the I.W.W. rooms, presided over by one Mahony (a foreigner whom he knew well, and whom he later described as an Austrian), in which he and two others had drawn lots to see who would set a fire. He identified one of these two as Tom Moore.

Over the following weekend, there was a rash of unsuccessful attempts at arson—including an attempt to fire Mark Foy's store. On the Sunday, McAlister met Mahony on the Domain. Mahony was disappointed that the fires had failed. He told McAlister that the chemicals were supplied by a chemist who was a member of the organisation, but that the mixture was not yet right. And he warned McAlister to be careful: the incendiarists would get life 'if we got caught at this game'.

Soon after their arrest on the forgery charge, Louis and Davis Goldstein came to the police saying that they had information concerning I.W.W. incendiarism.

Davis was known as a fiery agitator and a member of the I.W.W.; indeed, he had been secretary of the Sydney Local for a time. Aged twenty-two, short, dark, a rather good-looking man, he was alert of mind and volatile, even belligerent of temperament.

Of less pleasing appearance and demeanour, Louis, the elder by three years, did not give the same impression of virile alertness, and he lacked his younger brother's bravado. He had never been a member of the I.W.W., but through his brother knew many of the Wobblies.

The I.W.W. rules provided that only wage-workers could be members of the organisation. Davis Goldstein set himself up in his own tailoring business, employing a number of hands, in November 1914, when he successfully contracted for the supply of uniforms to the armed forces.

Davis said that his membership of the I.W.W. ceased at this time; presumably this was formally true. But his association with the organisation, and his friendship with many of the members, was not broken. He contributed articles and money to *Direct Action* during 1915 and 1916, and he continued to associate with Glynn, Barker and other leading Wobblies. Louis claimed that he came increasingly to disapprove of his brother's association.

On September 15, Davis Goldstein gave the police a bottle of fire-dope which he said a Wobbly named Jack Hamilton had given him. Hamilton had met him outside the I.W.W. rooms, sympathised over the forgery charge, told him that the Wobblies were using fire-dope, given him some and demonstrated its use. Later, Goldstein reported that Tom Glynn had also spoken to him about the fires.

On the basis of this information, warrants were issued on September 22, 1916, for the arrest of 'Marney', 'Androvitch', Tom Moore, Peter Larkin, Tom Glynn, Charlie Reeve, Donald Grant, Fred Morgan and Jack Hamilton, on a charge of treason.

It was a curious group. At this time, the police had definite information from McAlister concerning 'Marney', 'Androvitch', 'Moore' and 'Andrew' (whose name was not included).* Goldstein had

* Later, the Crown Solicitor, who drew the warrant, said that his understanding was that it was Androvitch who had supplied the dope to McAlister. Superintendent Walker, the police officer responsible, said that the Crown Solicitor had misunderstood him. Before the Royal Commission, Mr Windeyer argued, and Mr Shand denied, that Androvitch and Andrew had been thought of as the one person until comparatively late in the piece; the evidence on this was not clear. See the discussion of the case against McPherson, below.

provided information about Glynn and Hamilton, but it was of little value since he had so far refused to become a Crown witness. Morgan had skipped bail on the forgery charge, but there was no evidence to connect him with arson; presumably, he, along with Larkin, Reeve and Grant, were included because they were known as leading I.W.W. propagandists and organisers.*

In the morning of the next day, Saturday, thirty police headed by Inspector Campbell raided the I.W.W. headquarters which had by now been moved to a building at the south end of Sussex Street.

The two entrances to the hall were blocked and none of the thirty-odd men present was allowed to leave. All had to give their names and addresses and the names of their employers. The police searched the premises and seized all the papers and literature they found, including most of the copies of the current issue of *Direct Action*.

The police had been watching the comings and goings at Sussex Street for several weeks. They recognised Tom Glynn, Peter Larkin and Charlie Reeve and arrested them immediately.

Tom Glynn was at the time secretary of the Sydney Local, one of the few full-time positions the Wobblies offered; earlier, he had edited *Direct Action*. A County Galway man, thirty-five years old, and a blacksmith by trade, Glynn's alert expression and quizzical mouth betokened a sharp mind; among his fellows, he was known as a scholar and 'the intellectual of the bunch'.†

Glynn's fellow-Irishman, Peter Larkin, was a striking contrast. Eleven years older and heavily built, with an untidy mop of hair surmounting a moon face dominated by a great bulbous nose, Larkin looked the man to wield a shillelagh. He already had twenty years of experience as a labour agitator behind him (he was a brother to the famous Irish trade unionist, Jim Larkin) when he arrived in Australia, as a seaman, only twelve months before. Now he worked on the waterfront and spent his spare time agitating for Home Rule for Ireland and industrial democracy.

Charlie Reeve, thirty years old and English born, was a knock-about lair. A fluent soap-boxer, he had bummed around the continent agitating for the Wobblies, from Broken Hill to Perth and

* Larkin and Reeve had both had recent convictions arising out of their propagandist activities on the Domain.

† Tom Glynn's daughter, in a personal communication (November 29, 1967) remembered her father as having a "burning hatred of injustice and a positively saintlike kindness and devotion to his fellow men." She records that Glynn migrated to Melbourne in 1889, aged seventeen, and shortly afterwards enlisted for the Boer War. In South Africa, he was mentioned in despatches for his bravery, and court-martialled for his refusal to carry out the order of a British officer to shoot a Boer child.

the Westralian goldfields. His fellows thought of him as foolhardy, a 'bloody madman' who would 'fight the world—so long as it was looking on'.

In the hall, the police approached an older man, with a thin, bitter mouth and a cast in one eye which gave him a sinister look. This was Jack Hamilton, a Victorian-born miner, now 'dusted' and back in Sydney, who had turned over his savings to enable the Wobblies to buy their printing press.

Besant and McPherson, two other members of the Twelve, were picked up in this raid. Bob Besant was a 25-year-old Englishman who had arrived in Sydney only three months before from Melbourne, where he had been working on the railways. Now he was helping to print *Direct Action*. Besant, when asked by the police what was in a number of parcels lying about the office, replied correctly—his tools, a pair of boots, some soiled clothing. One of the detectives kicked a fourth parcel across the floor towards him; Besant said that it was also soiled clothing. It turned out to be cotton waste. When tackled with this, Besant said: 'I hear you have been finding some of this in shops lately, but, by Christ, you'll find a bloody lot more before we have done.' There was no warrant for Besant, so he was arrested on the drag-net charge of vagrancy; later, his name was added to the treason indictment. In the room where he was arrested was a picture of a winged figure carrying a flaming torch and looking down over a city; the legend was 'Behold, I bring you freedom'. The Crown later suggested that this had some special esoteric significance.

The police arrested Don McPherson on a charge of being in possession of goods suspected of having been stolen—to wit, two shirts. (These were military flannels which had been stolen from the wharves; ironically, they had come from the Goldsteins' factory.)

McPherson was released on bail. A week later, 'Mac' McAlister saw him around the police courts and identified him as 'Andrew', the man who had supplied the fire-dope. McPherson was re-arrested and charged with treason.

Glynn, Reeve, Larkin and Hamilton appeared in the Central Police Court on Monday, September 25, on the treason charge. The Crown asked for eight days' remand. Mr P. K. White for the defence objected; the forgery case was also listed for October 3, and this could be prejudicial to his clients. The magistrate granted the Crown's application, and bail was refused.

Also in the court that morning was Joseph Brice, charged with using insulting words at an I.W.W. meeting in the Domain the previous day:

'The police are a lot of bludgers on the community. Sixteen big, lazy loafers raided the I.W.W. yesterday, and actually stole their literature and arrested four working-class men.'

Brice was put on a twelve months good behaviour bond.

On Friday, September 29, Detective Arthur Leary arrested Tom Moore on the treason charge. Moore admitted that he was a member of the I.W.W., but said he thought that the charge must be a mistake; he had only been at the I.W.W. rooms once in the last five months.

It was a surprise arrest; Moore was not a well-known Wobbly. A New Zealander, he earned a casual living around Sydney as kitchenhand and stableman for racehorse trainers. A slight man, thirty-four years old, with the sad eyes and mouth of a clown, Moore looked as if he would accept suffering with resignation. But he proved a fighter.

Later, Detectives Leary and T. Lynch, searching Moore's room, found small pieces of cotton waste, which Moore said belonged to an engineer with whom he shared the room. Moore appeared in the Central Police Court and was remanded until October 3.

Donald Grant was visiting Broken Hill to agitate against conscription when he was arrested on September 29. From all accounts, Grant was a splendid orator. He was a leading I.W.W. propagandist, although he was not intimately involved in the organisation. A twenty-five-year-old Scot, he had come to Australia in 1910 after serving his time with James Maxton in the Independent Labour Party. A contemporary photograph shows him as tall, slender, fine-looking, with head held proudly in the slightly mannered pose of the public figure who knows his worth. Grant had made some fiery speeches at the Barrier, and while he was in the town an attempt was made to fire two chaff trucks in the railway yards. He was charged with treason and remanded to Sydney.

Davis Goldstein had reported to the police that Bill Teen had boasted to him of the I.W.W.'s part in incendiarism.

Davis also reported that Joe Fagin had boasted of the I.W.W. fires, mentioning specifically Simpson's Bond Store, telling him that the chemicals were supplied by Harry Scully.

Henry Christopher Scully was a Queenslander, a chemist by profession. A short, slight man, he was intelligent and quick witted. He had been a member of the I.W.W. and had lectured in the early months of the war to members of the organisation on chemicals, including explosives. Towards the end of 1914, he went to work as a dispenser for a Mr Cole, the proprietor of a chemist shop

in Market Street. About the same time, he claimed, he allowed his membership of the I.W.W. to lapse, but he remained an active trade unionist, an officer of the Shop Assistants' Union. Like Davis Goldstein, he maintained some contact with the Wobblies, visiting their rooms occasionally and talking to the members.

Independently of Goldstein's information, the police had discovered that Scully was an I.W.W. man. They had Cole's shop under observation from September 25. The watchers were Detective Arthur Surridge and Detective-Sergeant T. Robertson. At 9 a.m. on Saturday, September 30, the two detectives accosted Scully, Robertson saying: 'We have been informed that you are connected with some I.W.W. men in the procuring and mixing of chemicals for the recent fires.' Scully replied that he knew he had been under observation and was expecting to be picked up; he had seen his solicitor, and if he was going to be charged he would say nothing.

Robertson then went back to the chemist's shop to speak to Cole, while Scully and Surridge walked to the Detective Office. What passed between the detective and Scully is not known,* but when Robertson rejoined them, Scully asked: 'If I make a full statement of what I know about the fires, how will I get on? Will I be charged?' Robertson told him that, if he co-operated with the police, he would not be charged but would be used as a Crown witness. Scully turned to Surridge and said: 'As I have known you a long time I will tell you everything I know, and give evidence for you.'

At the Detective Office Scully told them that Fagin had boasted to him of the Wobblies' responsibility for Simpson's and Winn's fires. He had discussed incendiary techniques with Fagin, Hamilton, Teen and Beatty on several occasions in Fagin's room. On one occasion, 'there was talk of the proposal to bring conscription in—that in the event of conscription being forced upon us we would break shop windows, create rioting, and if necessary burn Sydney down'. The conspirators had at various times ordered carbon bi-sulphide and phosphorus from him. The German escapee from Holdsworthy, Fritz Georgie, was present on one of these occasions. Of those Scully named, Georgie was on the run and Hamilton was already under arrest. Warrants were issued for the other three.

* Scully's account was that Surridge told him then that he had been watching him for a week, saying: 'There have been all sorts of lying reports gone in about you, so I persuaded [Superintendent] Walker to let me get in on your case and let me protect you.' (The 'lying reports' were that Scully was the ringleader in incendiarism and the manufacturer of the fire-dope. Scully later said that Surridge did not use the word 'protect', but that he had drawn this inference.) Surridge said that Scully had asked him what he should do, and that he had replied that he (Scully) should tell the police everything he knew about the I.W.W. and the fires.

Scully showed the police a lodging house in Darlinghurst, kept by a Russian named Albert Franks, where Fagin, Teen and Beatty lived, and drew a plan of the rooms.

In the afternoon of Saturday, September 30, the police made preparations to raid this house. However, the detectives were instructed that Teen 'was not to be arrested at the [I.W.W.] rooms or at his home, but . . . in the street away from there if possible'.

That night Davis Goldstein met Bill Teen at the I.W.W. rooms and they arranged to go to the Stadium, where Les Darcy was fighting. Teen, Tasmanian born (he and Hamilton were the only native Australians among the Twelve), was a pleasant looking, smartly dressed young man with an engaging grin. Until recently, he had worked at the Randwick railway workshops and had represented his workmates on the council of their union; he had been sacked when it was discovered that he was a Wobbly.

Teen and Goldstein left the I.W.W. rooms and at the corner of Liverpool and Elizabeth Streets Teen was accosted by Detective F. Matthews, who told him he was wanted at the Central Police Station.

At the station, Teen was searched by Detectives J. Miller and T. Hooper. Miller found a piece of old towel and a small brown-paper parcel in the lining of Teen's overcoat (the pocket was torn). Asked what was in the parcel, Teen said he supposed it was soap. But the parcel turned out to contain a bottle and some cotton waste. Teen said that he had borrowed the coat from Tom Pope, a fellow worker who lived at his lodging house.

At one o'clock on the morning of Sunday, October 1, a squad of police raided the lodging house and searched the room shared by Joe Fagin and Tom Pope.

From a gladstone bag, which Pope said was Fagin's, Detective S. Robson produced a parcel inside which was a bottle containing a mixture of carbon bi-sulphide and turpentine, with phosphorus in solution, and some cotton waste. Robson showed Fagin the bottle and asked him what it was. 'You know, you bloody well put it there,' Fagin replied. 'You mean that?' asked Robson. 'Of course I do,' said Fagin, 'men that would lock up Reeve and Larkin would do anything. You are all criminals.'

Arrested, Fagin began to struggle and was handcuffed. Pope was not arrested but was taken to the police station.

In the room adjoining that of Fagin and Pope, Detective Leary found Bill Beatty. A quiet but determined looking young Englishman, Beatty was a water-sider and an active, though not especially

prominent, I.W.W. Leary told him he was wanted at the police station. Beatty went quietly. A thousand copies of a booklet titled *Sabotage* (a local reprint of the American pamphlet by Walker C. Smith) were found underneath his bed.

At the police station, Teen was confronted with Pope. Detective Leary asked Teen: 'Is this the man you say gave you the overcoat?' Teen said that it was. Pope confirmed the loan, but denied all knowledge of a bottle or any cotton waste. Teen made no further comment, and Pope was allowed to leave.

Later, 'Mac' McAlister identified Teen as the third member of the lot-drawing ceremony.

On Tuesday, October 3, the eleven arrested men appeared at the Central Police Court, charged with treason. The Crown requested and obtained a remand to the following Friday, although the defence wanted the case heard a day earlier. The defence asked for bail. The Crown opposed it. The accused were 'men of no particular state, being merely birds of passage. They had no really settled place of abode'. Mr White, for the defence, claimed (inaccurately) that the majority were married men with families. Bail was refused.

On the Friday, the Crown sought a further remand to Tuesday, October 10. Mr Bathgate of the Crown Law Department said that there were important fresh developments which he could not at that stage disclose, and that the Crown needed more time to prepare its case.* This time, the magistrate was not sympathetic. Other cases had been postponed so that the I.W.W. case might go ahead that day; he would stand the case over to Monday, but if the parties were not then ready, the case, no matter how important, would have to take its chance on the court lists.

That day, John Benjamin King, who was awaiting trial for forgery, was also charged with treason and remanded. King was a Canadian who had joined up with the Wobblies on the American west coast. A rather stout man, he looked younger than his forty-six years; his eyes sparkled and his mouth quirked with a sly wit. A miner by trade, he was a leading propagandist and organiser for the Wobblies. He made the Twelve.

On Monday, October 9, the Crown applied for, and the defence consented to, one further day's remand. The delay was perhaps of advantage to the Crown, for on that day the inquest was held on the death of Constable Duncan of Tottenham.

* Presumably this referred to the negotiations which were then taking place with Davis Goldstein to persuade him to give evidence for the Crown.

The case of the I.W.W. Twelve opened before Mr Arthur N. Barnett, S.M., in Sydney's Central Police Court on Tuesday, October 10, 1916. The charge was treason. The indictment was seven foolscap pages long; it took the Clerk of Court an hour to read. The Twelve accused were charged that they,

'not regarding the duty of their allegiance, but wholly withdrawing the love, obedience, fidelity, and allegiance which every true and faithful subject of the King did and of right ought to bear, at Sydney, on September 14, 1916, and on other days before and after that date, did feloniously and wickedly compass, imagine, invent, devise or intend to levy war against the King within the State of New South Wales, in order by force or restraint to compel him to change his measures or counsels . . . did conspire to raise, make, and levy insurrection and rebellion against the King . . . did feloniously and wickedly conspire to burn down and destroy buildings and shops in Sydney and elsewhere . . . did prepare and manufacture a chemical with intent to employ the same in furtherance of the burning down of buildings and shops . . . did place and deposit a chemical with inflammable material in certain shops and buildings with intent to burn down and destroy them . . . did endeavour to put force or restraint upon the Parliament of New South Wales . . . did endeavour to intimidate or overawe Parliament.'

Mr Ernest Lamb, K.C., had been briefed by the Crown Solicitor for the prosecution. Lamb was well regarded by the legal profession as one of the leading criminal barristers of the day. He was patriotic, conservative, and above all zealous in the pursuit of whatever he conceived to be his duty. Indeed, surviving I.W.W. opinion believes that Lamb bore the main responsibility for the case against the Twelve, and asserts that he 'would do anything to get a conviction'. Certainly he spared no effort on this occasion.*

His opening address summarised the case for the Crown. The charges against the Twelve arose out of a series of recent fires in business premises in Sydney. It was alleged—and would be proved—that these were caused by the accused, with the intention of coercing the Government over several questions, including the introduction of conscription (which Mr Lamb with conscious or unconscious wit referred to as 'the burning question of the day').

Such a dastardly plot was unparalleled in Australian history. Many lives had been endangered; damage to the extent of

* In 1931-32, Ernest Lamb was a member of the quasi-fascist New Guard. He appeared as counsel (unpaid) for the New Guard's Captain De Groot, who was charged with damaging government property (to wit one ribbon) after he had anticipated the Premier, J. T. Lang, in opening the Sydney Harbour Bridge.

£250,000 had been caused; had all the attempted fires succeeded, the damage to property would have exceeded £1,000,000.

The twelve accused were members of the Industrial Workers of the World, an organisation which preached sabotage. Some of them were associated with a 'notorious German' who had escaped from an internment camp. It was impossible to establish how far the fires were due to 'direct German influence', but there was no doubt that the tactics adopted were pleasing to the enemy.

The crimes committed by the Twelve were 'deliberate . . . pre-meditated . . . fiendish in design and devilish in ingenuity'. They were compounded by the occasion of their commission:

'Many of these fires took place after Mr Hughes's great and memorable speech, and when his voice was ringing throughout the country with its call to patriotism, they preached destruction. . . . At the moment when the words of Mr Hughes were illuminating the minds of patriots the blazing Co-operative building was illuminating the skies over the city.'

Every stop was pulled out. 'The facts of the case,' concluded Mr Lamb, 'will show that there was a gigantic conspiracy to cause havoc and destruction in Sydney, and to endanger the lives of the people. . . .'

The four principal Crown witnesses—the Goldsteins, McAlister and Scully—told their stories. Police witnesses supported and amplified their evidence at some points, and sketched in the background. Briefly, the case was this:*

In September 1915, Tom Barker was convicted of publishing material likely to prejudice recruiting. On appeal, the conviction was quashed. However, before the appeal, some I.W.W. members urged incendiarism to secure Barker's release. Charlie Reeve wrote from Perth to Fred Morgan in Sydney:

'Supposing we institute a Sab. Cat campaign in a highly scientific manner and uphold the traditions of the movement. . . . Let us see to it that the kittens travel and Bryant and Mays is not dead yet. Tell all rebels to put on the shoe and kick like Hell, it's high time something was done and now's the time to do it. Motions and philosophising is not much good, it's action that counts.'

The implication was that pressure should be put on the New South Wales Government, by burning down buildings, to force the release of Barker. (This evidence was later disallowed by

* Only an outline of the Crown case is given here; the details are analysed in Part II.

Mr Justice Pring in the trial of the Twelve, on the grounds that it referred to a time before that stated in the indictment.)

In March 1916, Barker was again convicted. He appealed and was granted bail. According to Scully, Fagin at this time began to talk about burning down Commonwealth property so that 'it would not pay to keep Barker in gaol'. Stickers found in the room occupied by J. B. King read:

SABOTAGE SILENTLY AND JESUITICALLY APPLIED WILL
RELEASE BARKER. SINK THE BOOT.
THE ONLY LANGUAGE WHICH TALKS WITH THE BOSS IS *PROFIT*
SHOW HIM THAT BARKER IN GAOL DOES
NOT *PAY*

On the Sydney Domain, Donald Grant spoke the sentence that was later to become famous as his 'fifteen words':

'For every day Barker is in gaol, it will cost the capitalists £10,000.'

Barker's appeal was dismissed, and during June there were fires at various business premises. Scully said that Fagin had boasted of these; McAlister said that McPherson had talked about them.

On July 23, King said in the Domain:

'It is the mission of the working class to make this world a hell for the capitalist class and every shirker that belongs to it.* I do not mind seeing them roasting and toasting on the gridiron.'

Four days later, the Stedman factory was destroyed. Louis Goldstein said that Teen had boasted that he had started the fire.

The Governor-General cut Barker's sentence by nine months, and he was released on August 3, 1916. But by now the conscription campaign was well under way.

During August and September, I.W.W. propagandists threatened reprisals if conscription were introduced. Glynn and Grant urged sabotage of the capitalists' property. Larkin said: 'Far better to see Sydney melted to the ground than to see the men of Sydney taken away to be butchered for [by?] any body of infidels.'

About this time, Scully discussed with Fagin, Teen, Hamilton and Beatty means of preparing a more satisfactory fire-dope, and supplied chemicals.

Early in September, McAlister produced his information and the bottle of fire-dope. Twelve days later, after a series of

* 'Shirker' was widely used at the time to describe young men who failed to enlist; the use here was ironic.

unsuccessful attempts at arson, Davis Goldstein also produced a bottle of dope.

Police witnesses gave evidence of the arrest of the accused, of Besant's self-incriminating statement and the discovery of fire-dope in the possession of Fagin and Teen. And they added corroborative evidence: Reeve, Larkin, Glynn and Moore had been seen around the I.W.W. rooms at various times; the accused habitually associated together; Larkin and Reeve had been seen demonstrating the use of fire-dope on the footpath outside the I.W.W. rooms.

For good measure, the prosecution threw in certain evidence which was strictly irrelevant to the charges, but which was sure to go over well with the gallery.

After his escape, Fritz Georgie turned up in Sydney and made contact with Jack Hamilton and the I.W.W. men who were living at Franks' lodging-house. He wanted a temporary hiding place and help in getting rid of the prominent tattoo marks on his arms.

Fagin sought Scully's advice on the tattooing and Scully recommended a mixture of silver nitrate, tannic acid and nitric acid. It would, he said, remove the skin, too, but that was the only way of dealing with the tattoos. Later, Hamilton asked him to come round and show the boys how to use it.

Scully went to the lodging-house where he met Fagin, Teen, Beatty, Hamilton and Georgie. His story was that, when he realised that he had to operate on a German escapee, he declined. Scully painted a lurid picture of Fagin threatening him with a gun and warning him that his mouth would have to be closed. Hamilton quietened Fagin, and Scully left, after applying the mixture to Georgie's arm.

The purpose of this story was clear. All people of German origin were self-evidently agents of the Kaiser (even when they were revolutionary opponents of the war), so here were the I.W.W. men helping the Kaiser. It added verisimilitude to the charge of treason, although the indictment did not refer to this episode.

Then every effort was made to connect the Kennedy brothers, already committed by the Coroner to stand trial for the murder of Constable Duncan, with the accused. Police witnesses read to the court a letter discovered in the raid on the I.W.W. rooms:

'I have been sabotaged for my last four or five "Direct Actions". . . . Herb, the brother, and I are liked very well by the masters here.

They say it's a shame to see us producing profits for them. So they barred us from all the mines and Government jobs. But the slaves are getting their dope just the same. . . . We are doing all that is possible for Barker's release—a wooden shoe. Yours-in-revolt, R. N. Kennedy.'

This, along with the evidence that Roland Kennedy had applied in 1915 for a charter to form a Tottenham Local, connected the I.W.W. with murder.

Mr Lamb, k.c., presented letters to the I.W.W. from various Labor Party members and groups—Frank Anstey, M.H.R. ('My dear Barker, I am with you to the hilt. . . .');* W. Mahoney, M.H.R. ('I . . . shall . . . do everything possible to have Barker out'); the Melbourne branch of the party ('. . . enter a strong protest against the persecution of Barker . . .'). These connected the Labor Party with the I.W.W.—and with the Kaiser, treason, arson, and murder. It was a rich haul.

In court, Lamb asked Dr T. Cooksey, the Government Analyst who had examined the fire-dope, to demonstrate. The four-foot-high flames and the thick clouds of grey smoke provided a dramatic interlude.

The Crown closed its case. For the defence, Mr A. James, k.c., argued that there was no case to answer. There was no evidence that the accused had levied war against the King, and arson as such did not constitute treason-felony. There was no evidence of anything other than speeches and association against several of the accused, although overt acts were alleged against some others.

The magistrate agreed with Mr James that the evidence was more substantial against some of the accused than against others, but held that a *prima facie* case had been made against all. He proposed to commit them all for trial.

Asked if he had anything to say as to why he should not be committed, Peter Larkin shouted: 'Not guilty, reserve my defence.' Donald Grant said, more quietly: 'I am not guilty. I never saw this stuff till I came into court.' Before any of the others could speak, defence counsel interposed that all the accused would reserve their defence.

The Twelve were committed for trial at the Central Criminal Court on November 20, 1916; bail was refused.

* Detective-Sergeant N. Moore, the police expert on subversive activities, reported, on the basis of Anstey's request for 'a couple of those posters', that Anstey 'would appear to have been mixed up in the poster traffic'.

Backdrop 1916

SABOTAGE

After the arrest of the Twelve, there were more reports of sabotage. A fire at Grace Brothers' furniture store in Forest Lodge caused heavy damage. Incendiarism was suspected aboard the collier *South Bulli*, but the coroner returned an open verdict. At Corrimal, on the south coast, thirty-seven coal-skips were let loose, to crash to their destruction at the end of the line.

At Lockhart, in central New South Wales, fires broke out in the wheat stacks at the railway siding on the morning of Saturday, October 14. George Finn, a Sydney tramwayman and an I.W.W., who had arrived in the town only a few hours earlier on a visit to relatives, was arrested and charged with arson. But there was no real evidence against Finn, and he was discharged. A month later, there were more fires; by this time, however, George Finn had departed and the police reported that there were no suspicious circumstances.

A fire destroyed a grocery storehouse in the city; an anonymous caller, the police reported, telephoned to say that this was another of Barker's fires. (This repeated exactly the words Bill Teen was alleged to have used three months earlier. But by now Barker was long out of gaol. It was a curious incident; it seems unlikely that it had any connection with the I.W.W.)

At Victoria Barracks, night sentries discovered several small fires in the stables. Police arrested a twenty-seven-year-old naturalised German on suspicion of arson, and charged him with vagrancy. However, there was nothing to connect him with the fires, other than his suspicious ancestry, and he was released.

THE TOTTENHAM MURDER: THE TRIAL

The trial of Frank Franz and Roland Kennedy opened at the Bathurst Circuit Court on October 16, 1916, before the Chief Justice, Sir William Cullen.

Frank Franz pleaded not guilty. Roland Kennedy pleaded guilty, but the plea was changed to not guilty by his counsel.

in the destruction of life: it would 'be folly to kill a King or a policeman, because as soon as they were gone others would be put in their place. . . . I believe in social reform where such people can be done without'. He had given the police an account of his movements on the night of the murder. The sole evidence against Herbert Kennedy was that of Franz—but Franz was, on his own admission, an accomplice.

On the plea of Kennedy's counsel, the judge ruled that there was no proper evidence to go to the jury, and Kennedy was discharged.

THE FORGERS SENTENCED

On Monday, October 23, the six remaining accused in the forgery charge came up for trial. Cattell and Grummitt pleaded guilty and were remanded for sentence.

Between his committal and these proceedings, Davis Goldstein had given evidence against the Twelve. Mr Lamb, K.C., for the Crown, said that the Attorney-General declined to file a bill against Goldstein, and he was discharged.

Ferguson, Bradbury and King remained to stand their trial. The proceedings lasted four days; the case against the accused was as it had been in the preliminary proceedings. King conducted his own defence.

All three were found guilty. Ferguson (who, with the missing Morgan, had emerged as a ring-leader) was sentenced to ten years. Cattell got four years, Bradbury two years, and Grummitt twelve months.

King was sentenced to three years. This was surprising; the evidence suggested that he was less deeply involved in the forgery than the others—but he was prominently identified with the I.W.W. He appealed against his conviction; his appeal was upheld and a re-trial ordered. He was again convicted, and this time sentenced to two years.

CONSPIRACY IN THE WEST

On October 19, 1916, the day after the Tottenham trial, the first of twelve alleged Westralian I.W.W. conspirators was arrested at Kalgoorlie.

The I.W.W. in Western Australia was not large but it was active. It began when Tom McMillan and a few other 'slaves' blew in from Broken Hill towards the end of 1914 'with the message of industrial unionism'. They formed a Local in Fremantle, the main Westralian port, and from there spread to the goldfields and the Trans-Australian Railway.

Among the recruits were Mick Sawtell, a thirty-four-year-old labourer of a philosophical turn of mind whose heart flamed with the gentle anarchism of Tolstoy and Emerson; Alex Horrocks, a forty-year-old miner who had been treasurer of the Miners' Association at Coolgardie but who had joined the I.W.W. out of disgust with the failure of arbitration to give the miners a living wage; Monty Miller, born eighty-five years ago in Tasmania, the silver-haired and silver-tongued veteran of a hundred radical causes from the Eureka Stockade to rationalism, socialism and syndicalism; and Jack O'Neill, a young journalist on the Perth *Truth*, whose satirical verses (under the pen-name 'Cresset') often enlivened the pages of *Direct Action*:

From early dawn till twilight grey,
 One Bill Magee, a working plug,
 Toiled for his boss, and oft he'd say—
 He was that sort of silly mug,
 'At honest work I feel I'm free;'
 Some quaint ideas had Bill Magee.

In September 1915, when Tom Barker was first imprisoned, the thoughts of the Westralian Wobblies turned to sabotage. Charlie Reeve wrote to Fred Morgan hoping that 'Bryant and Mays' was not dead. From the goldfields, Mick Sawtell wrote to *Direct Action*: 'Last Sunday night we discussed the imprisonment of fellow-worker Barker, and decided upon a campaign of "Black Cat".' And again: 'Some of the Federal Senators have large farms in this State. Nuff sed.'

The Westralian police had had the local Wobblies under observation for some time. After the raids on the Sydney headquarters (where Reeve's letter to Morgan was discovered), they acted, saying that they had not previously realised the extent of the organisation. The suggestion was that they had decided their action independently, after receiving information from Sydney. However, there is evidence that the Commonwealth intervened—prosecuting counsel in the W.A. trial were briefed 'with the approval of the Federal law officers', and the Commonwealth footed the bill.

The first to be arrested (October 19, 1916) was Alex Horrocks. Mick Sawtell was arrested on a station in the Gascoyne district, 400 miles north, and brought to Perth. Monty Miller and Jack O'Neill were picked up in the city. Eight others were arrested, including a young Russian named Alex Auwart; John Goller, a German who had only been released from the Rottneest Island internment camp at the beginning of the year; and a couple of Italian miners. The I.W.W. knew no national boundaries.

All twelve stood charged with seditious conspiracy; against Sawtell, there was the additional charge of threatening to destroy the property of Senator Paddy Lynch.

The preliminary proceedings in the case of the twelve Westralian 'conspirators' opened in the Perth magistrate's court on November 18, 1916. The court publicity was too late for the conscription referendum, which had already been lost (although 'Yes' had won hands down in the West); but the arrests had been nicely timed. The hearing lasted seven days; it was, said Mick Sawtell, 'the first great working class case in the history of Western Australia.'

The indictment was read:

'You, and each of you, between April 1916, and October 1916, at Perth and elsewhere in the State of Western Australia, conspired together, and with E. McLoughlin and P. J. Daly, of Broken Hill . . ., Thomas King [J. B. King?], F. W. Reeves [fellow-worker Charlie Reeve?], and Thomas Glynn, of Sydney . . ., and divers other persons unknown, to carry into execution an enterprise having for its object to raise discontent and disaffection amongst the subjects of our Lord the King, to promote feelings of ill-will and enmity between different classes of the subjects of our said Lord the King. . . .'

King's Counsel was briefed for the prosecution. Thomas Walker, a Labor Member of Parliament and a well-known radical lawyer, appeared for ten of the accused. Mick Sawtell and Monty Miller conducted their own defence.

The Crown case alleged that the I.W.W. was an organisation which advocated sedition, sabotage, and other 'lawless acts'. This was established by its propaganda. If the accused could be linked with the I.W.W.—and this was done through their letters, articles, speeches and other activities—then they were guilty of seditious conspiracy. It was not relevant that these men were earnest social reformers; the law was not concerned with motives, but with deeds.

The Crown witnesses were called to establish the link between the accused and the I.W.W. In this case—much more than in

AN ANARCHISTIC CIVIL SERVANT

Between the preliminary hearing and the trial of the Westralian 'conspirators', a senior officer of the Statistics Office, William Siebenhaar, was suspended from his post and charged before the Public Service Commissioner with 'improper conduct by manifesting sympathy with the illegal methods of the I.W.W.'

Siebenhaar was 'an academic anarchist', Dutch by origin, a naturalised Australian since 1895 when he had joined the Westralian civil service. In 1907, he had published a long poem, "Dorothea", which was anti-war in sentiment.

When Monty Miller was arrested his daughter asked this anarchistic and poetic servant of the government for help.

It was alleged against Siebenhaar that he had collected money to help with Miller's defence, from his fellow civil servants and in working hours. The Under-Secretary told the Commissioner: 'When they found a senior officer who bore a foreign name, if not German, inviting his fellow servants to sympathise with a man who had been caught red-handed preaching sedition . . . it was no time for hesitation.'

Siebenhaar was able to establish that he had not used the government's time to solicit money for the government's enemy; but the Commissioner still did not hesitate. Siebenhaar had admitted to anarchism, republicanism, and anti-conscription, and he was out.

CONSCRIPTION POLLING DAY

Through murder and forgery and treason and arson, the referendum campaign rolled on.

The conscriptionists, starting with the Prime Minister, did their best to identify anti-conscriptionists with I.W.W. criminality.* Mr Hughes declared: 'The I.W.W. not only preach but they

* On the day before it was introduced in court, the Prime Minister read to an audience at a conscription meeting the letter written by anti-conscriptionist Frank Anstey, M.H.R., to Tom Barker at the time of the latter's trouble over the 'recruiting' poster. The defence suggested that this demonstrated an improper connection between the Prime Minister and the New South Wales authorities, as well as the improper use of material which was *sub judice* for conscriptionist purposes. Both the police and the Government denied that they had made the letter available to Hughes. What had in fact happened (as emerged from New South Wales Police Department files) was that the police subversion expert, Detective Moore, had supplied a copy of the letter to Military Intelligence in Melbourne, who had passed it on to the Prime Minister.

practise sabotage. . . . They are to a man anti-conscriptionists.' The Sydney *Mirror* wrote:

'The public now know who are behind the anti-reinforcement campaign. They know that the I.W.W. is dominated, on the one hand, by German money and German influence, and, on the other hand, by a gang of American and other foreign criminals, who will stop at nothing to achieve their wicked ends—murder, arson, forgery, smuggling—all the crimes in the calendar.'

(This, it should be noted, appeared while the Twelve were awaiting trial.)

A newspaper headline declared: 'The Kaiser and the I.W.W. want you to vote "No"; the Anzacs want you to vote "Yes".'*

On the eve of the poll, a placard shouted:

I.W.W. ASSASSINS WANT YOU TO VOTE NO

The antis fought back vigorously: 'They don't attempt to besmirch other organised bodies in that way. They don't announce "Member of the Millions Club Arrested for Wife Beating"; or "Liberal Pickpocket Caught Red-handed"; or "Methodist Communicant Convicted of Murder"; or "Conscriptionist Gets Five Years for Larceny".' But much of the mud must have stuck.

However, when the numbers went up on October 28, 'No' had won. But Labor had lost some of its best known leaders—among them Prime Minister Hughes and Premier Holman—expelled because they had defied their movement's verdict and continued to advocate conscription.

FRITZ GEORGIE AND THE CASE AGAINST
THE TWELVE

Fritz Georgie had, so Scully said, been taken to Broken Hill by Tom Barker. There he worked in the mines under an assumed name. Scully claimed to have told the police on the day they picked him up of Georgie's whereabouts. On October 23, the day the forgery trial opened, the fugitive was arrested on a charge of escaping from Holdsworthy internment camp.

Ten days later, the Crown Law Department notified the solicitor representing the Twelve that the charge against his clients had been amended from treason-felony to conspiracy to defeat the ends of justice and to commit arson, and seditious conspiracy.

* The truth about the desires of the Anzacs cannot be finally established. But the evidence suggests that the front-line soldiers voted against conscription, while those who had not yet seen action voted for it.

Why was this done? The Crown may have been impressed by the defence argument in the lower court that there was no evidence to support the treason charge. Or they may have believed that a jury would be more reluctant to convict on the more serious but less precise charge. Or they may have felt that the more serious charge had served a propagandist purpose while the referendum campaign was on, but that now conscription had lost there was no good reason to press it. But surviving I.W.W. opinion has a different explanation.

Fritz Georgie, found guilty of gaol-breaking, was sent to Goulburn Gaol. One man, who served time with Georgie at Goulburn, and who had an intimate knowledge of I.W.W. affairs, later said that Georgie had told him that the police wanted to establish firm links between the I.W.W. and the German Government. Had Georgie played his part, the treason charge might have stuck. But Georgie held out, and without his evidence the more serious charge was without support.

In any event, conspiracy was an easier charge to sustain than treason. To support the latter charge, the prosecution must prove that each of the accused has committed some overt act; whereas to support a charge of conspiracy, all that has to be established is an agreement between the parties to the conspiracy to do something unlawful. Usually, the existence of a conspiracy can only be inferred from criminal acts undertaken by the parties acting together; if this is proved, then it can be assumed that the parties have previously agreed so to act. But conspiracy can also be established if criminal acts can be proved against some of the parties, and if it can be further proved that the other alleged conspirators were in constant association and shared a common purpose with the perpetrators of the acts. It was along these lines that the case of the Twelve developed.

THE NEW INDICTMENT

The forgery charges were disposed of, and there was no longer any reason to delay the opening of the treason case. At the same time that they notified the defence of the amendments to the indictment, the Crown announced that they proposed to start the trial on November 6.

On that day, the Twelve appeared before Mr Justice Robert Darlow Pring in the Central Criminal Court, Darlinghurst. The new indictment was read:

'Between March 1 and October 1, 1916 [the accused] conspired, combined, confederated, and agreed together maliciously to set fire to certain warehouses, storehouses, shops, and bags of chaff in Sydney and elsewhere in the State with intent to injure; . . . between March 28 and August 4, 1916, they conspired to pervert the course of justice by unlawful means to procure the release from gaol of Tom Barker before the termination of his sentence; . . . between March 1 and August 4, 1916, they unlawfully, maliciously, and seditiously contrived, intended, and devised to raise and create discontent and dissatisfaction among the liege subjects of the King; to excite contempt of the Government and constitution of the realm; to excite hatred, jealousies, and ill-will among different classes of people; to create discontent and disaffection among subjects serving in his Majesty's army; to bring into disrepute and to diminish the confidence in the tribunals lawfully constituted for the administration of justice; by means of intimidation to procure and effect changes to be made in the Government laws and constitution; and [they] conspired together and with others to accomplish these ends.'

The Twelve pleaded not guilty, and their counsel asked for an adjournment to November 20 (the date originally fixed for the trial). There had not been adequate time to prepare the defence, he said; so far, he had seen only four of the twelve prisoners, and there were many witnesses to interview. The Crown pressed for an earlier start, but the judge granted the adjournment. The defence sought bail, since the indictment had been amended, but the judge refused.



MORE ARSON



There was more trouble at Victoria Barracks. Shots were fired at a man who was seen in the early hours of the morning loitering suspiciously near the ordnance stores. At the Neutral Bay tramways depot, inspectors found some burning waste underneath the floorboards of a returning tram; it was the third such attempt in recent weeks. The fire brigade found piles of wood shavings and other inflammable material after they had extinguished a fire on the premises of a furniture manufacturer in Oxford Street.

The Twelve: The Trial

The trial of the Twelve opened before Mr Justice Pring in the Central Criminal Court on Monday, November 20, 1916. The court was crowded. Special seating arrangements had to be provided in the dock.

Mr E. Lamb, K.C., with Mr D. G. Bathgate of the Crown Law Department, appeared for the Crown; Mr J. C. Gannon, K.C., appeared for six of the accused and Mr S. Mack for five; J. B. King conducted his own defence, as he had done in the forgery case. (Mr A. James, K.C., had withdrawn from the defence; he had in the meantime been appointed Minister for Public Instruction in the Holman Government.)

The Crown had empanelled 192 jurors, so that sufficient would be left to form a jury even after the Twelve had exhausted all their challenges. All but three of the potential jurors answered the call and crowded into the narrow corridors of the court-house. Seventeen were challenged before the first juror was allowed to pass. Each of the accused used his eight challenges, and the Crown stood down nine. It was ninety-five minutes before a full jury of twelve was sworn in.*

The case for the prosecution followed closely that presented at the preliminary hearing; it took up the whole of the first week.

When the Crown closed its case, J. B. King submitted that there was no evidence against him and that he should be acquitted. Mr Justice Pring rejected his plea.

The accused in a criminal case has three courses open to him. Other than pleading guilty or not guilty he may choose to say nothing at all, relying solely on his counsel's cross-examination and legal argument to make his case. Or he may make a statement from the dock in his own defence; if he does this, he is not sworn and cannot be cross-examined by the prosecution. Or he may choose to give evidence on oath, in which case he is open to cross-

* Even so, one juror who escaped challenge was the manager of a paper mill who had sacked Grant from his employ (on political grounds) twelve months earlier. Grant did not recognise him. The defence interests later claimed that this evidence of bias on the jury invalidated the trial; but this demand was rejected.

examination. Defence lawyers very often advise their clients to make unsworn statements. A common reason is that, under cross-examination, the accused may be trapped into admissions about his behaviour or character which, although they are not relevant to the offence with which he is charged, may nevertheless prejudice the jury against him. The law says that the presiding judge may not comment adversely on the failure of the accused to give sworn evidence; this is his absolute right under British (and Australian) law, and it should not be held against him that he exercises it. Nevertheless, juries do in fact often count it against an accused person that he has not been prepared to submit himself to cross-examination. It is never an easy decision for the defence lawyers to make. In the case of the Twelve, all but three of the accused made unsworn statements from the dock.

Charlie Reeve, still 'fighting the world provided it was looking on', was the first to speak, and he was clearly ready to use the opportunity to accuse his accusers and denounce the system which had put him in gaol. The judge recognised what was coming, and confiscated Reeve's notes. He denied any complicity in the purchase or use of chemicals, and on the specific allegation that he was in the vicinity of the I.W.W. rooms on September 14, he pleaded an alibi—he was in Long Bay gaol, awaiting release on bail. The bail magistrate and his bailor, fellow-worker George Jago, supported his alibi.

Tom Glynn also produced an alibi in reply to one of the important allegations against him—Davis Goldstein's evidence of a conversation on the night of September 21 in which he had admitted his knowledge of the arson conspiracy. Glynn said that he had been at the I.W.W. rooms on that night, and five witnesses confirmed his story. He did not, however, deny any conversation with Goldstein. He said that Goldstein had called on him at the I.W.W. rooms on the afternoon of September 21. At this time, the forgery case was still hanging over Goldstein's head, and Goldstein had asked whether Glynn could do him a good turn—he had been told that if he could discover the whereabouts of the missing Morgan, he would hear no more of the forgery charge. Glynn told Goldstein that he didn't know—and that, if he did, he would certainly not tell him. Whereupon Goldstein made some vague threat and left.

Glynn also denied the police evidence that he had been seen on several occasions near the I.W.W. rooms with Tom Moore—he had never seen Moore until they met in Long Bay. He denied all knowledge of the fires, and any part in a conspiracy.

Peter Larkin was belligerent. He likewise denied any knowledge of arson. In regard to the allegation that, on September 14, he had demonstrated the use of fire-dope to a group of men on the footpath outside the I.W.W. rooms, he too pleaded an alibi—that he was at home at the time with his wife. Mrs Larkin confirmed his story, adding some circumstantial detail.

A wharfie and a fellow-worker, Pat O'Brien, also supported Larkin's evidence.

Don McPherson (whom McAlister had identified as 'Andrew') gave evidence on oath. He was precise, clear and calm. He denied complicity in any fires. In regard to McAlister's evidence of meetings with him, he pleaded an alibi. He named the ships on which he was working on the days in question, and independent witnesses supported him.

Tom Moore provided a touch of humour:

'As far as sabotage is concerned, I know nothing about it. As for going slow, it is a good thing, and if I am on a job and I get a chance, I have only two paces—go slow and stop.'

He denied any knowledge of arson and said that the cotton waste found in his room did not belong to him. His landlady gave evidence that the waste belonged to an engineer who shared the room with Moore.

The other seven denied complicity in conspiracy and the specific allegations made against them. Grant and Besant gave evidence on oath, and were not shaken in cross-examination.

Donald Grant, expounding I.W.W. doctrine, used as an example of sabotage the 'go slow' pace of Mr Lamb, k.c.—which was, he suggested, evidence of the prosecuting counsel's desire to earn more fees.

Counsel made their final pleas. Mr Mack, for five of the Twelve, warned the jury against allowing prejudice against the I.W.W. to colour their consideration of the evidence. He argued that the only conclusive evidence came from the three informers, Scully, McAlister, and Davis Goldstein. Since these men were accomplices, their evidence could not be accepted unless it was corroborated. If the jury believed a word of what Davis Goldstein said, they would be doing the accused a very great wrong—and if they also disbelieved the other two, there was no case against the accused. His review of the evidence lasted for more than three hours.

Gannon, k.c., for the rest of the accused except King, argued much the same points. Of Scully, he said that the man's evidence could not be accepted. He was 'a skunk, a coward and a criminal'

who had removed tattoo marks from the arm of an escaped German internee 'while the latter's countrymen were trying to get their hands at the throat of the Empire'. It was a curious defence in the light of the I.W.W.'s professed attitude to the war.

J. B. King, appearing for himself, supplied the ideological element. (Indeed, it is possible that the Twelve arranged among themselves for King to stand alone, so that he could do this.) In his own case, King said, there was not enough evidence to convict 'a sick cat'. As for the alleged conspiracy, the I.W.W. was opposed to violence; the destruction of life and incendiarism were 'unthinkable' to the accused. The I.W.W. existed not to advocate crime but to remove the conditions which bred it.

Lamb, K.C., spent six hours summing up for the Crown. This case, he said, was 'of supreme importance to the people of Australia and . . . the whole of the people of the Empire'. The jury did not have to decide whether the accused were attempting to improve the condition of the working class, but whether they had tried to burn down Sydney. Among the prisoners were several men of intelligence; these had denied the allegations of the purchase and handling of chemicals, but this was not alleged against them. They had remained behind the scenes while others, their dupes, did the work. The evidence had established the existence of a conspiracy. It was the duty of the jury to find each of the accused guilty on all three counts.

The tenth and last day of the trial came on Friday, December 1, 1916. The I.W.W. were still confident. On this day, Tom Barker wrote to a fellow-worker in Melbourne:

'The judge is summing up today in the case, which has lasted 10 days. Hope the jury find the lot "Not Guilty", as you do.

'We are optimistic, and will never look back if the boys come out. . . .

'Yours for the One Big Union. . . .'

Mr Justice Pring took four hours to deliver his charge to the jury, in the course of which he reviewed the evidence on each of the three counts. It was claimed that two of the witnesses were accomplices, he said, and it was the practice of the Courts to warn the jury that they should not find an accused person guilty on the uncorroborated evidence of such a witness. As to Scully, there was no doubt that he was an accomplice. As to McAlister, the judge could not see that the evidence established this, but the jury would have to make up their own minds. (He did not mention the possibility of Davis Goldstein also being an accomplice.) In one case, that of Beatty, the judge warned that the only evidence

connecting the accused with the alleged conspiracy was that of the accomplice, Scully; he told the jury: 'I do not say you must not convict, but you ought not to convict.'

Dealing with some of the specific defences, Mr Justice Pring agreed that, on the basis of the alibis offered by Larkin, Glynn, Reeve and McPherson, the Crown witnesses must have been wrong on some points. However, he concluded that it was quite possible that the conversations and acts alleged against the accused had in fact occurred, but that there had been (on the part of the Crown witnesses) 'simply a mistake as to the date'.

On the charge of sedition, Mr Justice Pring cited approvingly the definition of a leading British authority that one form of sedition was 'to promote ill-will or hostility between different classes of [His Majesty's] subjects'. This he took to include the propagation of the class war between employees and employers. The British people were justly proud of their liberty of speech, but liberty did not mean licence; rather it meant that anyone was entitled to discuss any subject 'in a fair and temperate way', and the I.W.W. went far beyond this limit.

Mr Justice Pring asked the jury, before they retired, whether there was anything they would like to know. The foreman reported that they were rather puzzled—did they just have to bring in a verdict of guilty or not against each of the prisoners, or did they have to consider each of the three charges separately? The judge replied that the latter was the course required of them. The jury left the box to consider their verdict.

The judge's charge had gone strongly, but in some respects subtly, against the accused. Nevertheless, the defence side was still full of hope. Counsel asked that the prisoners be allowed to talk with their friends and relatives in court while the jury was out. Mr Justice Pring agreed, and the court room hummed with optimistic talk and excited laughter.

The court was still crowded when the jury returned five hours later. Those friends and sympathisers who had waited for the verdict had never questioned the innocence of the Twelve, and did not believe that anyone who saw them and heard them speak could judge them otherwise. But this jury did. Glynn, Hamilton, McPherson, Teen, Beatty, Fagin and Grant were guilty on all three counts. Reeve, Larkin, Besant and Moore were guilty of conspiracy to commit arson and seditious conspiracy. King was guilty of seditious conspiracy.*

* A later rumour stated that the jury had made up its mind after the first day; the only disagreement was whether King should be found guilty on one count or two.

'Wives, and mothers, and sisters of the accused broke into hysterical weeping, and some of the unfortunate men themselves were visibly affected,' wrote one observer. So great was the disturbance that Mr Justice Pring ordered the court to be cleared of women.

The jury completed its report, and the judge gave his thanks. To the jury, he said that they had 'performed a very great service to the community'; he was pleased to inform them that they would be paid £1 a day from the fourth day of the trial. They had been 'very careful and attentive' throughout, and he was sure that their verdict had been 'arrived at [only] after very careful consideration'. The detectives he congratulated on 'the remarkably clever way in which they worked up this case. They performed one of the greatest services that have been performed to the community for a very long time'. The prisoners were remanded to the following morning.

Outside the court, over two thousand people were waiting. While uniformed police held back the crowd, a motor van rushed the Twelve across the street into No. 3 Police Station.

When the court reassembled the following morning, the Twelve were asked whether they had anything to say before sentence was passed.

There was an air of injured pride about Charlie Reeve's reply: 'It is true I am a member of the I.W.W. and that I am what is known as a working-class agitator. . . . I have always had a great ideal to fight for—the complete freedom and happiness of all humanity. . . . I would freely give my life . . . in propagating the ideals I have lived for, but to think that my name as an industrialist is to be besmirched by such a foul crime as arson is something that revolts my nature. . . .'

Tom Glynn remained the cool political theorist, seeing beyond his personal dilemma to the future of his movement:

'I am not a criminal and no sentence of this court can make me a criminal so long as my conscience is clear and clean. . . . Politicians have been responsible for us being where we are today, but so far as I am concerned, I know that this verdict and the sentences that are to follow will help the working class to understand, better than years of talk would do, the ideals for which we fight.'

Generations of Irish rebellion had bitten deep into the soul of Peter Larkin:

'You ask me have I anything to say! Have I anything to say against a Star Chamber? . . . Why, I ask you, should I bring to this country

but a few months ago the wife of my bosom and the child of her womb and then perpetrate the foul crimes with which you charge me. No such thing as crime can be laid at my door or at the doors of any of my ancestors. I am not guilty, even if all the juries in the world say I am. I leave it to my own class who know me . . . and I say again, "if my class condemns me I am prepared to take the medicine."

Life had not treated Bill Beatty well:

'I am absolutely innocent. . . . The evidence against me rests upon the word of one man—Scully—a drug-fiend and a diabolical liar. . . . I am a little over thirty years of age. A little over thirty years ago I was condemned to penal servitude for life, so that any sentence you may now impose troubles me not. . . .'

J. B. King well understood the meaning of sedition:

'I have known that the moment I made the slightest attempt to better the conditions of the working class, that moment I was conflicting with the laws of the pirates—the capitalists. . . . I am not the cause of class strife; I am a product of it. . . .'

Fagin, Hamilton, Besant, Moore and Teen all renewed their protestations of innocence.

It remained for Donald Grant, whose eyes glowed with the just society of the future and whose liquid tongue spilled torrents of exciting words, to speak most eloquently for the accused:

'If I am any judge of psychology, I think I am right in saying that the verdict of the jury was astounding. There was not a man in the court who was not more or less affected by the verdict, and I think it was because the verdict . . . was not in accordance with the evidence. I may have been guilty, individually, in my Domain speeches, but I have never acted in any way that could implicate me in seditious conspiracy. I have expressed my own mind. I have never conspired with anyone as to what I should say or he should say. I feel my position keenly, because this jury has associated me with a crime I know nothing about. The people of Sydney know that Grant, at all events, and the rest of these men, for the matter of that, do not believe in such a foully fiendish crime as is alleged to have been committed. . . . You are making the same mistake with us as they made with Bruno, who, when he said the world was round, they gaoled to prove that it was not. You are putting us in gaol to prove there is no class war. But there is, and it is not of our making. . . . I can only add that I will take the sentence of the court, backed by the fortitude that my clear mind gives me.'

Each of the Twelve had denied complicity in arson. Some had accused their accusers of mounting a conspiracy against the I.W.W. Some had conceded that their revolutionary agitation

might, by the yardstick of capitalist justice, be held seditious; but this was a part of the class war and they felt no shame or guilt. All now recognised that their fate was sealed, and that only the future prosecution of the class war could release them from their servitude.

Mr Justice Pring had been carefully dispassionate in his charge to the jury, although the sense of this was clearly against the accused. Now that the verdict had been given, the fear and abhorrence aroused in him by the prospect of revolution flowed freely in the speech he made to the prisoners in pronouncing sentence:

'Each of you prisoners has condemned the verdict of the jury. I have only to say that, in my opinion, the jury has done no more than its duty. It has been extremely patient and careful throughout the case, and no-one who has listened to the evidence could possibly doubt the correctness of the verdict. . . .

'You have been convicted of very serious crimes. You are members of an association which I do not hesitate to state, after the revelations in this case, is an association of criminals of the very worst type, and a hotbed of crime. I hope that now very strong and drastic steps will be taken to uproot that association. If I may venture to suggest one thing, it is that these Domain meetings should at once peremptorily be put a stop to. These meetings are simply held for the purpose of recruiting young, ignorant men into the ranks of this criminal association.

'Only the other day two members of this association, in the most cowardly, cold-blooded way, shot down a policeman whose only fault was that he was doing his duty. Those two men, in the course of a few days, will pay the last penalty of death, and you may consider yourselves very lucky that some of you were not in the same position, because you have not hesitated to devise a devilish scheme, not merely for the destruction of property, but absolutely regardless of human life. . . .

'You talk about your loyalty to your class. Did you think when you conceived this diabolical course that the result of your action would be to throw large numbers of your class out of employment? You talk of class hatred. Who is it but you who have been fostering that hatred by the speeches you have made, and by this pernicious literature you have been scattering abroad? I hope to see that in every case this literature is destroyed, and that the authorities will use their best endeavours to prevent any more of it coming into this country.

'One of your counsel has described the crime with which you are charged as the act of devils, and I think he was right.* I am going to

* That is, Gannon, K.C. It was later alleged that he had privately expressed the hope that all the accused would get ten years.

pass sentence upon you—a sentence which I do not think, personally, is really commensurate with the terrible crime you have committed, but I will lean rather to the side of mercy than to vengeance. Nevertheless, I must pass a heavy penalty, and I am going to do it; otherwise I should fail in my duty towards the whole of the public of New South Wales.'

Hearing this, and knowing the record of Mr Justice Pring, the prisoners could have been left with little hope. Even so, they were hardly prepared for the sentences which came.

Glynn, Hamilton, McPherson, Teen, Beatty (whom the judge said the jury 'ought not to convict'), Fagin, and Grant—fifteen years hard labour on each of three counts, the sentences to be concurrent.

Reeve, Larkin, Besant and Moore—ten years hard labour on each of two counts, the sentences to be concurrent.

King—five years hard labour on one count, the sentence to commence after his sentence in the forgery case had expired.

Outside the court, a large crowd of sympathisers had gathered, and there was a large squad of police to ensure that the crowd did not storm the courthouse or the barred tram which was to convey the prisoners to their gaol. A rumour swept the crowd (was it started by the police?) that the enclosed tram was a decoy, that the prisoners were really locked in a police motor-van. But the van was in fact full of police, and the crowd made no attack. As the tram left No. 3 Police Station for Long Bay, the crowd cheered their farewell to the twelve men within.

The Release Campaign: Stage One

Ted Giffney was a South Australian, born at Kadina in the wheat-belt, who had joined the first Australian Local of the I.W.W. in Adelaide in 1911. He had knocked around the country, working at unskilled jobs. He held his membership with pride: 'Once you were a member you were always a member as long as your dues were paid up, no matter in what part of the world you were. It was only one organisation.' He remained a member 'until the police made it impossible to carry on'; wherever he went he agitated for the organisation, always as a volunteer for the class war.

Late in 1915, Ted Giffney became general secretary and treasurer of the national committee (the General Executive Board) of the I.W.W., which sat in Sydney, using the rooms of the Sydney Local. He was one of the inner circle of the I.W.W.; he was constantly at the rooms, and knew all the active Wobblies well. He was present at the rooms when the police made their big raid on September 23, 1916, and he saw the first six of the Twelve arrested.

Giffney's immediate response to the arrests is therefore of some interest; it was typical of the general I.W.W. reaction, and it came from a man who, by virtue of his position, was well informed.

Two of Giffney's letters to the Melbourne Local of the I.W.W. have survived. The first, dated September 26, 1916, was reprinted in a leaflet, *I.W.W. Appeal to Unionists and the General Public*:

'Last Saturday morning thirty plainclothes policemen swooped down on our premises. . . . The charges are all frame-ups. I heard since the arrests that the police had twelve warrants for members of our organisation issued last Friday night. Who they are we do not know. The police are enquiring for Barker; up to date he is free and hard at work on this week's *Direct Action*.* . . . You want to make a hell of a howl amongst the unionists over this. Unions here all ready,

* In fact, warrants had been issued for only nine men, and Barker was not among them.

moving towards a general strike, and will make these arrests part of their grievance. Go to it; all well with Local; sign out. . . .'

On October 1, he wrote again:

'There has been twelve I.W.W. men arrested in Sydney to date charged with treason—four of them arrested in bed this morning at 2 a.m. and their belongings taken.* Word reached us this morning that three I.W.W. men arrested at a place called Tottenham, charged with murder—shooting a policeman. All sorts of charges are being framed up against our men. . . . Storey [the A.L.P. leader] said last week that all I.W.W. men arrested would be held till after the war. All our men are being arrested, but no lack of speakers up to date. . . . Think we are in for big fight. I do not know how long I will be at liberty. If call comes for speakers, send them prompt. Hope general strike here Wednesday next. Wharfies like to make fight for our imprisoned men.'

Even if we accept that Giffney was accurately reporting his state of mind in these letters, it does not, of course, prove that the men charged with murder and arson were innocent. But the letters are strong presumptive evidence that the organisation as such knew nothing of these crimes.

The hopes of the Sydney Wobblies that the unions would take up the case of the arrested men came to nothing. As part of a national movement, Sydney unionists did indeed stop work on Wednesday, October 4. But this one-day strike was called by the Interstate Trade Union Congress, in protest against the call-up of single men for home service. Although direct actionists were prominent among the three thousand strikers who met in the Sydney Town Hall, the case of the Twelve was not mentioned in the resolutions passed by the meeting.

The Wobblies were not dismayed. The first job was to raise money for the defence of the prisoners and for the support of the dependents of the three married men.

Workers' Defence Committees were formed in Sydney, Melbourne, Brisbane, Adelaide and Broken Hill, to seek the assistance of other sections of the labour movement. Agitators were despatched to the coalfields, the metal mines, the railway construction camps, all centres of I.W.W. influence. Soap-boxers were on the job on street corners, in halls, in the public parks. *Direct Action* reported that the authorities had withdrawn the I.W.W.'s permit to take up collections in the Sydney Domain; the ring of

* Giffney evidently presumed that Tom Pope, who had been taken to the police station to identify the overcoat he had lent to Bill Teen, had also been arrested.

white helmets round their stump the following Sunday 'lent an air of enchantment to the scene', but nevertheless the crowd contributed over £20 to the funds:

'Christ was crucified for treason, and on the strength of it soul snatchers have cadged many millions from the public. We rattle no boxes for Jesus' sake, but we do say that men who are likely to be crucified for their adherence to working class principles are deserving of help.'

The Defence Committees appealed to the unions for funds. A few contributed, but others were less sympathetic. The General Secretary of the Australian Workers' Union returned a cheque to an A.W.U. shed representative, with the comment that the union would under no circumstances pay over money to the I.W.W., a 'German-American organisation' which had consistently attacked the union. (The shed representative promptly forwarded the money direct to the I.W.W., saying that 'the enclosed sum, subscribed by shearers here, does not bind them to holding with the views of the I.W.W., but is from a feeling of sympathy with men who are up against the laws of the country, and they wish to see them get a fair trial.' This was perhaps representative of much rank-and-file unionist opinion.)

Meanwhile, the campaign for the conscription referendum was well under way, and the conscriptionists took full advantage of the association of the I.W.W. with the 'antis' to press home their case.

Prime Minister Hughes linked the anti-conscriptionists and the Labor Party with I.W.W. saboteurs. The New South Wales Attorney-General D. R. Hall played on the patriotic sentiment of a Sydney audience by reading a list of I.W.W. members and laying heavy stress on the considerable number of foreign names.*

The I.W.W. and the anti-conscriptionists complained loudly of this wholesale contempt of court, the attempt to arouse prejudice, the public declaration of the men's guilt while they were still on trial. But to no avail; no prosecutions were launched against Messrs Hughes and Hall.

In the Central Police Court, the Twelve reserved their defence and were committed for trial. Outside, the drive against the I.W.W. continued. More agitators were picked up and gaoled for offences against the War Precautions Act, and still more rose from the

* The Crown Solicitor later denied that he had made this list available to the Attorney-General. He suggested that Hall might have acquired it from the military, who had (without his authority) made a copy of it during the preliminary proceedings.

depths to take their place. Using the membership lists seized in the raid on the I.W.W. headquarters, employers (particularly the New South Wales Government Railways) began to sack the Wobblies. Norman Rancie commented in *Direct Action*:

'If the boss is going to force us to change our names, play the hypocrite, and tell lies in order to get a job, then upon him will be the blame, and not us. . . . We are here to stay, and stay right here we will, fighting the good fight, all the time and everywhere, until the world at last is free.'

Despite the charged atmosphere in which the campaign was fought, the conscription referendum was lost. The labour movement was surprised and jubilant.

In mid-November, it was announced that Mr Justice Pring would try the case. It was this which began to swing the labour movement behind the defence of the Twelve. For Mr Justice Pring was thought to be a 'hanging judge'. In 1909, as a circuit judge, he had travelled to Albury to preside over the trials of Tom Mann, the British labour leader who was then organising in Australia, and Harry Holland, the socialist agitator, both charged with offences arising out of a Broken Hill miners' strike. In 1910, he had tried Peter Bowling, a leader of the coal-miners' union, for offences against the industrial law. In 1911, he had tried the leaders of a Lithgow miners' strike. In each case, he had expressed strongly conservative sentiments, and imposed heavy sentences. Now, radical opinion was that he had been especially chosen to preside over the trial of the Twelve. On the motion of Ernie Judd (a member of the Socialist Labor Party, which was at odds with the I.W.W., and delegate of the Municipal Workers' Union to the Sydney Labor Council), the Council protested to the N.S.W. Government against 'allowing Mr Justice Pring to try members of the working class'.

When in December the men were found guilty, and Mr Justice Pring pronounced anathema upon the prisoners and awarded his sentences, the storm broke.

The I.W.W. reaction was predictable—a direct appeal to the class solidarity of the workers:

'These vindictively sentenced men are men of our class; they lived among our class; worked with us and fought unceasingly for the uplift of our class. YOU KNOW THESE MEN! You know from the evidence that THEY ARE NOT CONVICTED NOR SENTENCED on the strength of that evidence. THIS IS THE FIRST STAMP OF THE "IRON HEEL" IN THE FACE OF LABOR! . . . We, the working class, cannot afford to lose

their services, and we are going to fight like tigers to see that the capitalist class does not keep them from us. CAN WE COUNT ON YOUR HELP?'

But other labour movement responses suggested a new atmosphere. The bitterness of the conscription fight, the hatred the surviving labour movement felt for those Labor leaders who had 'ratted' over conscription, the entry of Mr Justice Pring and the severity of his sentences—all these combined to convince the labour movement that the I.W.W. prisoners were victims of conscriptionist vindictiveness and class prejudice. The men who had been condemned as cantankerous disruptors were now hailed as martyrs.

The Socialist Labor Party had no cause to love the Wobblies. For four years they had condemned the Chicago-ite I.W.W.'s advocacy of sabotage and the general strike as anarchistic lunacy. Now they returned to the same point: 'Once more the tactics of the Chicago faction . . . has led the members of the working class to jail.' But they condemned the 'outrageous and vindictive sentences' imposed by Mr Justice Pring:

'Even admitting that these men were guilty of the act of which they were convicted, the penalties imposed were out of all proportion to the deeds alleged to be committed; the evidence bearing on the case being largely of a circumstantial nature.'

Henry E. Boote, editor of the A.W.U.'s weekly, the *Worker*, was still more forthright. The A.W.U. had even less cause to love the I.W.W., which had consistently denounced the union as corrupt and its leaders as time-servers. The Wobblies within the A.W.U. had encouraged wild-cat strikes which annoyed the union leaders as much as they did the pastoralists. However, Boote was a man of strong radical convictions. It was 'a worry for him, as the A.W.U. had reason to hate the I.W.W.', his sister wrote; but during the conscription argument Boote had won more independence in his conduct of the paper, and his convictions triumphed.

On December 7, 1916, in the *Worker*, there appeared Boote's article, 'Guilty or Not Guilty'. It was a characteristically trenchant piece of journalism, which did more than anything else to change the attitude of the movement at large to the case.

The organised labour movement and the I.W.W., Boote proclaimed, had nothing in common 'but a desire to serve and save the exploited millions'. But, during the referendum campaign, it had served the conscriptionists' purpose to blacken the anti-conscriptionists with I.W.W. criminality. Once this was done, the

I.W.W. prisoners had no chance of justice. The evidence against them was 'tainted'. They were tried by a 'bigoted capitalist judge' who was 'temperamentally unsuited . . . to preside at trials of working-class advocates'. The conviction and sentences were 'a grave judicial scandal'.

'Whether these men, or some of them, are guilty or not guilty of incendiarism we do not know. But we are perfectly certain that the charge of exciting sedition, when levelled against industrial agitators, is only a weapon for repressing the expression of working class discontent and upholding the moral code of exploitation.

'And we do not hesitate to declare the belief that, on the more serious charges of firing buildings, and of conspiring to secure the release of Barker by unlawful means, the evidence on which these men were convicted was ROTTEN through and through. . . .

'Organised Labor . . . should not rest until the prisoners are set free, or their criminality established, on testimony less grotesque, less tainted, and less obviously twisted and distorted to the needs of an unscrupulous prosecution.'

Boote had been the foremost publicist for the 'No' cause in the conscription campaign. He was known and respected as honest and courageous. His intervention gave new heart and powerful arguments to the I.W.W. sympathisers and stirred the consciences of many who had until now been satisfied to accept the I.W.W.'s guilt.

This impassioned article also stirred the New South Wales Government to action. Attorney-General Hall inquired from the Chief Justice whether he desired that Boote be prosecuted for contempt of court. Sir William Cullen replied through his associate, Herbert Vere Evatt—then a rising young barrister—that he did not think it advisable to take any action.

Boote was not so fortunate with his next attempt. On December 14 he published in the *Worker* an article, 'The Case of Grant: Fifteen Years for Fifteen Words'. Boote said that Donald Grant's case deserved special attention:

'This man got fifteen years for saying fifteen words: FOR EVERY DAY BARKER IS IN GAOL IT WILL COST THE CAPITALISTS TEN THOUSAND POUNDS.

'That is a record for Australia. I don't believe it can be beaten in any part of the world. . . .

'Only a jury as stupid as it was vindictive could possibly have found that those words proved that the person who used them was guilty of a three-fold crime. . . . And only a judge as insolent as he was bitterly

biased could have handed out fifteen years for that, and pretended he was dealing lightly with the prisoner at the bar. . . .

'Grant is a young man. He is able, eloquent, earnest, fearless, devoted to the service of the class to which he belongs.

'It is horrible to think that fifteen years of his valuable life should be wasted in jail, while that brainless and brutal jury goes about pluming itself on what it has done, and that class-biased and bitter Judge sits in the seat of Justice with loaded scales.'

The police subversion expert, Detective Moore, was concerned. Boote's articles had, he reported to the Government, 'actively assisted a campaign, which if not dealt with with determination may bring about most serious and widespread industrial disturbances. . . . If the *Australian Worker* is allowed a free hand in publishing such articles, the probable result will be in exciting the industrial classes to such an extent as to make them ready for any industrial upheaval for which this conspiracy case may become a battle-cry.' The I.W.W. was already working to this end.

At the time Boote published 'The Case of Grant', the appeal of the Twelve was pending. The Crown proceeded for contempt of court, alleging among other things that Boote's account of the evidence against Grant was 'grossly misleading'. The case was heard in March 1917; Boote was convicted without penalty but with costs against him.

The defence interests were not slow to draw the contrast between Boote's fate and the immunity of those who had freely committed contempt (by affirming the guilt of the Twelve) at a much more serious period, when they were awaiting trial by jury.

The unions responded quickly to the conviction of the Twelve and to Boote's denunciations. During December, *Direct Action* reported demands from unions throughout the eastern states for the release of the Twelve. In Sydney, the Labor Council resolved, on Judd's motion, to send a deputation to the Parliamentary Labor Party, asking it 'to use every means in [its] power to secure the appointment of a Royal Commission to inquire into the whole conduct of the I.W.W. cases by the Crown Law Department and the Attorney-General, [and] to report all irregularities in the Crown's conduct of the cases'.

In Melbourne, the Trades Hall Council decided to support the New South Wales Labor Council's plea for a Royal Commission, after a prolonged debate in which 'extremists . . . strongly advocated action which might result in the immediate liberation of the prisoners'. In Brisbane, the Industrial Council decided to affiliate with the local I.W.W. Release Committee.

The union front was solid, but the action decided on was political rather than industrial. The appeal of the Broken Hill Miners' Association, an old I.W.W. stamping ground, for a general strike 'until constitutional government is restored in New South Wales and members of the I.W.W. gaoled in Sydney and Broken Hill* are released' found little support.

* Several I.W.W. members and some other unionists, including Jack Brookfield, soon to become the Member of Parliament for the district, had appealed against gaol sentences arising out of disturbances during the conscription campaign. Most of the appeals were disallowed. In giving his decision, Judge Bevan said: 'The I.W.W. is of foreign origin, and some of the things suggested are repulsive to the British. . . . This organisation is striving at the millennium, but does not go the right way about it. The man who aims at the millennium should start by doing unto others as he would have them do unto him. I hope these decisions will be a lesson.' The judge himself was evidently no millennarian.

Backdrop 1916-1917

AN INSURANCE FIRE

As the trial of the Twelve was dragging to a close, the police arrested two brothers, James and George Renton, who had been discovered at the bottom of a lift well in business premises on the corner of King and York Streets, Sydney, and charged them with arson.

Later, it emerged that the brothers were out of work because of a strike which was then tying up the New South Wales coalfields. Their father was supporting them, although his own business was near bankruptcy. The brothers had read of the allegations against the I.W.W., and had decided to help their father by burning down the building in which his factory was situated.

The Rentons were not hardened criminals. They pleaded guilty, and were sentenced to three and two years gaol respectively.

However, the police were still suspicious. Reporting yet another fire in the unfortunate Mark Foy's, on October 24, 1916, Detective Leary wrote: 'It would appear that members of the I.W.W. are still endeavouring to destroy business places. . . .'

THE FIRST REACTIONS

The heavy sentences on the Twelve had a sobering effect on the Wobblies; their meeting in the Domain on the following Sunday was a forlorn affair. The police, headed by Inspector-General Mitchell, were present in strength. The tone of the meeting was 'subdued' and the speakers 'steered clear of sedition'. The Domain orators likened the Twelve to the early Christian martyrs, and pledged that the whole strength of the organisation would be thrown into the demand for a new trial. Elsewhere, there were reports that sympathisers were canvassing among trade unions and Labor politicians to win support for the release of the prisoners, or at least a reduction of their sentences.

Conservative opinion was relieved and jubilant. Voices were raised on all sides in support of Mr Justice Pring's encomium to the police, and his recommendation that stern action be taken against the I.W.W. The *Sydney Morning Herald* declared that public opinion strongly supported a ban on the organisation. This was not a matter of the right to free speech of 'visionaries intent upon bringing in the millennium'; on the contrary, the I.W.W. was inciting its supporters to anarchy and destruction. The task was made even more urgent by the demands of war: I.W.W. anarchy would lay the nation open to attack; I.W.W. sedition was undermining that national solidarity which must confront the enemy.

ILLEGALITY

On December 13, 1916, Prime Minister Hughes (now heading a 'National Labor' Government) telegraphed to the Premier of New South Wales:

'ROUETTE INERTLY RANDINGS INDIGENCY TRALIGNERA OFFERTOR WORLD PLANNING POLYPOSIE SYDNEY OR MELBOURNE CIRCULATE CLEMATIS LEAFLETS ADVOCATING GEMERONO SKITTISHIM PUTIVAMO SECURING RED-HUMPED METALINO OFFERINGS OVERSHINE TOTALISANT RECENTLY CRABITES SYDNEY CRUCIATION OFFSETPIPE SILVERGRAY DECISOSAT DENDRITES ABRIPEDAN PODASIMUS CENURO LEAFLETS BUT CREBREEZE YOUR PENETRAL DESIRED SILVERGRAY GENOVICE KINDLY DIRECT THIS HUGHES.'

Translated, this delightful piece of Joycean prose read:

'**Secret and Confidential.** Information has been received Industrial Workers of the World planning print at Sydney or Melbourne circulate Commonwealth leaflets advocating general strike for the purpose of securing release members of that organisation who were recently convicted Sydney criminal offence. Defence Department taking action to prevent circulation of leaflets, but co-operation your Police desired. Would be glad if you could kindly direct this. Hughes.'

The Premier passed this request over to the Inspector-General of Police.

Two days later, the Prime Minister introduced into the Commonwealth Parliament an Unlawful Associations Bill which was designed to put the I.W.W. out of business. The Bill provided that the I.W.W., or any other association which incited men to the

prosecute for incitement to crime. A Premiers' Conference resolved on similar legislation in all States. But the panic was temporary. The other States did not follow suit, and the New South Wales legislation seems to have had little use.

THE POLICE: SATISFACTION AND REWARDS

Mr Justice Pring's tribute to the police had a sequel. On the day the Twelve were sentenced, an enthusiastic citizen announced that he was calling a meeting in the Sydney Town Hall to consider suitable means of rewarding the police officers who had so skilfully and painstakingly uncovered the conspiracy. He hoped especially that businessmen whose property had been safeguarded would mark their gratitude in a practical way.

Inspector-General Mitchell 'strongly discountenanced' this proposal. Speaking (perhaps without due warrant) for the whole of the force, the Inspector-General said that the public expressions of satisfaction were 'ample recompense to all concerned'. The Premier concurred: 'Full justice will be done to these deserving officers', and there was 'no need to support that by a spasmodic effort which can only have injurious effects'.

Despite these strictures, the meeting went ahead. Two hundred people turned up, and Sir Allen Taylor, M.L.C., took the chair. A motion to approve the objects of the meeting and to form a committee to further them was declared carried—amid jeers from an unruly group of I.W.W. sympathisers in the back of the hall, and cheers for 'the men in gaol'. Sir Allen headed a committee of thirteen, but in the event the proposal to make public recognition of the police, 'a splendid body of men who well deserved the respect and admiration of citizens', was lost in the mists of bureaucratic disapproval.

The Police Force felt that 1916 had been a good year. The annual report of the Inspector-General, despite its careful official phraseology, evinced a quiet satisfaction:

'The year has undoubtedly been one in which a phenomenal amount of crime of a serious nature has called for attention. A feeling of unrest was evidenced, in certain places, engendered, no doubt, by the existing state of affairs. The operations of certain persons professing beliefs in doctrines of an extremist nature brought them into conflict with the laws of the community and have called for special efforts on the part of the Police. . . .'

To mark the occasion, the authorities granted to a number of the police involved 'special gratuities . . . for exceptional zeal and assiduity . . . in bringing to justice offenders charged with serious crimes'. Among the detectives closely connected with the various I.W.W. cases, Turbet and Leary got £50 each; Moore, Pauling, Robson, Lynch, Robertson, Miller, Hooper and Surridge got £25 each. Two of these detectives were also granted an extra 2s. a day, and three more an extra shilling.*

The police also distributed the £600 public reward which had been offered in the arson case. (£250 had come from the Government, £250 from the Fire Underwriters' Association, and £100 from a firm of timber merchants.) McAlister came out best with £250; Harry Scully got £200; the Goldstein brothers were awarded £60 each; F. P. Brown, a freelance reporter who had given evidence against Donald Grant, got £25; and Joe Brown, a private-eye whom the police had planted in the I.W.W., got a miserable £5.

THE WESTRALIAN TRIAL

The trial of the remaining nine Westralian 'conspirators' opened before Mr Justice Robert Bruce Burnside in the Perth Criminal Court on December 6, 1916. To make sure of a jury, the names of 138 potential jurors were listed; 82 names were called before the jury of twelve was empanelled.

Before the proceedings opened, Monty Miller asked the judge for a twelve-month adjournment: 'public opinion was inflamed about conscription, the I.W.W. and the war, and the court should give it time to cool down'. Mr Justice Burnside refused his request.

The Crown case followed closely that presented in the preliminary hearing. The main interest in the trial was in the activities of the two accused who were defending themselves, Mick Sawtell and Monty Miller.

Miller, the 'grand old man' of the I.W.W., took every chance to expound his views. His cross-examination of the principal police witness became 'a lengthy discussion . . . on the rights of the worker in the disposal of his labour as a commodity, the position of the employers to fix rates of wages, and the power of the

* It was partly because of this discrimination that *Truth* later alleged that the Sydney C.I.D. was 'a seething cauldron of dissatisfaction and discontent' in which the 'white-headed boys' got 'all the juicy morsels that are going', while those not so fortunate were 'thrown a dry, meatless, unappetising bone'.

Arbitration Court'. The judge intervened on several occasions to stop Miller in the middle of a lengthy speech.

Sawtell and Miller used the court-room almost as a Brechtian stage.

Miller: 'Fellow-worker Mick Sawtell, what is the black cat of sabotage?'

Sawtell: 'I do not know where it comes from, but it symbolises strength and courage.'

These were the classic tactics of the rebel, confronting the masters' court. Answering Miller's questions—which had been carefully rehearsed—Sawtell explained his philosophy:

'The I.W.W. did not believe in violence or the destruction of life and property, although it recognised circumstances—for instance if they were attacked by scabs—when the workers would be justified in using violence. Revolution did not necessarily mean violence; its primary meaning was a total change, as the Wagnerian revolution in music, Oscar Wilde's revolution in aesthetics. It did, however, mean force; but force could be passive as well as active, as Tolstoy had shown with his teaching of non-resistance. To secure justice for themselves, the workers had to oppose the master class; had not great thinkers like Emerson and Socrates urged that opposition to law and government was the pre-condition of progress?'

Such a dialogue was not the usual stuff of the criminal courts, and Mr Justice Burnside was patient and evidently impressed.

In his final address, Mick Sawtell spoke 'with dramatic force and a flow of language which held the close attention of those in Court':

'If we are denied the right of free speech in a country like Australia, then we must go back into the impervious gloom of hopelessness and despair. If we, the I.W.W., are on trial today, it may be the trades unions tomorrow. If Australia is to be a country where no man has the right of free speech, to freely organise for the betterment of his fellow men, then I tell you . . . I would sooner die. . . .'

After Sawtell, the prosecuting counsel was a dive from the intoxication of champagne into the sobriety of iced water. The accused had not attempted to deny the evidence; they had sought only to justify their illegal actions. A desire to reform society gave no licence to break society's laws. A man could hold his opinions, but the law established the limits of his right to express them. In times like these, when the Empire was at war, society should 'stamp out anything savouring of revolution or revolt'.

All the accused expressed pride in their I.W.W. membership and determination to continue their fight—in gaol or out, for, as one said, ‘when we come out of gaol we will probably have some of the criminals in our ranks, who will give added force to the I.W.W. . . .’

But it was Monty Miller who left the greatest impression. As he rose unsteadily to speak, he seemed ‘for the first time to be suffering from his ordeal’. His voice at times broke with emotion as he spoke ‘at length and somewhat incoherently’.

‘The only reason I can advance as to why sentence should not be passed upon me is that my life, as far as I can remember it, is a refutation and a contradiction of the charge of having conspired with others. That life has been a long series of acts, day by day, hour by hour, in the full light and gaze of my fellow men. . . . I see the long shadow cast along the space of time, and it reminds me that the sun of my mortal existence must be coming near the time of setting. Whether it be so, I care not. . . . The little children I had have now grown grey, are here, and their married children and their children. There are in the dock here married men with children . . . if it is possible to temper the sentence you are about to pass with mercy, I ask that it shall be done for [them]. . . .’

The trial, which had contained so much of pathos and blind courage, ended in near farce.

Mr Justice Burnside, for all his devotion to law and order, was no Pring, and he was more than ready to temper the winds of justice to these I.W.W. lambs. Although each was liable to three years’ imprisonment, they were men of good character who had committed no reprehensible act; their guilt was that they had foolishly distributed someone else’s seditious propaganda. They should listen to the voice of reason: it was useless trying to pit their will against the law. This could only have one consequence.

‘I am prepared to let you go, upon your entering into recognisances to be of good behaviour, to keep the peace, and to obey the laws of the land. You will see, therefore, that justice may be tempered with mercy. If you desire to make martyrs, as you term it, of yourselves, and experience the undesirable atmosphere of prison, then you may do so for any period up to two years. . . . Miller may go on his own recognisances, because, at his time of life, it would not be just to send him to gaol.’

Miller interjected: ‘I don’t want mercy . . . I want justice.’ To which His Honour replied: ‘You may exercise your own discretion.’

Sawtell asked: ‘I have always endeavoured to keep the peace, and be of good behaviour. What do you regard as good behaviour

fer to Bathurst, they attacked a warder in the exercise yard and made their escape.

Recaptured at Quirindi, some fifty miles from Tamworth, they were returned to gaol, to await trial for this new crime.

Later Wilson was sentenced to a further five years' hard labour, and Coxen to a further three years.

In the meantime—perhaps in the hope of securing a shorter sentence—Coxen told the police a remarkable story.

A few days after their conviction on the forgery charge, he claimed, Wilson had boasted to him of his part in a more serious crime—the Pappageorgi murder.

Wilson had said (according to Coxen) that a mate called Swiss had told him that Pappageorgi had a lot of money on the premises and had proposed a robbery, to which Wilson agreed. That night, half drunk, he and Swiss took a piece of metal from the I.W.W. rooms (where he often slept when in port) and a piece of cord from Peter Larkin's bag. They went to the Allies' Cafe, where Swiss followed Pappageorgi into the kitchen, and hit him on the head with the iron. The two of them then strangled him with the rope and robbed the till and his box. They took the iron bar back to the I.W.W. rooms (in Sussex Street, behind the cafe), and the next morning Wilson picked up a job on an interstate ship and sailed out of Sydney. He was, however, frightened that he might have left his fingerprints on the cash register.

Stories of this kind, retailed by men who are trying to buy their way out of punishment, are always suspect, but this one fitted.

The routine police check on fingerprints had already revealed a similarity between that found on Pappageorgi's cash register and those taken from Wilson at the time of his arrest. Investigations showed that Wilson had indeed shipped out of Sydney on the same day that Pappageorgi's body was discovered. But, most important of all, Wilson confessed.

When first questioned by Detectives Leary, Lynch and Hooper, he had, of course, denied all knowledge of the affair. Then he was confronted with the evidence of the similarity of the fingerprints. At this point he claimed that he had spent the night in one of the rooms above the Allies' Cafe, saw Pappageorgi's body when he came down the next morning, looked at the cash register to see if there was anything in it, got frightened, and left. He was charged with the murder, but said no more.

Later, he was confronted with Coxen's statement. On the day before the trial, he told the three detectives that he had committed

the murder, that it was a premeditated crime for money, that he had done it alone and intended to plead guilty.

According to the police evidence, he added: 'I blame the I.W.W. for this. I was never in trouble till I joined the organisation. Curse the I.W.W.! It has made a criminal of me and many others.'

The trial was held in the Darlinghurst Police Court, before Mr Justice Richard Meares Sly. Wilson persisted in pleading guilty, and neither the judge nor the counsel who had been provided for him by the Attorney-General could talk him out of it. He was sentenced to death, and hanged on May 31, 1917.

Of Wilson's case, *Direct Action*—by now deeply embroiled in the campaign for the release of the Twelve—wrote:

'Those workers whose brains are so deranged by the system as not to know the difference between social war and individual spite, between social restitution and individual garrotting, are respectfully requested to first earn a stretch in gaol on their own responsibility, and on release to become agents for the police after the manner of their kind. The I.W.W. needs their room for reasonable men.*'

THE TOTTENHAM MURDER: PLEA FOR COMMUTATION

Running like a blood-red thread through the trial of the Twelve was the effort of the I.W.W. and other labour organisations (including the Sydney Labor Council) to persuade the Government to commute the death sentences on Roland Kennedy and Frank Franz.

There had been no execution in New South Wales since 1912, and neither the case against capital punishment nor the Government had changed. It seemed that these two men were to be hanged not so much because they had murdered but because they had belonged to the I.W.W. Besides (*Truth* added) it was unprecedented—and dangerous—to hang a man who had turned King's evidence.

However, the Executive Council, at its meeting of November

* Tom Barker did not believe, however, that Wilson was guilty. In his reminiscences, he says that, on the night of Pappageorgi's murder, Wilson 'was fast asleep, dead drunk . . . in the corner [of the printing shop]. A few months later [he] got hold of some of those crooked five pound notes that were floating around; he was picked up and got ten years for it. While he was doing his time in jail, he suddenly got to hate the whole thing, decided it wasn't worth it, so, like a nut, gave himself up for this murder. It's an absolute impossibility that he could have been in the shop with the Greek that night.' However, the comment in *Direct Action* suggests that the Wobblies were at the time convinced of Wilson's guilt. (Barker was in gaol at the time.)

30, 1916, decided that the law should take its course. Roland Kennedy and Frank Franz went to the gallows in December 1916.

The contemporary reports say that both men met their death bravely.

Roland Kennedy and Frank Franz were hanged together. Since 1908, it had been the practice in New South Wales to compensate the Sheriff's officer who attended on executions with £5/5/-, 'in view of the very disagreeable nature of the duties involved'. But this was a double hanging.

The officer concerned applied for £5/5/- per noose. The Attorney-General's Department demurred: '. . . when two or more criminals are hanged on the same day they are executed simultaneously. They stand on the platform together and fall at the same time.'

The Public Service Board was more sympathetic: if one corpse was worth five guineas, two were clearly worth ten. They directed accordingly. But the Department had the last word. It seemed, said the Under-Secretary, 'an extravagant waste of public money' to pay double for a twin execution. The Minister concurred. The hangman, of course, was paid twice; the Sheriff's officer had to be content with two for the price of one.

Later, *Direct Action* said of this case:

'It is a sad, and a mad, and a bad thing for a man, or men, to murder anyone—even a policeman. . . . But what about the hangman who committed two murders for nothing at all, but his blood money?'

The Twelve: The Appeal

The appeal of the Twelve opened before the Court of Criminal Appeal on February 26, 1917. Submissions by counsel for the Twelve and for the Crown took seven days; Mr Justice Alexander Gordon delivered judgement for himself and his brother judges on March 10.

The grounds of the appeal were these: that Mr Justice Pring had misdirected the jury on the question of whether McAlister and the Goldsteins were accomplices, and on the matter of alibis; and that the verdict was against the evidence and the sentences were excessive.

The court upheld Mr Justice Pring's rulings. It agreed, however, that there was a difficulty in the case of Beatty (against whom the only evidence was that of an accomplice), but held that Mr Justice Pring had made this sufficiently clear to the jury and concluded that the jury 'gave full weight to His Honour's warning and advice and . . . with the full sense of the responsibility of so doing decided to act on the testimony of Scully even though uncorroborated'.

After examining the cases of each of the accused in detail, the Appeal Court found that in two cases only—those of Don McPherson and Tom Glynn—were the verdicts of the jury in error. In relation to McPherson, there was no evidence to connect him with any unlawful acts prior to August 20, 1916—that is, twenty-seven days after Tom Barker's release from gaol. Therefore there was not sufficient evidence to convict him of conspiring to secure Barker's release; this conviction was quashed, and McPherson's sentence was reduced to ten years. In Glynn's case, there was no evidence that he had ever advocated arson to secure Barker's release, or that he had been involved in any of 'Barker's fires'. His conviction on this count was also quashed, and his sentence was likewise reduced to ten years.

The decision of the Court of Criminal Appeal left Hamilton, Teen, Beatty, Fagin, and Grant to serve fifteen years; Reeve,

Glynn, Larkin, Besant, Moore, and McPherson to serve ten; and King to serve five.

Hit with this verdict, *Direct Action* headlined:

JUDGES REFUSE TO SCAB
MEN SENT BACK TO DURANCE VILE

Some people, commented the Wobblies, found the decision of the Appeal Court a shock. But most members 'were prepared for the worst, and expressed surprise that the Court even went so far as it did in reducing the sentences of Glynn and McPherson'.

Defence lawyers were anxious to make a further legal test, and some of the Wobblies supported this. But the Workers' Defence and Release Committee (the new name adopted by the I.W.W.) 'decided that it would be USELESS to carry the case any further through the courts'.

So that the Twelve might have the chance of expressing their views on their unpromising future, the Committee arranged for a special permit from the Superintendent of Prisons for three of its members to visit the men at Long Bay gaol. The visitors saw the men one by one (not being permitted to meet them all together) and reported their opinions:

Tom Glynn: 'As far as I am concerned a further appeal is no good. Drop the Court.'

Don McPherson: 'I don't expect to get justice from the Courts. Useless to take the case any further.'

Tom Moore: 'I am quite satisfied now to get away to Bathurst. I have had enough of the Courts to satisfy me.'

Bob Besant: 'A further appeal would be useless. Spend the money in some other way. Use it for organising work.'

Donald Grant: 'Don't think about any more Courts for me. Had quite enough. Give the money to the poor. You would do more good.'

Joe Fagin: 'No, no, no. No more Court for me. Waste of time and waste of money.'

Bill Teen: 'Further appeal would be useless. We have given them a good try. It is only a waste of money. Better spend it on literature.'

Peter Larkin: 'There might be a chance, but very little. I think it would cost too much. I still have hopes that my class will not forget us.'

J. B. King: 'Absolutely useless to go any further. Terrible waste of money. I did not go too much on having the last appeal.'

Jack Hamilton: 'Don't be mad and waste any more money on barristers. Let the idea of a further appeal drop. It will only be good money wasted.'

Charlie Reeve: 'I was against the last appeal. As for me, you can drop all idea of another try in the Courts.'

These were brave words—the words of men who perhaps were still caught up in the heady drama of arrest, trial, conviction, and appeal, and who had not yet come to live with the insidious knowledge that the years of their manhood were to rot away in gaol. Or perhaps it was as *Direct Action* said:

'They are now prepared to leave their destiny in the hands of the class to which they belong. They are now prepared to TRUST THE MEN AND WOMEN they have worked with, and fought for, for so many years. It is only the working class—THEIR CLASS—that can understand the wrongs they suffer and know the agonies they endure.'

Their faith was more than three years in its fulfilment, but it was not misplaced. *Direct Action* concluded its appeal:

Though the heel of the strong oppressor,
 May grind the weak in the dust,
 And the voices of fame with one acclaim,
 May call him great and just,
 Let those who applaud take warning,
 And keep the motto in sight—
 No question is ever settled—
 Until it is settled right.

The Release Campaign: Stage Two: The Suppression of the I.W.W.

Fellow workers, twelve railroaded working class agitators are waiting for their class to speak!

They are doing time for you!
What are you doing for them?

Direct Action

Whether the Twelve were guilty or innocent had now become irrelevant; they had been crucified by the conscriptionists, and that was enough. The militant anti-conscriptionists set out to pull the whole of the labour movement into line.

At Broken Hill, the editor of the unions' daily paper told a mass meeting attended by the leader of the parliamentary Labor party that if the Labor politicians did not attempt to release the Twelve, 'the workers would have to begin by tossing [them] out and make room for someone who would put up a fight'. The miners were as good as their word. At the next Labor pre-selection, they endorsed Mick Considine (for the Federal seat) and Jack Brookfield (for the State seat) as their candidates. Both were militant industrialists and ardent advocates of the release of the Twelve.

The Victorian Labor Party, with its powerful socialist faction, was more forthright. The party joined with the Trades Hall Council in sponsoring a public meeting to demand a new trial. The Melbourne *Argus* condemned this 'alliance of prominent public men with a gang of criminals and conspirators'.

From Townsville, a roving agitator reported that the police had prohibited meetings in the street, so the Wobblies had moved to the beach. The police had stopped this, too, so the Wobblies moved their stump into the sea. 'Stanley West, like the Galilean of old, spoke to the multitude from the water. Dressed as a parson and declaiming in parsonic style, West administered the ether with telling effect.' The delighted crowd lapped it up.



1916  1931

**Fellow Workers : Remember !
We are in Here For YOU.
YOU are Out There FOR US.**

A 'Wobbly' release poster

It was a successful campaign. By the end of March (fifteen weeks after the Twelve were sentenced), the Defence and Release Committee reported that it had collected over £1,000 to support the families of the prisoners and to campaign for the release of the men; it had distributed 160,000 leaflets (including 100,000 copies of Boote's *Guilty or Not Guilty?*) and 10,000 pamphlets.

Perhaps the most successful aspect was the growth of the organisation. The passage of the Unlawful Associations Act had drawn from the Wobblies the terse comment: 'The I.W.W. has no present intention of being closed up.' The organisation's name was changed, and it continued in business.

Hundreds, perhaps thousands, of membership cards were sold at protest meetings of workers throughout Australia. New Locals were formed and old ones revived.

For May Day 1917, the Wobblies issued a special number of *Direct Action*. The front page cartoon showed Justice and Liberty mourning the fate of the Twelve; inside, a Wobbly bard, W. A. Levey, hymned the "Star of Emancipation":

Workers' Star of Fortune,
Fixed in Heaven's zenith high,
Paling all thy rivals,
Till their fitful twinkles die. . . .

Some 12,000 copies of this issue were distributed—probably a record for an Australian radical paper.

The spread of I.W.W.-ism, and the growing support for the release of the Twelve, alarmed the authorities. In May 1917, the Federal Government ordered the withdrawal of *Direct Action's* permit for transmission by post. The paper headlined:

INDEX EXPURGATORIOUS!

Direct Action PROHIBITED THROUGH THE POST

THE ONE BIG UNION IS THE THING THAT HURTS THE BOSS

The paper continued to appear weekly, distributed now by I.W.W. sympathisers aboard ships and trains.

The pressure mounted. On the night of Sunday, July 22, 1917, Inspector-General Mitchell led a police raid on the I.W.W. hall. Nearly a thousand members and sympathisers were packed in to listen to the socialist orator, Jennie Scott Griffiths. As many again had overflowed into Sussex Street.

The police searched the hall and the crowd; they confiscated all the literature on the premises and the organisation's books. No arrests were made, and nothing of significance was found—

except for some stickers carrying the slogan 'If water rots your boots, what does it do to your stomach?' (A new angle on sabotage?)

After the search, a large part of the crowd formed up outside the hall and marched down George Street, singing the Wobbly hymn, "Solidarity Forever".

A few days later, Prime Minister Hughes moved to amend the Unlawful Associations Act of 1916. The simple declaration that the I.W.W. was illegal had proved ineffective; the amendment authorised the Government to declare any association illegal whose purposes were those proscribed by the Act. Other clauses prescribed six-month sentences for membership of an illegal organisation, or for distributing the association's propaganda, or for raising or contributing funds.

Norman Rancie, the editor of *Direct Action*, appealed to his readers:

'Fellow Workers—

The I.W.W. is now on trial. It is now facing the most critical period in the whole of its history. The next few weeks will greatly determine whether we will live or . . . die. . . .

'The I.W.W. has been long enough in Australia now for the working class to know what it is, and what it stands for. The question which one is now forced to ask himself or herself is: Is the I.W.W. worth fighting for? Is it worth going to gaol for? . . .

'There are hundreds of men and women in Sydney who have never taken the platform before, but, if necessary, are prepared to do so today. . . . When the gaoling starts, if it ever does, members in the country are asked, if they think the I.W.W. is worth fighting for, to make for Sydney and help keep the fight going. . . .

'Only by a bold and open front can we expect to win. . . . Wobblies, the eyes of the world are upon you, so let us now show to the world that we are worthy of our steel.'

The amendments became law, and the Workers' Defence and Release Committee was proclaimed an illegal organisation. In *Direct Action*, Wyatt Jones issued a last defiant call:

'We will go to Long Bay. We will go through hell and fire and water, and insects like Hughes and all his slimy crawling satellites will never stay us. We will answer the call in our hundreds and our thousands, the spirit of the wealth producers who have toiled and groaned and died within us.'

The police moved in. For the last time they raided the I.W.W. Hall. The current (and last) issue of *Direct Action* was seized, as was the press on which it was printed. The hall was sealed.

The Wobblies answered the call—but by dozens, rather than by hundreds and thousands. Disdaining to conceal their membership, they returned to their old tactic of jamming the masters' courts and gaols. One after another, they mounted the stump to offer themselves as sacrifices for their movement.

The first big batch was convicted in Sydney's Central Police Court on Saturday, September 1, 1917. The proceedings were characterised, *Truth* reported, by 'indecent haste'; men were convicted and sentenced with no opportunity to deny the allegations made against them.

This was arbitrary justice, but it was not altogether the Crown's fault. There was, among the Wobblies, an air of eagerness to make their sacrifice. An arresting detective reported that one of the accused had said that he wanted to get into court quickly and get his sentence. The magistrate was ready to oblige: 'I will grant your request . . . six months' hard labour.'

The effect was soon felt. The *Sydney Morning Herald* reported: 'Owing probably to the activity of the police during the last few days, the usual Sunday meeting of the I.W.W. in Bathurst Street was not held last night. In its place a recruiting meeting was held.'

It was an ironic twist, which must have given the authorities much pleasure; but it did little to help recruiting, which was going badly.

The eighty-six-year-old Monty Miller, out on bond following the Westralian conspiracy trial, had come east on a lecture tour on behalf of the Twelve. Admitting his membership, he was arrested in the raid on I.W.W. headquarters on August 31. The arresting detective commented on Miller's age and suggested that he withdraw; Miller declined.

In court, Miller declared that he had a 'conscientious objection to pleading'. He volunteered the information (as he had done in Perth) that he was a Wobbly, and declared that he would remain so until his death. But he would not plead. This was a new way of sabotaging the legal process.

The magistrate recorded a formal plea of not guilty. Before sentencing him (indeed, before even formally convicting him) the magistrate asked Miller whether he had anything to say as to why he should not be given the same sentence as his fellow-workers.

'No,' said the old man, drawing himself up proudly. 'I have no desire to evade my true right of membership. . . . I believe that six months is the maximum, and I ask that the full penalty be meted out to me. . . .'

The magistrate replied: 'It is hard to deal with such an old man as you. However, I will give you what you ask for—six months' hard labour.'

Then Miller, funnelling his hand around his ear, and leaning toward the bench said: 'Do I hear and understand rightly? Six months' hard labour?' To the magistrate's 'Yes,' Miller murmured: 'Hard labour for an old man eighty-six years of age. Thank you so much.'

And straightening his back, and throwing his chin in the air, he walked out.

The sentence passed on Monty Miller caused public criticism of 'an extraordinary, unprecedented, and astonishing blunder' on the part of the magistrates who were dealing with the Wobblies—their practice of regarding six months' hard labour as not only the maximum but also the minimum sentence they should pass. Miller's case was followed by a demand that the magistrates exercise their discretion, which they subsequently did.

In another week, the organisation was beginning to feel the pinch. Sergeant Mackay, the police shorthand writer (later Police Commissioner of New South Wales), reported Alex Rosenthal as saying in the Sydney Domain that the Wobblies 'had decided that speakers were to address meetings at length in order to conserve their members, who were being gaoled rapidly'. Rosenthal had spoken for two hours; he got six months.

A fortnight later, Eva Lynch was in court, the first woman to be charged. Police claimed that she had said in the Domain:

'I am busy instructing a class of girl speakers who will attend here in the Domain every Sunday and keep the movement alive until our men come out.'

Magisterial discretion rewarded her with four months.

It was about this time that, according to some of their members, the Wobblies conceded defeat. Rudolph Matthias, who had been sentenced to six months and was out on bail pending appeal, claimed that eighteen or twenty of the organisation's executive members met in mid-December and 'decided that as so many members had been gaoled they could not carry on, and disbanded'. The Crown did not, however, accept this story.

One of Mrs Lynch's team of girl agitators was an attractive barmaid, May Ewart, the fiancee of an I.W.W. prisoner, Jock Wilson.

Wilson applied for permission to marry May Ewart, and the

Attorney-General, David Hall, gave his consent. The couple were married in Long Bay gaol on October 4.

The ceremony was conducted by the prison chaplain, with Governor Darcy and prisoner Eva Lynch as witnesses. The governor's present to the happy couple was a copy of *The Sentimental Bloke*.

A week later, May Wilson joined her husband in Long Bay—doing three months as a member of an illegal organisation.

This was the end of the I.W.W. In its last hours, some eighty men and women had made their defiant gesture against the State, and taken proudly their six months of building the structure of the new society within the gaols of the old. Their sacrifice underlined a central weakness of their theory and organisation: they had set themselves to defy the law and the State, but they had made no effective preparation for illegal organisation when the State moved against them. Surviving I.W.W. opinion describes the death struggle of the Wobblies as an act of courage, but it was rather—as Tom Glynn said—misplaced bravado.

The I.W.W. was an extraordinary movement. Its reckless courage, its biting humour, its uncompromising advocacy of the rights of the working class, and its total rejection of the values of bourgeois society had won it the whole-hearted devotion of all kinds of people—footloose bachelors and settled family men, respectable workers and reputed criminals, men who fought with their poems and men who fought with their fists. But devotion was not enough, and the movement which scorned politics and defied the State was destroyed by politics and the State. It remained for others to agitate the cause of the Twelve.

Backdrop 1917-1918

THE GENERAL STRIKE

Nothing alarmed respectable opinion more than the infiltration of I.W.W. ideas into the government service. From 1915, politicians, railways commissioners and trade union officials were expressing alarm over Wobbly influence in the government railways and tramways. Early in 1916, Railways Commissioner Milne complained of posters which had appeared in the Randwick railway workshops:

SLOW WORK MEANS MORE JOBS

MORE JOBS MEAN LESS UNEMPLOYED

LESS COMPETITION MEANS HIGHER WAGES, LESS WORK, MORE PAY

Soon afterwards, Bill Teen was sacked from the workshops. His union protested against this victimisation. Teen persuaded them to appoint a sub-committee to investigate the possible use of sabotage.

Early in 1917, Railways Commissioner Fraser complained that his workshop employees had slowed down by fifteen per cent in the last seven years. Tom Barker wrote in *Direct Action*:

'At the present rate . . . the boss will be in dungarees about 1955. [Slowing down] is a more effective way of dealing with the working class nightmare [of] unemployment than soup-kitchens and unemployment parades.'

But there were not many Wobblies left in the service. A Nationalist parliamentarian who had had access to the membership lists seized in September 1916 could unmask only a dozen Wobblies still in government employ. It was rather that, in the unrest which was rife in the railways, the Wobbly slogans of Go Slow and Direct Action were finding willing listeners.

On July 20, 1917, the Railways Commissioners introduced a new system of recording the work done in the Randwick workshops. Thirteen days later, after their ultimatum had been rejected, the workshops employees struck—against 'speed-up'. They were joined by other railwaymen, by watersiders, seamen, carters, miners, and other workers. Within a fortnight, 50,000 men were

out; the peak of 69,000 was reached when the strike was five weeks old. This was something approaching a general strike, 'the biggest industrial upheaval ever experienced in Australia'.

The strike took the Wobblies as much by surprise as anyone. But the New South Wales Government found them a convenient whipping-boy:

'The Enemies of Britain and her Allies have succeeded in plunging Australia into a General Strike. For the time being they have crippled our Country's efforts to assist in the Great War. AT THE BACK OF THIS STRIKE LURK THE I.W.W. AND THE EXPONENTS OF DIRECT ACTION. Without realising it, many Trade Unions have become the tools of Disloyalists and Revolutionaries. . . .

'Who is for Australia and the Allies?'

The Wobblies in fact took little part in the strike, although their slogans sometimes appeared in the daily strike processions, and one of Joe Hill's songs ("Casey Jones, the Union Scab") was popular:

Casey Jones kept his junkpile running,
Casey Jones was working double time;
Casey Jones got a wooden medal
For being good and faithful on the S.P. line.

They were now very much preoccupied with self-defence, but the last issue of *Direct Action* gave a whole page to strike news, and the paper drew its own lessons from the way the dispute was run:

'We must have scientific organisation, which means all workers in the one industry in the one union and all industries linked up into one concrete body of the working class with a General Executive Committee controlling the whole dispute. This does not exist among the transport workers today. They have not even got a loose federation of all crafts which some call one big union. Almost a score of different unions are on strike, and each union seems to be trying to settle the trouble in its own little way. There is no publicity, and the great bulk of strikers know very little about what is going on. So far there has been no official mass meeting of all unions on strike and no responsible official has appeared on the platform to explain to the strikers what business is being transacted, and how the prospects are looking. No strike bulletins have been issued, and no leaflets or papers explaining the cause of the strike. . . . This very lax and inefficient system only spreads discontent among the men, and they at last become tired of hanging around doing nothing and hearing nothing, and getting dissatisfied, defeat will follow.'

Defeat did follow. Perhaps the I.W.W. prescriptions would have helped the unions to avoid defeat—but perhaps not, since the Government was determined to smash the strike. In any event, the I.W.W. could no longer have any say. By the end of the strike, their paper was banned, their leading members were in gaol, and their organisation smashed.

At Broken Hill, though, the Wobblies left their mark. The metal miners declared coal 'black' soon after the outbreak of the general strike, and went out in sympathy with the strikers. When the mine managers tried to keep the mines open, the miners stormed in and forced the managers to draw the fires. Seventeen men, many of them Wobblies, were arrested for rioting, and the miners threatened to storm the gaol.

The police were anxious to seize their chance. The local Superintendent wrote to Sydney: 'The I.W.W. are strong here and [the Amalgamated Miners' Association] are decidedly sympathetic. If other arrests could be made without exhausting the gaol accommodation the present is a good opportunity to break up this unlawful association.' He suggested that the New South Wales Government arrange with South Australia to move some of the local prisoners to South Australian gaols; 'if such an arrangement could be made it would relieve the situation here and give the police an opportunity to clean up the I.W.W.'

Later, hearing the appeals of seven men who were convicted of rioting, Judge Walter Bevan said that the attack on the gaol 'would have gone like wildfire if the public had only had arms to do it'. Of the Barrier in these turbulent days he said:

'The whole countryside must have been in uproar. The business people and other law-abiding citizens must have been in fear of their lives. It was a mistake to call it a strike. It was a revolution, and revolution at a time when the whole world should have stood aside and remembered what was happening elsewhere. . . .'

THE COLEDALE SHOOTING

With a general strike in progress, feeling on the coalfields was running high. Volunteer crews were manning the trains, and they were not popular with the miners.

On the night of Saturday, August 25, 1917, as the Sydney-Nowra train was running through dense bush near Coledale, a mining village on the coast south of Sydney, there was a shot,

and the volunteer fireman, Alfred Green, was struck in the chest. He was rushed to Wollongong Hospital, where he gradually recovered; the New South Wales Government offered a reward of £1,000 for information leading to the conviction of the guilty party.

Squads of detectives and a black-tracker were put on the job, but with no success. On September 4—acting on ‘information received’—the detectives arrested Fred Lowden and James McEnaney,* two young men, members of the I.W.W. and officials of the Coledale miners’ lodge.

The Crown Prosecutor (once more Mr Bathgate) was granted a remand. The defence asked for bail, which was set at £1,500. Lowden was bailed out that same day and McEnaney the next. The striking miners had raised the money.

The defence heard that the information against the prisoners had been provided by one Charles Thorburn, a police agent who was known to have acted as a provocateur in sly-grog and gambling cases. Their suspicions were confirmed when John Hughes, a wheeler in the mines, volunteered the statement that Thorburn and his wife were in the Hughes house at the time of the shooting and could not have seen it. Lowden, in fact, was in Sydney at the time of the shooting.

When Lowden and McEnaney appeared on October 10, charged with the shooting of Alfred Green with intent to murder, the Prosecutor announced that he proposed to offer no evidence, for a reason which would become apparent in another case. The two miners were discharged. The large crowd outside the court applauded vigorously.

Straight away, Charles Thorburn and May Roy (his *de facto* wife) were put in the dock and charged that ‘they did conspire, combine, confederate, and agree together falsely, to charge and accuse’ the two miners of the shooting.

It was a sorry story. The police evidence was that they had arrested Lowden and McEnaney on Thorburn’s information, but further inquiries had revealed that Thorburn was lying. They had then arrested Thorburn and Roy for conspiracy. Thorburn had said that he had picked on the two miners because they were I.W.W. men; if the plot had come off, he would have got his share of the reward.

Thorburn, in his defence, said that he had indeed conspired—

* The name is spelt McInerney in the Minutes of Evidence of the Street Commission. Since the shorthand writers often spelt proper names wrongly, I have preferred the spelling given in the contemporary newspaper reports of the case.

not with his wife, but with two detectives, Robertson and Surrige (who had figured prominently in the I.W.W. case). They had suggested to him that he accuse Lowden and McEnaney. Surrige had said: 'We can get the thousand. There will be another thousand from the railway. I didn't get anything out of the I.W.W. cases; I intend to get something out of this.*' Robertson denied Thorburn's story. Scully said it was 'diabolical', 'an absolute fabrication'.

The jury found Thorburn guilty and his wife not guilty. They added a rider: 'The jury expresses its satisfaction with the position of the police in this case.†' Thorburn got three years' hard labour for what the judge (Mr Justice David Gilbert Ferguson) described as 'a despicable crime'.

The man who shot Fireman Green escaped punishment, and the £1,000 was never distributed. Lowden and McEnaney, who had suffered imprisonment and lost their jobs, and who still owed money for their legal costs, applied to the Government for compensation. The Minister for Justice replied that he could not recommend any payment. In Parliament, he explained that 'very important considerations will have to be taken into account if it becomes a question of compensating all persons charged with offences and afterwards proved to be innocent'. The same argument was later used against the Twelve.

THE FORGED FIVERS: A LAST FLUTTER

The mysterious Astor, the skilled draughtsman who did the drawings for the forged fivers and arranged for the plates to be made, was later identified as Norman Astor, a Melbourne artist.

Arrested fifteen months after his fellow-forgers had been gaoled, he appeared in the Sydney Central Police Court on December 10, 1917.

The Crown alleged that, with the printer Ferguson, Astor was 'really the brains behind the undertaking'. Certainly he was the most skilled craftsman involved.

Astor appeared in the Criminal Court on March 20, 1918, and pleaded guilty. He was sentenced to three years.

* Surrige in fact got £25 as a bonus for his work in the arson case; he did not, however, receive the extra salary granted to some of the detectives.

† There was some independent evidence, however, which made the police story suspect. When the detectives first searched the hut occupied by the two miners, at the time of their arrest, they found nothing incriminating. But when they searched the hut again—with Lowden and McEnaney in gaol—they 'found' two cartridges, identical with those found at the seat of the crime, wrapped in an I.W.W. song-sheet and hidden in an old boot. Since the miners did not have to stand their trial, this evidence was never tested.

ARSON AGAIN?

In October 1917, the Sydney *Sun* headlined a new arson scare.

TRAIL OF THE FIRE BUG: IS THE I.W.W. STILL AT WORK?
SHIPOWNERS' EFFORTS TO PROTECT WHARVES

The fires in question had broken out in two ships carrying copra, and in a shed on the wharves where copra was stored. The police investigated.

Detective Moore reported that there were no suspicious circumstances; all three fires seemed to have resulted from spontaneous combustion. The C.I.B., he said, had 'special means of obtaining inside information' on I.W.W. incendiarism, of which twelve men had already been convicted; it was 'noteworthy that no information whatever was obtained from any of the sources at the disposal of the police' concerning these fires.

The Release Campaign: Stage Three

At this hour when the plutes are dictators,
Controlling industrial life,
To jail go the best agitators,
Leaving helpless their children and wife.

So make it a ding-dong collection,
We'll send a fat cheque by next mail,
To help the helpless dependents,
Of the comrades who languish in jail.

From Songs of the Industrial Labor Party

After the suppression of the Wobblies, the release campaign temporarily lost its vigour. From August 1917, the labour movement was absorbed in the general strike and its aftermath, and had little time or energy to spare for the Twelve. And most of those who might have kept the cause alive—the fellow-workers of the Twelve—were in gaol themselves.

The New South Wales Labor Conference of June 1917, had debated the I.W.W. case. A delegate moved the appointment of a party committee to collect information and to support a petition for a Royal Commission. William Morby, the president of the Labor Council, opposed the motion; it was, he said, 'misguided zeal' to lump all the Twelve together—they should try to get the release only of those whom they believed innocent.

Nevertheless, a committee was appointed, and Morby was named as a member. But the committee was unable to do its job. The members 'came to a certain point and then disbanded because they had to', Morby later explained. The trouble was 'a difference of opinion as to the guilt or innocence of the men'.

By the end of 1917, the unions had recovered from the first shock of their disastrous defeat. In the new year, they again raised their heads. On the Sydney Labor Council, Jock Garden,* a militant, became the new secretary, with a militant executive to back him up.

* Died January, 1969.

On the third day of the new year, Ernie Judd moved on the Labor Council for a deputation to the Premier requesting the appointment of a Royal Commission into the case. Holman replied: 'I am at present advised that there is nothing for a Royal Commission to investigate and the time of the deputation and myself will be wasted unless they can show that further facts have come to light since the trial which throw doubt upon the justice of the verdict.'

The Labor Council responded to this challenge by appointing a committee, including Judd as 'investigator', to act with Henry Boote of the *Worker* to have the case re-opened. All thought of industrial action was now abandoned—indeed the unions, after their recent disaster, were in no condition to strike—and the campaign became consciously political.

Throughout the quiescent months, Boote had kept his pen alive. In the *Worker*, during June and July 1917, he had expanded his earlier exposure of 'The Case of Grant'. These articles were now issued, in pamphlet form, by the Sydney Social Democratic League. Boote concluded:

'In proof that Grant was guilty of three serious crimes, namely—conspiring to burn down buildings, conspiring to obtain the release of Barker by unlawful means, and conspiring to excite sedition amongst the people, the prosecution could offer no more than scraps of his speeches which they had taken down, omitting the context which would have explained them. . . . The most extreme of these was the statement, "For every day Barker is in gaol it will cost the capitalists ten thousand pounds."

'Yet on a fabric of evidence so frail that one honest breath can blow it down, Donald Grant is condemned to spend the most precious period of his life in jail!'

And, for the Labor Council's defence committee, Boote produced an even more ambitious pamphlet—an extension of his first 'Guilty or Not Guilty?' article. He opened his attack by pointing to the manifold advantages enjoyed by the prosecution:

'It had the question of proof simplified to the last degree. It had witnesses with personal reasons for desiring convictions.

'It had a Judge biased by education and training and social environment against working-class agitators charged with the destruction of property.

'It had a public mind poisoned against the accused, and predisposed to accept the harshest judgement upon them.'

He went on to analyse the evidence against the Twelve. It had, he found, two outstanding characteristics—the Crown witnesses

were extremely lucky, for they always found what they wanted to find and heard what they wanted to hear; and the accused were extremely obliging, because they always provided the Crown with the evidence it wanted. The accused happened to make convenient admissions to the Crown witnesses; they happened to have about them samples of fire-dope even though they must have known that they were under observation. It was all too good to be true. Boote concluded:

'If these men are guilty, let their guilt be established in a manner that will satisfy the intelligence, and do no violence to the instinct of fair play. That has not been done up to the present, and until it is done, we cannot, we dare not, let the matter drop.'

Boote's pamphlet apparently hit home. Before Mr Justice Street, Inspector-General Mitchell said that he knew of the pamphlet, 'but he considered only a certain class read [it]. Had the pamphlet contained any direct charges there would have been an enquiry'. However, three months earlier, he had sent off a memorandum: 'Acting-Superintendent Walker might submit a copy of *Guilty or Not Guilty?* . . . to all the detectives mentioned therein, and obtain from them a full report of the incidents mentioned by Mr Boote.' A month later the police chief sent the Superintendent a reminder. But no reports were forthcoming until Mr Justice Street's Commission began.

Premier Holman was sufficiently troubled by the challenge to his Government's, and his own, integrity to take a personal interest in preparing an effective defence. As early as November 1917, on his return from abroad, he had told the press of his talks with Samuel Gompers, the highly conservative leader of the American Federation of Labor, whom Australian industrialists anathemised as the epitome of the despised craft unionism. Gompers, said Holman, had revealed the true nature of the I.W.W. The German Social Democratic Party took orders from the Kaiser. The American Socialist Party took orders from their German comrades. The American I.W.W. took orders from the American Socialists. And the Australian I.W.W. took orders from their American fellow-workers. Even to the unknowledgeable the links must have seemed tenuous, although war hysteria covered many a logical slide. To the informed, the argument was ludicrous. Now Holman set out to strengthen his case.

In February 1918, the Premier instructed his Publicity Officer to analyse the indictment of American I.W.W. leaders by a Grand

Jury late in 1917 on charges of conspiracy to hamper the war effort, to 'see if it supplied any matter likely to be useful against the I.W.W. and Labour movements connected therewith in Australia'. The Publicity Officer reported that the literature of the U.S. Wobblies was 'decidedly pro-German', quoting in support:

'We have the good will of the German people here and we feel sure they are in sympathy with our cause. We do not call them Germans however but refer to them the same as others, as fellow workers.'

To anyone who knew that the I.W.W. urged a united stand by the international working class against the war, this was poor stuff, but the report on the local scene was even thinner. The Secretary of the Labor Council had signed an appeal for the release of the Twelve. The accusation of the release campaigners that the Nationalists had used the I.W.W. case to 'damage the Labour movement' implied some connection. The Industrial Labor Party (a tiny, impoverished and uninfluential syndicalist sect) supported the Release campaign.

The Publicity Officer seemed pleased with his efforts, and suggested that his report be circulated. The Premier was apparently not so pleased, and asked for further information to be gathered. Six weeks later, his research assistant provided some more scraps of information about the I.W.W. in the United States and the United Kingdom, together with a recent quotation from the *London Times*:

'It was definitely established after the [New Zealand] transport workers' strike in 1912 that the Federation of Labour in New Zealand was affiliated to the I.W.W. of San Francisco through a secretariat in Berlin.'

This was an inaccurate and out-of-date reference to the pre-war International Trade Union Secretariat; it was characteristic of the Government's assiduous but futile efforts to link the Australian I.W.W. with the Kaiser and 'German gold'.

The Wobblies were down, but not quite out. In October 1917, one of the survivors, Betsy Hamilton Matthias (her husband Rudolph was in gaol, a victim of the Unlawful Associations Act) formed an Industrial Labor Party and began to publish a monthly journal, *Solidarity*. 'Our ranks,' the new party declared, 'are ever open for red-blooded men and women of the working class, who are sick of the sordid slavery of the modern vile system. The motto of the Industrial Labor Party is Organise for Industrial Control.'

The police soon had the I.L.P. under observation. In December, Mrs Matthias wrote to the Premier and the Chief Secretary complaining that the detectives were continually inquiring about her husband's origin (presumably with a view to his deportation—but he was in fact Australian-born) and harassing the organisation. She ended her complaint with a curious plea:

'The [Labor Party] machine is all intrigue and the snake in the grass to Labor—while your party is honest as the open enemy to Labor. I and other intelligents would prefer to see the release of the political prisoners come about by the open enemy—than the veiled enemy. Why do you not do same? Indiscretions are muddling the nation—and no progress is made on either side.'

It was a hurried and exasperated note, and no-one bothered to ask Mrs Matthias how she thought both sides could progress simultaneously.

Solidarity opened a fund for the families of the political prisoners. It was this which caused the trouble within the defence camp. Rumours began to circulate that the money collected was not being used for the purpose for which it was intended, and that Mrs Matthias—herself the wife of a political prisoner—was benefiting personally. It was a bitter and seemingly pointless dispute.

A further committee was formed, on a more representative basis—its president was a former Labor senator, its secretary was a former I.W.W., and its two financial controllers were businessmen. The police were scathing in their reports—J. B. Steel, the treasurer, was the manager of a paper mill which had had a number of successful fires; others of the committee were known for their German sympathies—but it succeeded in raising enough money to pay the wives of each of the three married prisoners a steady £2 a week while their husbands were in gaol.

As the Relief Committee took over the support of the dependents, the I.L.P. turned more and more to straight-out agitation for the release of the Twelve. As the Wobblies finished their six months and were released from gaol, they returned to the Domain, on the stumps of the I.L.P. and a revived Release and Defence Committee.

The police were alarmed. While the leading soap-boxers were in gaol, the meetings had been 'quiet and undemonstrative', reported the Metropolitan Superintendent of Police. Now they were becoming 'gradually more inflammatory'. The Superintendent proposed his remedies. The meetings should be 'absolutely

prohibited in the Domain and other public places, in the interests of the Empire'. The organisations should be declared illegal under the Unlawful Associations Act. The members should be interned for the duration. But this was a matter for the Government rather than the police, and nothing was done.

The agitation mounted, and behind it the serious work continued—the laborious endeavour of Ernie Judd to accumulate sufficient evidence of corruption and perjury to force an inquiry into the case of the Twelve.

After the Trial: Harry Scully

As a crucial witness, Harry Scully had been well looked after. While the police were preparing for the preliminary hearing, back in 1916, and between the preliminary hearing and the trial, he received living allowances plus general expenses. When the Government's £2,000 reward was divided he received £200. In all, for his services as a witness, he received £370 from the Government over three months. But Scully was not satisfied. Nor was 'Mac' McAlister. With Scully acting as master-mind, they concocted a plan to sue the New South Wales Government for a more adequate recompense for their services.

Scully's writ claimed £2,000 from the Government of New South Wales for an alleged breach of agreement to pay him for supplying 'to the Government, the police, and detective officers of the said State, such information as would lead to the conviction of certain persons being members of the organisation known as the Industrial Workers of the World'. McAlister filed a similar claim. The Government denied that any such agreements had been entered into, but the police, apparently, were not unsympathetic.

McAlister's claim lapsed suddenly on April 26, 1917. That night he was found unconscious and taken to the Sydney Hospital, where he died of pneumonia soon after admission. Scully later alleged that Superintendent Walker had commented to Detective Surridge: 'A bloody good job—he might have squealed.' Walker and Surridge agreed that all the former had said was 'Poor old fellow', or some such sympathetic remark.

The defence interests thought McAlister's death rather too convenient; they suspected foul play, but they had no evidence. Scully's claim, however, was still alive, and he was having financial troubles. He had had difficulty in finding a job after the trial. On his own account, he had been refused jobs by chemists in three States, had tried to enlist twice but had been rejected because of his I.W.W. associations.*

* This was not strictly accurate: he had (through the good offices of the police) offered his services as a chemist to the military. But he had been debarred by the Pharmacy Board, and the military would not have him. Instead, they suggested that he enlist as a private in the A.I.F., which he refused to do.

Then came the general strike. 'Free labor' was widely recruited, especially on the waterfront. With Detective Robertson's assistance, Scully got a job at the ship coaling berths at Garden Island, and went to live at the 'loyalist' camp at Dawes Point. He was apparently a success as a coal-lumper, for he quickly rose to become an official of the 'loyalist' Port Jackson Coal Workers' Union.

According to Detective Moore, the police expert on subversive activities, the C.I.B. had at this time lost track of Scully. So had the defence interests. Judd had been appointed the Labor Council's 'investigator', but he had little to go on. He knew that Scully and McAlister had filed writs against the Government, but McAlister was dead, and he didn't know where Scully was.

Then, on the first Saturday in February 1918, the police roundsman of the Sydney *Daily Telegraph*, Clarence King, met Detective Surridge at the Victoria Park races. King had his suspicions about the validity of the I.W.W. case, and put the question to Surridge. The detective suggested that he should see Scully at Garden Island—he had knowledge of Scully's movements which he did not share with his fellow-detectives.*

King passed his information on to Thomas Davies Mutch, Labor Member of Parliament for the industrial suburb of Botany and a well-known supporter of the Labor Council campaign.

Meanwhile, the question of Scully's whereabouts was raised in the New South Wales Parliament on February 5. (A Labor Member, acting at the instigation of the Wharf Laborers' Union and without seeking the advice of the men most closely associated with the release campaign, asked a question without notice, with the object of embarrassing the 'loyalist' union.) Mutch subsequently described his reaction:

'One of us suggested it would be absolutely necessary, if we were to see Scully, that we should go straight away, because the result of the question being asked would be that official inquiries would be set afoot almost immediately . . . and I realised that he might be removed from his place of employment as a result.'

* Giving evidence before the first of the Royal Commissions which inquired into the I.W.W. case, that of Mr Justice Street, Surridge described King's report of their conversation as a 'vile concoction'; he conceded, however, that he had known where Scully was to be found. His story was supported by Detective Robertson, who said that Surridge was in his company all afternoon. However, King had reported the conversation to his editor. The editor had not been anxious for King to follow the story up, but confirmed his evidence. Mr Justice Street found: 'I do not believe that Surridge is telling the truth in denying the existence of any such conversation. . . . There might have been a mistake in what was said in the conversation, but I believe the conversation did take place.' A more sceptical mind might well have asked why, if the conversation did take place, Surridge should have denied it—unless its substance was as King reported. There might have been comment, too, on the apparent collusion between Surridge and Robertson to conceal the truth.

Taking with him another *Telegraph* journalist, Roy Connolly, Mutch finally tracked Scully down. Scully told his interrogators that to his knowledge six of the I.W.W. prisoners—Grant, Larkin, King, Moore, Reeve and Glynn—knew nothing of the affair; that Fagin, Teen, Besant, Hamilton, Morgan (the 'fivers' man) and others were involved, but that a great deal of the evidence was rigged. Mutch and Connolly returned to the *Telegraph* office and typed out what Scully had told them.* On Mutch's advice, Scully went to see Henry Boote on February 7 and repeated his story.

Meanwhile, on February 6 (the morning after Scully's interview with Mutch and Connolly) the manager of the Shipping Labour Bureau, which was responsible for the 'loyalist' coal lumpers, rang the police and told them that he had been informed that a man named Scully, a reputed I.W.W., was working at Garden Island. Detective Moore was sent to the depot the next day to identify him.

Scully was concerned about his job. The detective assured him that the police did not want to take away his livelihood; rather, they were anxious to help him earn an honest living. However, when the local Superintendent of Labour asked the detective for his advice, Moore told him that the police wanted no responsibility in the matter; Scully might have reformed, but it was up to the local people to decide whether they would take the risk. (Privately, Moore expressed the view that it was most unlikely that the military would want Scully there—Garden Island was a coaling depot for naval vessels.) However, the Shipping Labour Bureau, advised by Detective Robertson but unknown to Moore, had already once cleared Scully for employment; now it again signified that it did not want to sack him.

Scully had apparently been impressed by his talk with Mutch and Connolly. According to Detective Moore, he 'appeared to blame the Government for hounding him down, and from hints that he let fall I am suspicious that the fact that he is now an official of a union newly formed is some clever arrangement . . . to place this man in such a position with a view of facilitating an inquiry into the whole case of the I.W.W. conspiracy'. This was the first time the police suspected that the I.W.W. case might come unstuck.

Despite his close knowledge of the labour movement, Moore's judgement was astray. The 'loyalist' union, which was bitterly

* The document appears as Appendix A to Mr Justice Street's Report. Mutch and Connolly had misheard Scully; he had not implicated Besant (whom he later absolved) but Beatty.

hostile towards the I.W.W., learned of Scully's past and called a meeting to discuss his position. Scully appealed to the police to come to his assistance. Detective Robertson was prepared to go to the union meeting and speak for him, and Superintendent Walker was prepared to allow Robertson to attend; but Inspector-General Mitchell barred this involvement in 'politics'. A copy of the transcript of the I.W.W. trial was mysteriously produced at the union meeting; the union resolved that Scully was 'not a fit and proper person to carry coal', and his job was gone.

Not unnaturally, Scully blamed the police. He believed that they had learned from the *Daily Telegraph* that he had been in contact with Mutch, and had thereupon decided to dump him. But he was also half inclined to blame Judd and his associates for engineering his dismissal through the 'loyalist' union: '[Davis] Goldstein and I were both in a pretty rotten condition around Sydney. One side evidently had no further use for us, and were not particular what became of us, and the other side would like to see us right off the earth in a hurry.'

Evidently believing that he had more to hope for from the defence interests, Scully went back to Henry Boote, who took him to see the Labor Council investigator, Ernie Judd, on March 8. Scully wanted the defence interests to back his case against the Government; this would, he argued, bring everything out into the open. But Judd would have none of this: their policy was for a Royal Commission, and he asked Scully to make a written statement. The reluctant witness was more dissatisfied than ever with his treatment by the police, but he was still mindful of his own safety. He refused to sign anything unless he was given enough money to make a fresh start in America. But this was no good to Judd, who said that a statement would be useless unless the witness was available for cross-examination.

Overnight, Scully changed his mind. He offered to produce a statement of everything he knew about the case, in return for enough money to make a getaway, or to write down what he knew except for such things as would leave him open to a charge of perjury. Judd settled for the latter.* Scully produced his statement on March 29. In it, he alleged that evidence he had wanted to give at the trial in favour of some of the accused had been suppressed, that the fire-dope had been planted on Teen and Fagin by the detectives, that McAlister had joined the I.W.W. at Detective Fergusson's instigation as a paid spy and his evidence against

* This was Judd's account; Scully denied that he had offered any such alternative.

McPherson and concerning the drawing of lots was faked, that several of the detectives were dissatisfied with their share of the reward and were threatening to reveal what they knew about the case.* The statement was in Scully's handwriting, but was unsigned. Judd did not ask for a signature because he feared that his home would be raided by the military authorities. Asked whether they would not recognise Scully's unsigned statement, Judd said he did not think so—judging by an officer of military intelligence who had said recently that Wolf Tone had died the year before last.

Why did Scully make this confession? It was not for money. Over the five months he was in touch with the defence interests (during which time he was out of work) he got only £44 from Judd for 'expenses'. According to Judd, Scully declined any payment, saying that he didn't want to take money for getting innocent men out of gaol: 'he seemed to have a genuine desire to assist to right a wrong which . . . he had been a party to bringing about.'

Scully had nursed his grievance against the police; undoubtedly he hoped to use the defence campaign to further his claim. But when he found that he could not get away with this, he nevertheless gave Judd his written confession. Perhaps this was just one more lever to force some money out of the Government; or perhaps his conscience hung heavy. Surviving I.W.W. opinion is divided. Tom Barker declared flatly in his memoirs that Scully 'ratted on the I.W.W.'—but he was not able to observe Scully in 1918 and 1920. One other witness, with an intimate knowledge of the case, says that Scully 'did his best to redeem himself'.

The police knew that Scully was in contact with the defence interests; they were apparently now keeping an eye on him. However they were not greatly worried. Detective Moore reported to Inspector-General Mitchell on April 1: 'One can understand why [Boote] is interested in Scully, who however is too much involved in the fire conspiracy charges to be of much use to him.'†

Scully was still having trouble finding a job. He continued to see Judd, and arranged at different times for Judd to see Davis Goldstein and Detective SurrIDGE.

The story of the relations between Davis Goldstein and Judd will be told later. The interview with SurrIDGE was, however, a simple affair.

* This statement is Appendix B in Mr Justice Street's Report.

† Earlier, Moore had described Scully's position: 'It was found absolutely necessary in the interests of justice and of the public of Sydney generally, to use this man as [King's evidence], probably much against the natural inclination of the police, and consequently he . . . is at present at large immune from any police action.' Moore's present comment seemed to suggest that Scully's immunity would only last so long as he adhered to his evidence against the Twelve; however, Inspector-General Mitchell denied this inference, and Moore himself said that he had only meant that Scully, having given sworn evidence, could not now go back on it.

Judd saw Goldstein towards the end of March, and Detective Surridge a little later. The meeting with Surridge took place in Hyde Park. According to Judd, he told Surridge that he was investigating the case on behalf of the Labor Council, and that he believed the detective could tell him, if his position were safeguarded, where the weak spots in the case were. Surridge said that he had a good job and that his home and interests were in Sydney; he was not prepared to discuss the case, but would tell the truth if a Commission were appointed. Judd then asked him where he might look for evidence, and Surridge replied: 'Have you seen Goldstein?' Judd (untruthfully) said that he had not, and Surridge advised him that he should do so.

Surridge admitted the meeting with Judd, but gave a different account of the conversation. He had replied to Judd's opening gambit by saying 'I have nothing to tell you.' Judd had said that he was going to see other Crown witnesses, and he (Surridge) had told him that he could see whomever he liked. Goldstein's name had not been mentioned.

Mr Justice Street found that Judd 'impressed me as a witness who was not only possessed of a very retentive memory, but who was anxious to be accurate in his statements'. The judge was 'prepared to accept his statement in preference to that of Surridge in reference to the mention of Goldstein's name'.

Late in April 1918, still playing both sides,* Scully went to see the Crown Solicitor about his action against the Government. The Crown Solicitor referred him to Inspector-General Mitchell, who told him to put his request in writing. The crux of his letter was a complaint about the disabilities he had suffered as a result of the I.W.W. case, and a request for £1,000 to enable him to get away to America and make a fresh start.

Detective Leary was asked to report. He said that Scully had indeed had a difficult time; however, his own statements showed him to have been a member of the 'inner circle [of the I.W.W.] which was composed chiefly of criminals of the very worst type, who were responsible for some of the most dastardly crimes ever perpetrated in this or any other country'. Scully had received enough.

Superintendent Walker concurred. The Inspector-General,

* Scully's account to the Street Commission was that he kept his action against the Government alive because of a disagreement with Judd—Judd wanted to argue that all the Twelve were innocent, while he wanted to give evidence for some only.

however, felt differently.* He asked the Crown Solicitor whether he, 'being well aware of the important evidence given by Scully', did not think that a little more money might be paid 'with a view to his leaving Australia'.

The Crown Solicitor's reply was a revealing document:

'I am afraid that I have not much to add that would be of assistance; and for another thing it is not discreet to write fully regarding this case.

'As for the trial of the pending action [Scully's writ against the Crown], if Scully should ever venture into court, I feel sure the judge would permit no so-called disclosures. Plaintiff would be non-suited I should think on barely outlining his case in the box, for the only evidence pointing to inadequate share of the reward would be inadmissible, involving as it does the police methods in detection of crime.

'On the other hand, if he could be removed, voluntarily or otherwise, it would be in the public interest. And this is the only point in the case, viz., how best to get quit of the criminal Scully, whose sole motive in the matter was the saving of his own skin.

'I would be prepared to discuss the matter verbally any time. I need hardly mention that Scully would accept a fractional part of £1,000.'

This was surely an unguarded comment. A judge would probably permit no disclosures (of what?)—yet it was better to be quit of Scully. Further discussion should be verbal; it was indiscreet even for the Crown Solicitor and the Inspector-General of Police to communicate by letter. (What did this mean? Inspector-General Mitchell later said that he did not know; he could only assume that the Crown Solicitor thought it desirable to keep Scully's movements secret. It was a lame explanation. The Crown Solicitor was more frank. He had thought it indiscreet 'to set out in detail the reasons why it was desirable that a man of Scully's character should be got out of New South Wales'. Scully, in desperate circumstances, 'would be a menace to the community'; he might fall into the hands of seditious people, who would make use of him.)

There were more negotiations with Scully. Superintendent Walker first offered him £100 to get out of the country, and finally settled for £150.

* Before Mr Justice Street, the Inspector-General agreed that 'we knew that efforts were being made to get [Scully] to go back on his sworn word', but denied that he knew that Scully had already made a statement. He claimed that it was undesirable for Scully to remain in New South Wales—that it was too much of a risk for the police, who were responsible for his safety. However, a little later, Scully put the question to the Inspector-General: 'You were not anxious to get me out of the country?' Mitchell replied: 'No, not while there was the slightest likelihood of you being required to give any evidence at all in connection with the I.W.W. cases.'

Walker put this arrangement up to Inspector-General Mitchell, who approved it and submitted it to the Chief Secretary, George W. Fuller. Scully, Walker wrote, was 'likely to become a dangerous pest in this country, both politically and socially'. It was 'advisable to facilitate, in every way, his exit from Australia. . . . £150 would not be an exorbitant figure to accomplish same.' A passage was to be bought to the United States. Scully was to be given money to pay his debts (he later admitted that he had put a friend up as a 'creditor', and had collected the money himself), and the balance was to be handed over to him when he reached America.*

(In a wry aside, the Inspector-General implied that he felt some responsibility for Scully's situation. The fact that he had been unable to get a job was more the consequence of his becoming a 'loyal crown witness' than of his I.W.W. connections.)

The Chief Secretary approved. The police arranged a passage. The Chief Secretary signed the cheque.** The police saw Scully aboard the S.S. *Ventura*, and he sailed for San Francisco on June 26, 1918. Coincidentally, Detective Arthur Surridge was on the wharf to see him depart.†

* Scully denied that this grant was conditional on his departure; he said that he left of his own volition.

** Curiously, before the Royal Commission, Fuller said that he had never heard of any additional payment to Scully.

† After Scully's claim was settled, Mrs Rose McAlister renewed an application she had made shortly after her husband's death for 'some reward for myself and family'. She likened her position to that of Scully: 'I read in the press where Scully says he was tormented by insults being cast at him. I am an innocent and have had to put up with plenty of insults from people who have said my husband was an informer. . . . I was obliged to leave the house I lived in for eight years through the insults.' She claimed that her total income was 17/- a week State relief for herself and her daughter, and 5/- a week from each of her two lodgers. The police reported, however, that she must have some other source of income, and that one of the lodgers was, according to the neighbours, 'the chief cause of the estrangement between Mrs McAlister and her late husband'. The Attorney-General refused her application.

After the Trial: The Goldsteins

DAVIS GOLDSTEIN SINGS TO JUDD

Once Davis Goldstein had given his evidence against the Twelve, things began to improve for him and Louis.

After their arrest on the forgery charge, the Goldsteins had lost their contracts with the Government for the supply of uniforms to the armed forces. However, their solicitor, Mr E. R. Cohen, had intervened and with his help, and that of the police (as Davis admitted to the Street Commission), they received another order.

But despite this assistance, the clothing business failed to pick up, so the Goldsteins decided to sell out and go into the hotel game. The licence of the Grand Hotel at Wyong, a resort town some fifty miles north of Sydney, was vacant at the time, and Louis Goldstein determined to apply.

To obtain a licence, an applicant must satisfy the Licensing Court of his good character. Goldstein gave Detectives Turbet and Pauling (who had been involved in the I.W.W. cases) and his solicitor, Cohen, as references.

On request, Turbet sent the local Wyong police a statement which purported to come from him and Pauling:

'We beg to report that on the 8th September last, the applicant was arrested on suspicion of being concerned in the forgery of £5 notes, but it was found that there was no evidence against him and he was discharged. The suspicion arose through his brother being associated at one time with certain members of the I.W.W., who were concerned in the forgeries, and he was being blackmailed by them for being an employer of labor, contrary to their rules, and having been at one time a member of their association. Applicant has for the past two years been the proprietor of a clothing factory in Sydney, and has had contracts from the Military Authorities. He gave valuable evidence for the Crown in the recent I.W.W. conspiracy charges. We are of the opinion that he is a fit person to hold a hotel licence.'

Turbet's report was forwarded to Wyong through Superintendent Walker and Inspector-General Mitchell, and the licence was granted. On the face of it, the detectives' statement revealed much

less than the truth of the Goldsteins' association with the I.W.W. and the forgeries, despite Detective Pauling's later claim that he 'thought he would have told everything he knew' about Louis Goldstein.

Louis Goldstein, accompanied by Davis—who had put £1,000 into the business to buy the lease, licence, goodwill and stock—took over the licence at the Grand Hotel in February 1917.

For a time all went well and the Goldsteins' relations with the detectives remained cordial. Detective Pauling, along with Detective O'Keefe, spent a week-end at the Grand. So did Detective Surridge. The Goldsteins twice sent sucking pigs to Pauling in Sydney. The defence tried to establish that Pauling had been the Goldsteins' guest. Louis denied this, but there was no record; the hotel books, unfortunately, had been lost in a fire which destroyed the hotel's billiard room and office. The Goldsteins' barman denied that there was an office and there was no insurance record of the fire—the company had cancelled their policy.

The Goldsteins had not long been in Wyong before business began to decline. According to Davis, when the appeal of the Twelve was heard late in February, and the Wyong drinkers discovered that their new hosts were the two men who had given evidence in the conspiracy case, 'our trade . . . fell to zero'. It had no sooner begun to pick up than reports began to circulate that Louis was suffering from 'a loathsome [i.e. venereal] disease'. The local police sergeant, Davis said, 'ordered [Louis] to get out of the hotel as there was no chance of him getting a renewal of licence'. He appealed to Inspector-General Mitchell. But then the landlord also turned against them, and 'through constant intimidation and coercion we were compelled to sell out'.

The police denied that they had used any coercion. Superintendent Walker commented: 'The fact that they had to dispose of their hotel . . . was in no way due to any assistance they had rendered the police in connection with the I.W.W., but substantially to their own misconduct after taking the hotel over.'

However this may have been, there is no doubt that the Goldsteins lost a lot of money at Wyong. They sold the hotel at a loss in November 1917, and Davis, with his uncle, took over a hotel at Mudgee,* while Louis returned to Sydney; the following year, Louis filed his petition for bankruptcy.

The £400 he had lost when Fred Morgan skipped bail in the forgery case still rankled with Davis. He had applied three times

* According to Judd, Davis Goldstein complained that the Mudgee hotel was boycotted by local unionists. He (Judd) offered to go to Mudgee to speak on Goldstein's behalf, but Goldstein had declined.

during 1917 for the return of the money, but each time he was refused.

From time to time he ran across Scully and they exchanged grievances. At one time, according to Scully, Davis was contemplating launching an action against the police like that initiated by him and McAlister; however, Davis' lawyer advised against it and the idea was dropped. (Davis denied this, saying he was only interested in his £400.)

Once Scully had made his confession to the defence side, he set out to reinforce his position. In March 1918, he met Davis Goldstein again, told him about the statement he had made, and persuaded him to meet Judd. The detectives were also interested in Davis—they were inquiring for him from Louis in March and April.

The Labor Council investigator feared that Goldstein might go to the detectives and was reluctant to see him, but Scully's talk was convincing. The meeting was arranged; Judd showed Goldstein a copy of the written statement that Scully had by this time made. Goldstein responded first with a verbal and then (on April 16, 1918) with a written statement to Judd.*

It was a remarkable document. Davis Goldstein confessed that he had given false evidence at the trial. He alleged that he had done this at the instigation of the police—and, further, that other parts of the evidence against the Twelve had been concocted by the police. And he stated his 'firm belief' that eight of the Twelve—King, Grant, Besant, Moore, McPherson, Larkin, Reeve and Beatty—were 'absolutely innocent of the crimes on which they were convicted'.

Why did Davis Goldstein confess? Clearly, it was not for money. The few pounds that Scully had had from Judd emphasised what was already obvious—the defence cause was close to broke.

Like Scully, Goldstein had his grievances against the police—over the Morgan bail money, the Wyong pub, and the reward. But was Goldstein's motive (as he was later to say himself) merely revenge? or did he hope that, if he made enough of a nuisance of himself, the police would buy him off? or was he perhaps finding it hard to live with his conscience?

According to Scully, Goldstein had commented, 'I suppose I am getting hell in the *Worker*', and had said that he had often decided to go to Boote and tell him the whole story, but had never done so. According to Judd, Goldstein had in fact written out a statement late in 1917, but had torn it up in fear of the police. Now he had

* This statement is Appendix D to Mr Justice Street's Report.

told Judd what he knew, saying that 'for a long time . . . he had laid awake a lot at night . . . but after giving me that statement he had felt relieved, and had been sleeping better'.

The answer to this puzzle will become clearer, though never beyond doubt, as we follow Goldstein through the four months which separated his confession and the opening of the Street Commission on August 19, 1918.

Meanwhile, with his confession in the hands of the defence, Davis Goldstein returned to Mudgee. Louis remained in Sydney. Ernie Judd was busy with other parts of his investigation—and some difficulties with the police over his anti-war activities. Then came the revelation of Scully's dramatic flight and the Government concession of an inquiry, and all parties—Judd, the Goldsteins, and the detectives—began to prepare for action.

The Government Agrees to Inquire

Harry Scully had strung the defence along right to the moment of his departure for America, on June 26, 1918, and even after. He had kept Ernie Judd informed of his negotiations with the police—of everything except their culmination. The day before he sailed, he had told Judd that he was tired of waiting and had threatened the police with other action; that an Inspector had replied: 'You had better keep silent, or I'll send you out of the country.' But now he was gone, leaving behind a letter to be delivered to Judd (carefully post-dated June 28) saying that he was up the country and would be back soon. The defence had got their deposition, but the police had got rid of the deponent.

At this time Judd thought (incorrectly, of course) that only he and Boote knew of Scully's statement. Confident that he knew what Scully was up to, he decided that he could afford to go to Melbourne. On the night of July 3, he boarded the Melbourne express.* As the train was pulling out, he was told that Scully had been spirited away on an American boat. (The source of his information was never revealed.) At Picton, fifty miles down the line, Judd got off the train and took a car back to Sydney. It was urgent that he should see his Parliamentary friends before the House went into recess.

The defence organisers met to consider their position. If Scully's statement was to stand up, he had to be brought back to answer for it. The *Ventura* was due in San Francisco on July 15. They had ten days to force the Government's hand. Jack Brookfield, now the Labor member for Sturt (the Broken Hill miners' electorate) and the most militant of the release campaigners in the House, was deputed to bring the matter before Parliament.

On July 9, Brookfield moved that the House consider, as a matter of urgency, the appointment of a Royal Commission into the trial and conviction of the Twelve. The Government gagged the debate and defeated the motion.

* Judd had originally intended to leave for Melbourne on June 25, and had so informed Scully; had he done so, he would probably not have been able to act so quickly on Scully's departure.

The next day, the Chief Secretary moved successfully that the House should adjourn for five weeks from July 11. The defence campaigners had two days in which to make their point. That night, the Government lacked the numbers on the floor of the House to carry the adjournment, and Brookfield got his chance.

Brookfield told a startled House of the writ that Scully had filed against the Government, and of Scully's 'confession' to Judd. He hinted that the defence held another equally important statement, but would not say who had made it. And he challenged the Government with the deportation of Scully. He demanded the appointment of a Royal Commission into the whole circumstances, and for good measure, T. D. Mutch added that the Commission should investigate as well certain telegrams which he alleged had passed between the Commonwealth and State Governments with the aim of having the evidence at the preliminary hearing available in the final stages of the conscription campaign.

The Attorney-General, D. R. Hall (one of those who had followed W. A. Holman out of the Labor Party in the conscription split), pleaded ignorance, with every appearance of frankness.

'Until tonight,' he said, 'I had no idea that Scully had ever gone back on his statement. . . . I had not heard . . . any suggestion of Scully being deported. Still, it might be going on without our hearing about it. That is a Federal matter. . . .'

Hall promised to ask the Federal authorities not to deport Scully while an inquiry was under consideration; but no decision could be made, he said, until the Government had seen the defence documents.

Alongside Hall on the Treasury benches was the Chief Secretary, George W. Fuller, who had signed the cheque for Scully's fare. He did not open his mouth during the debate.

The following afternoon, Hall seemed a shocked man. He had contacted his officers, he said, and 'I learned to my surprise that Scully left Australia last month. [Uproar.] I shall go further and inform the House that Scully's passage from Australia was paid for by the police. [More uproar.]'

He made a feeble attempt to saddle Mutch with the responsibility for Scully's departure: Mutch should have made this information available earlier, not waiting until 'Scully was safely out of the way'. The Labor man replied indignantly that the investigators, for obvious reasons, had not wanted to speak out before their work was complete, and they would not have made their information public even now, had not their hands been forced by the rumour that Scully was to be deported.

During the debate on the adjournment, Brookfield pressed home his advantage: the Government must appoint a Royal Commission, and must get Scully back to Australia to face it. The Government demanded more information—in particular, copies of the statements held by the defence—before they would act. But Brookfield refused to hand anything over without a guarantee that it would not be passed on to the police.

He won his point. Winding up a tense debate, the Attorney-General said that Brookfield and his associates should 'give the Government as much of the available evidence as they can'. This would be placed before a committee of three members of Cabinet, and would not be referred to the police. Cabinet would decide, on the committee's recommendation, 'whether they will have an inquiry or whether they will take certain steps to attempt to keep an eye on Scully until we have an opportunity of getting further evidence'.

A third possibility—that of doing nothing—was not mentioned. The Government was pledged to act, and the House adjourned until August 13.

The Government discussions the next day (July 11) must have been heated. It was apparent that Chief Secretary Fuller had authorised Scully's departure without advising his colleagues, and now he had to back pedal. After a long interview with Inspector-General Mitchell, Mr Fuller said that steps were being taken to get Scully back to Sydney. That night, Attorney-General Hall made the best of a bad case. He produced Scully's letter seeking money to leave the country, and claimed that this demonstrated that 'the police were in no way responsible for [him] leaving Australia'.

Two days later, the police acted. Inspector-General Mitchell cabled to the San Francisco agent of the *Ventura's* shipping company to request Scully to return by the first available boat. The Government would pay his fare to Sydney, his living expenses, and his fare back to England.

At the same time, Mitchell cabled the San Francisco police chief for his support: he should persuade Scully to return, but, if he could not, he should keep him under surveillance.

The labour movement kept up the pressure. The Labor Council held a packed meeting in the Sydney Town Hall, demanding a Royal Commission. The Release Committee continued their agitation on the Domain. The police reported:

'It was apparent that all the speakers at the Labor and Socialist meetings were endeavouring to excite the public mind in connection with

the I.W.W. and "Scully" matter, and the public agitation appears to be well organised for political purposes. The police being specially singled out for condemnation, together with the Government, has made this agitation fairly popular with the masses frequenting the Domain.'

Meanwhile, Cabinet was considering its position. The Attorney-General, who had been greatly embarrassed by Scully's precipitate departure, was pressing the Government for an early decision. The far left wing of the labour movement was not so sure; the Industrial Labor Party, for example, condemned Brookfield's move for a Royal Commission, declaring that the only appropriate form of action was the strike.

While Cabinet was still considering the question, the Inspector-General of Police asked the Government to order an inquiry into the allegations against the police. The Government graciously acceded. Brookfield's later comment—that this was either 'a remarkable coincidence [or] pre-arranged'—seemed apt.

Having announced its intentions, the Government delayed action until the last minute. Parliament was due to reassemble on August 13, 1918. On the morning of the day before, the Attorney-General spoke with Mr Justice Phillip Whistler Street of the New South Wales Supreme Court about conducting the inquiry into the conduct of the police. The judge replied that afternoon. He said that he had discussed the necessary court arrangements with the Chief Justice, and was prepared to undertake the inquiry, starting the following Monday. He understood that this met the wishes of the Government, and hoped that his acceptance reached the Attorney-General in time for his needs.

On the second day of the session, the Attorney-General introduced the Police Inquiry Act, appointing Mr Justice Street 'to inquire into certain charges made against members of the New South Wales Police Force in respect of their conduct in connection with the case of *The King versus Reeve and others*'.

The Commissioner would have, the Attorney-General said, power to compel witnesses to attend and give evidence on oath, and to compel the production of documents; he would also be empowered to punish for contempt, to direct that witnesses who committed perjury before him be prosecuted, and to give immunity from prosecution for offences which might be admitted before him.

The Labor opposition attacked at two points. First, the appointment of a single judge to inquire involved a danger of an over-legalistic approach; there should be a commission of five, including two members of the government party and two of the opposition.

Secondly, the terms of the inquiry were too narrow. To confine it to the allegations against the police was unfair to the Twelve. An inquiry of this kind would enable the Government to find out everything the defence side knew about the case before it decided on an inquiry into the fate of the prisoners. The Bill should be amended to enable the Commission 'to investigate all the circumstances and evidence in connection with the trial and conviction of the twelve I.W.W. men, and any new evidence in connection therewith'.

The Government would not budge. The Premier was prepared to concede that, should Mr Justice Street's inquiry reveal 'a serious state of things', then the Government would consider reopening the whole case. But, said the Attorney-General, 'we are not going to set up a criminal aristocracy in this country and give some men rights which are denied to others'.

The Opposition was not happy, but there was nothing it could do. The Bill became law, and the Premier announced that Mr Justice Street would commence his inquiries on Monday, August 19, 1918.

Whereupon Louis commented that Davis could please himself, but as for him [Louis], he was going to tell the truth.

As soon as he got back to Sydney, Louis went to see Detective Pauling and told him of this discussion with Davis.* When this became known, it played right into the hands of the defence. Why, if Louis didn't know what was in his brother's confession, did he go to Detective Pauling? Because, Louis answered, the document concerned Pauling most—Davis, he now recalled, mentioned something about 'pooling' Pauling and two other detectives. No, he was not reporting back to Pauling as a result of previous instructions. This was positively his first approach.

Whether anything passed between Louis in Sydney and Davis in Mudgee over the next couple of weeks is not known. But just as Louis had turned up in Mudgee with no definite end in view—and certainly not with the idea of discussing Davis' confession, about which he knew nothing anyway—so now Davis arrived in Sydney for a similarly indefinite purpose.

Whatever prompted Davis' journey, it was not to see Judd, for he did not tell Judd he was coming.** He arrived in Sydney on the morning of Sunday, August 11. He had no appointment with Louis—had not let his brother know that he was coming—but went straight to Louis' lodgings in Forbes Street, East Sydney, where the two brothers spent some time talking. They did not, however—or so they said—discuss the inquiry which was shortly to open.

The next night, August 12, Louis again went to see Pauling.† Louis said that he and Davis had talked about the coming inquiry before he went to Pauling, but Davis denied this. Pauling took Louis to see Superintendent Walker. Louis' story was that he later told Davis that he had seen the Superintendent, but not that he had first gone to Pauling—he didn't think that necessary. Davis, on the other hand, agreed under cross-examination that he knew that Louis had been talking to Pauling; he had asked Louis what it was about, but Louis had refused to tell him.

Meanwhile, Judd, whose intelligence service was operating

* At first, both Louis and Pauling concealed this meeting from Mr Justice Street, suggesting that Louis had first told the detective of Davis' sworn confession a fortnight later. However, when the internal police reports were produced, it transpired that Detective Pauling had reported Louis' information to Superintendent Walker on July 31. Goldstein and Pauling had a clear interest in placing this date as late as possible—to avoid the impression that the detective was applying pressure to Davis, through Louis, to recant.

** Before the Street Commission, Davis said that he came down to collect the 'proceeds of the sale of a car'; there was no evidence that he had in fact done so.

† This was the interview that Louis and Pauling originally suggested as the occasion on which Louis first reported his brother's confession. Indeed, Louis claimed to have told Pauling on this occasion, as if *de novo*, that 'the I.W.W. crowd' had got hold of Davis.

smoothly, had been shown (by whom he would not say) a letter written by an unnamed Mudgee citizen to an unnamed Sydney correspondent, reporting that Davis Goldstein had said that he was coming to Sydney en route for the United States. Judd twice went in search of Davis at the Forbes Street lodging house. On the second occasion, Miss Egan, a close friend of Louis', who also lived at the Forbes Street residential, agreed that Davis was in town, and took Judd's message.

Judd finally caught up with Davis at Forbes Street on the morning of Tuesday, August 13. Davis greeted him: 'How did you know I was down?' Judd replied: 'Oh, that's all right Dave. We have our scouts out.' They went inside and Davis told him of Louis' visit to Superintendent Walker. Davis' report of the conversation ran thus:

Walker: 'What's going to be your attitude?'

Louis: 'The same as at the trial.'

Walker: 'I am glad to hear it; that's different to your brother.'

Louis: 'I don't know what my brother has done.'*

Judd asked Davis whether he should see Louis, but Davis said it would be inadvisable, 'his brother was a weak man under cross-examination and might break down'.

Judd was anxious to dispel any suggestion that Davis might conveniently (for the defence) disappear before the Commission opened, and suggested that Davis should appear at a mass meeting the Labor Council had organised in the Sydney Town Hall for that night. But this Davis refused to do.

The picture of Davis Goldstein at this moment is of a man under heavy pressure but still undecided as to what he should do. His brother was urging him to recant: and, since Louis had been in discussion with the detectives, it seems reasonable to conclude that they were pressing Louis to this end. (Indeed, is it credible that—as all parties claimed—neither Walker nor Pauling asked Louis what his brother was up to?) Why, then, was Davis holding out? Was it still conscience, or hatred of the police, that was delaying his surrender? Or was he perhaps hoping for a guarantee that he would not be prosecuted for perjury if he now declared that his sworn confession was a pack of lies, as he had held out for a *nolle prosequi* in the forgery case two years earlier?

The next night, August 14, Louis again went to see Pauling. He

* Louis, in evidence, gave a rather different account of the interview: 'I want to tell you, Mr Walker, that anything that Pauling or Turbet did while I was there was perfectly right; and any evidence I gave in the I.W.W. case was true.' (This seems to establish beyond doubt that, despite his denials, Louis knew perfectly well what was in Davis' confession, for Turbet and Pauling were the only two detectives named by Davis as responsible for concocting evidence.)

Preparing for the Commission: The Goldsteins

A CONFESSION, A RECANTATION, AND SOMETHING IN BETWEEN

When Jack Brookfield grasped his chance to make public the news of Scully's confession and subsequent flight, he had another card up his sleeve—the statement of 'another important witness', whom he referred to but refused to name. The defence was playing it carefully; they did not know just how much the police knew and were giving nothing away. But Davis Goldstein certainly took the point, and there is good reason to believe that the police took it, too.*

Six days later, Davis Goldstein arrived in Sydney. Following Brookfield's disclosure, Judd had written to him saying he wanted to see him. Goldstein had replied, asking for his fare down to Sydney, which Judd sent. Davis arrived on July 16.

It was an exciting moment, and Judd remembered it clearly. Davis told him that his previous statement was only part of the story and that he was now prepared to spill the lot.

Two days later, he turned up with a statutory declaration. This was an even more startling document than his earlier statement. He repeated his earlier confession that he had given false evidence at the instigation of the police. But in addition he made other serious allegations.

Davis claimed that his identification as a participant in the forgery affair was organised by the police, who later used this and the consequent threat to his Defence Department contracts to put pressure on him to give evidence in the case of the Twelve.

He alleged that, after his arrest in the forgery case, a 'messenger' approached him with the suggestion that 'it would be advisable for me to give the detectives concerned in the note case some money to make things smooth'. The messenger asked for £1,000, but finally settled for £750. Later, he told Davis that the money had

* The police had had the defence side under observation. It is highly probable that they knew of Davis Goldstein's interviews with Judd, both from their own observations and from Harry Scully.

gone to the detectives. (In a subsequent discussion with Judd, Davis said that the go-between was 'Little Tich' Lazarus, a publican who had gone bail for him in the forgery case.)

And finally Goldstein said: 'After the note cases finished, the whole of the detectives put it on me for a suit of clothes each. The whole of them went to my tailor (Mr Pura) and each selected their cloth and had a suit made by him. My brother and I paid the whole account.'

Judd was elated. This was the first properly sworn statement* the defence had gathered, and it seemed enough to blow the case against the Twelve sky high. Davis was very conscious of its significance, too; he said that he was fearful for its safety and was reluctant to give it to Judd. (It may have been, however, that he was still hesitating to commit himself against the police). But Judd pressed him, and finally he handed it over.

On July 22, Davis Goldstein went back to Mudgee. Shortly before he left, he told Boote that he believed his life was in danger—from the police. Boote gave him money for a travelling companion. Three weeks later, he was back in Sydney—to repudiate this sworn confession.

Within a fortnight, Louis Goldstein followed his brother to Mudgee, where there was some talk about Davis' confession. According to Davis, Louis had been in Mudgee when Judd's original message arrived and knew that he was going to Sydney to see Judd. Unfortunately, the record does not reveal whether Davis had seen Louis during his visit to Sydney, or whether Louis knew of the confession at the time, or whether Louis then approached the police.† Louis denied any contact with the police—specifically, Detective Pauling—before he went to Mudgee. But whatever he had in mind, there is no doubt that he went to see Davis.

Davis' account of the meeting (in evidence to the Street Commission) was that, in the course of a general conversation, he mentioned that Judd had wanted to see him. Louis asked why, and he told his brother that he had given a sworn statement to Judd which falsely 'impugned' the police. Louis did not ask what was in the statement, but only why he had made it; he replied that he had made it because the police had been persecuting him.

* Appendix E of Mr Justice Street's Report.

† There was some evidence to suggest that Louis Goldstein was in contact with Pauling at this time, but it was inconclusive. In addition, Louis was alleged to have told a friend, May Egan, that the police had told him that unless he got Davis to come over to their side he would never get another hotel licence. Miss Egan, summoned before Mr Justice Ewing, persisted that, although 'something was said', she could not remember what it was.

did not go by appointment; at their last meeting Pauling had said that he would contact Louis if he wanted to see him, but Louis had gone anyway, unsolicited. His explanation of this visit perhaps lends weight to the second of these suggestions as to Davis' state of mind. Hard-pressed, Louis explained reluctantly that Davis had 'told him that he [Davis] did not know what position he was placed in. It might have been in consequence of that he [Louis] went and saw Pauling.'

Louis gave two accounts of what he said to the detective. At first, he said that he had told Pauling that he would 'try to get him to tell the truth'; later, his version became, 'I think my brother will yet speak the truth.'^{*} He also affirmed that Pauling did not make any comment on this promise, or hope, whichever it was—but then agreed that he could not swear that Pauling did not say anything.

The next two days are obscure. At first, Louis swore that he had not seen Pauling again between this Wednesday meeting and the following Saturday night, but later, under tough cross-examination, he reluctantly withdrew this statement. The defence, however, had merely been 'fishing' and were unable to follow up their advantage. Davis Goldstein was being driven, or led, towards a decision, but the defence was still ignorant of the threat to their case. On the morning of Saturday, August 17, Judd called by appointment to see Davis at Dallington Hall, where he was lodging. They talked over the story of the bribery of the police through 'Little Tich' Lazarus. Judd asked whether he should see the publican, but Davis (as he had done in relation to Louis) said no: Lazarus 'is in touch with the police, and he may tell them before the Commission starts what you have got on to'. Judd arranged for Davis to see Mr Richard Windeyer, who had been briefed as leading counsel for the defence interests, the next morning at 10 a.m. There was still no suggestion that Davis might be about to recant.

Immediately Judd left, Davis went to Forbes Street to see Louis. They walked together towards the city, parting half an hour later. Louis could not remember where he went then, but would swear that he didn't go to the detective office.† (Finally, under persistent

^{*} The difference between Louis' two versions is significant. The first conceals his earlier meetings with Pauling; the second does not. The first could be taken to mean that he was replying to a request from Pauling; this implication is missing from the second.

† At the Royal Commission six days later, Mr Justice Street asked Louis: 'Do you seriously say that you don't remember where you went last Saturday morning?' Goldstein replied: 'Yes.' (Note that Goldstein had already conceded that he might have seen Pauling between the Wednesday and Saturday nights; could this have been the occasion?)

questioning, Louis claimed that he had gone to Central Station to pick up a suitcase.) Davis went off alone and 'reflected', and at about four o'clock in the afternoon, so he said, he finally decided to repudiate his confession.

At 8 p.m., Davis returned to Forbes Street; unprompted, he told Louis that he had decided to 'tell the truth' and wanted to see Pauling. Louis replied: 'That's the best thing you can do.'

Although Louis claimed that there was no arrangement to meet the detective there, he knew that Pauling would be on duty at Paddington Police Station at 10 p.m., and there the brothers went.

Davis claimed the visit to Pauling was his idea. When they reached the police station, Pauling was standing at the doorway; Davis said to him: 'Good evening, Mr Pauling. I have come to make a confession.' Pauling took them upstairs and Davis said his piece.

Louis' version was quite different. It was he who first entered the police station. There he saw Detective Jones, and asked for Pauling, saying that he had brought Davis to see him. Jones went upstairs to see Pauling, who invited the Goldsteins to come up. In Pauling's office, Davis said: 'I am sorry that I made that statement to Judd about you and the others. Tomorrow I have an appointment with Judd and Windeyer. I am going to tell them that the declaration is a pack of lies.' Pauling replied: 'What you do doesn't concern me, and I am not going to discuss the matter.' There was no further conversation, and the Goldsteins left.

Louis' account was, despite some detailed variation, supported by Pauling and Jones, and was undoubtedly correct. Davis had lied in order to maintain the fiction that the meeting with Pauling was not pre-arranged.

In evidence before the Street Commission, Pauling denied that there was any arrangement between him and Louis Goldstein to persuade Davis to recant, and affirmed that he did not know why Davis should have come to him. This was a surprising claim in view of the several discussions he had had with Louis concerning Davis' confession to Judd.

The Goldsteins walked back towards the city. They parted, Davis saying that he intended to make a fresh written statement, giving the lie to the one Judd held, which he would present to Windeyer the next morning.

At 10 a.m. on Sunday, August 18, Judd arrived at Windeyer's chambers. It was the morning before the Commission was due to open, and they were about to have their final discussion with their premier witness, Davis Goldstein.

When Davis Goldstein had not turned up forty minutes later, Judd walked round to Louis' lodgings in Forbes Street, where he was told that Davis had been earlier to collect some papers but had left. Half an hour later, Davis had still not arrived for his appointment; Judd rang Dallington Hall, and was told that he had left a message to say that he was 'preparing a programme for the theatre' (this code phrase had been agreed in advance) and would be along at 3 p.m.

Davis did not appear at this time either, but rang to say that he would not be ready for another two hours. Finally, at 5.40 p.m.—by which time Judd was pacing the footpath awaiting his arrival—Goldstein turned up.

He had had a hard day. He first collected his papers from Forbes Street, then borrowed notepaper and carbon paper from the people with whom he was staying and settled down at Dallington Hall to write his recantation—'absolutely on his own', he declared. About lunch time he went again to Forbes Street, staying away about an hour, but found Louis out. The rest of the afternoon he spent on the recantation.

At about 5.15 p.m., Louis called to see Davis and met him coming out of Dallington Hall. Louis' evidence about this meeting is worth quoting at length:

'He didn't stop his brother, as he had an idea he was going to see Mr Windeyer.* No, his brother didn't tell him he was going to see Mr Windeyer; the night before he understood the meeting with Mr Windeyer was at 10 in the morning. Still he seemed to know his brother was going to see Mr Windeyer. After a long pause, witness remembered now that he had rung up his brother in the afternoon, wondering whether he was busy. He couldn't say why he should wonder if his brother was busy, but he remembered that his brother had said on the Saturday night before that he was going to write out a long statement on the Sunday. The very last thing his brother told him on the Saturday night was that he was going to see Mr Windeyer on the Sunday at 10 o'clock. Still, when he rang up his brother on the Sunday afternoon, he didn't ask him how he had got on with Mr Windeyer, nor did he know then whether he had really seen Mr Windeyer or not. For all he knew, his brother might have seen Mr Windeyer as arranged. . . . †

* A week earlier, Louis Goldstein had told Mr Justice Street that Davis had told him he was on his way to see Windeyer. However, a few minutes before Louis gave this evidence, Davis had answered a question from Windeyer (with Louis out of the Court): 'I did not tell him at all that I was going to see you.' Now Louis was trying to reconcile the two accounts, by bringing his evidence into line with that of his brother.

† This account is taken from the *Worker*. The cross-examination appears on pp. 127-8 of the Minutes of Evidence; the *Worker* account is much condensed, and the tone is ironic, but it catches the flavour of Louis' evasiveness and self-contradictions.

Right to the end, the Goldsteins and the police maintained that Davis' recantation was entirely his own decision, and that his final sworn statement, in which he repudiated his confession, was entirely his own work. Indeed, if the recantation was to be accepted, they had to establish this point. Proof of pressure or of guidance in the preparation of the statement would have put it out of court. This was what the defence was aiming for.

There was, of course, no documentary evidence—that would have been too much to expect. All the defence could do was to rely on cross-examination to trap the Goldsteins and the detectives into significant admissions or contradictions. In this they were only partly successful.

The defence established beyond any doubt that Louis Goldstein was in contact both with Detective Pauling and his brother Davis. They drew reluctant admissions from Louis that he had discussed the possibility of Davis recanting with both parties. They demonstrated that all parties were loath to reveal the full story of these contacts and discussions. But the decisive question was: on whose initiative were these complicated negotiations undertaken?

Under cross-examination, three slightly different pictures emerged. Davis presented himself as a man who was so blinded by his hatred of the Government as to seek revenge against their agents, the police, but who had at last seen the error of his ways. No-one had prompted him to come to Sydney; he alone had decided to repudiate his confession to Judd; he had decided to see Pauling and had introduced himself to the detective; he had prepared his final statement unaided and had not discussed it with the police.

Louis saw it rather differently. Out of respect for truth and justice, or concern for his family's or his brother's welfare, he had set out to persuade his brother that he should tell the truth, and the police that they should listen and forgive.

Detective Pauling, for his part, sought to create an image of himself as a policeman of principle, devoted to his duty and the truth, who had nothing to fear from his calumniators, who disdained to approach them to withdraw their slanders and heard their *mea culpas* only reluctantly and out of charity.

But aside from these discrepancies of attitude—which might have arisen from nothing more than the self-deception and the desire for self-justification which besets us all—the evidence left a number of important questions unanswered.

Why did Louis Goldstein go to Mudgee to see Davis, after Davis had made his statement to Judd? Is it credible that they did

not discuss Davis' confession? Why did Louis and Detective Pauling try to cover up Louis' original report of Davis' confession? What prompted Davis to come to Sydney on August 11, without informing Judd? Why did Davis try to conceal his knowledge that Louis was in contact with Pauling? Where did Louis go on the Saturday afternoon before Davis' recantation? What did Davis and Louis talk about between eight o'clock on Saturday evening, when they met, and 10 p.m. when they went to see Pauling, if not Davis' recantation? Why was Louis sure that Pauling would be at Paddington Police Station when they called? Why, if Louis knew nothing about the final statement that Davis was to make, did Davis have to collect his 'papers' from Louis' lodging before he prepared it? Why did Davis make two copies of his statement—one for the police as well as one for the defence—if there was no prior arrangement? How did Louis know that Davis was going to see Windeyer at 5.15 p.m. on Sunday afternoon if that had not been discussed in advance?

These are the problems behind the Goldsteins' story. They cease to be difficult if two assumptions are made: that Detective Pauling was putting pressure on Davis Goldstein, through his brother Louis, to repudiate the confession to Judd, and that the Goldsteins and Pauling were trying their hardest to conceal this pressure.

This would explain, too, the curious denouement, of which we have Judd's graphic account.

At 5.40 p.m. on Sunday, August 18, Judd was pacing the pavement outside counsel's chambers, waiting anxiously for Davis Goldstein. At last he arrived.

'He came round the corner from King-street and went with me into Mr Windeyer's office. He was in a hurry and seemed to try and evade conversing with me.

'The first words that I think he said were, "I have come to tell you, Mr Windeyer, that all I have told Mr Judd is false." He was sitting down then at the end of Mr Windeyer's table of my right and on Mr Roberts' left. He put the statement that he had on the end of the table and unfolded it and proceeded to read [it] to the three of us. He seemed to be in a hurry to get through it. When he had finished reading Mr Windeyer asked him would he mind answering a few questions, and he said somewhat excitedly, "No, I am not here to be examined. There is my statement."

'I turned to him and said that by the statement he had just read out he had not only placed himself, but also placed me in a false position, as he had given me statements and led me to believe that

those statements were true, and I had made statements based upon the statements he had given me. I said, "In fairness to me and to us you should answer a few questions."

'Mr Windeyer asked him where he had been since seeing me. That was at 10.30 on Saturday morning. I think one of the first questions was, "When did your brother see the police?" He seemed reluctant to admit that his brother had seen the police, so Mr Windeyer asked then, "Did you not tell Judd that your brother had seen the police?" I may say he had told me, and I had informed Mr Windeyer prior to that of what he had told me. He admitted then that his brother had seen the police.

'Mr Windeyer asked him rather suddenly where he had seen the police. At first he seemed to avoid answering it, but ultimately he admitted that he had seen Detective Pauling the evening before. That was the Saturday evening. Mr Windeyer asked him where. He said in a street near the Police Station, and Mr Windeyer said, "What Police Station?" He said, "Paddington." Then Mr Windeyer asked him whether he met him by appointment. He said, "No, we met him casually." Mr. Windeyer asked him had his brother made any appointment, or did he know his brother had made an appointment to meet Pauling. He said, "No."

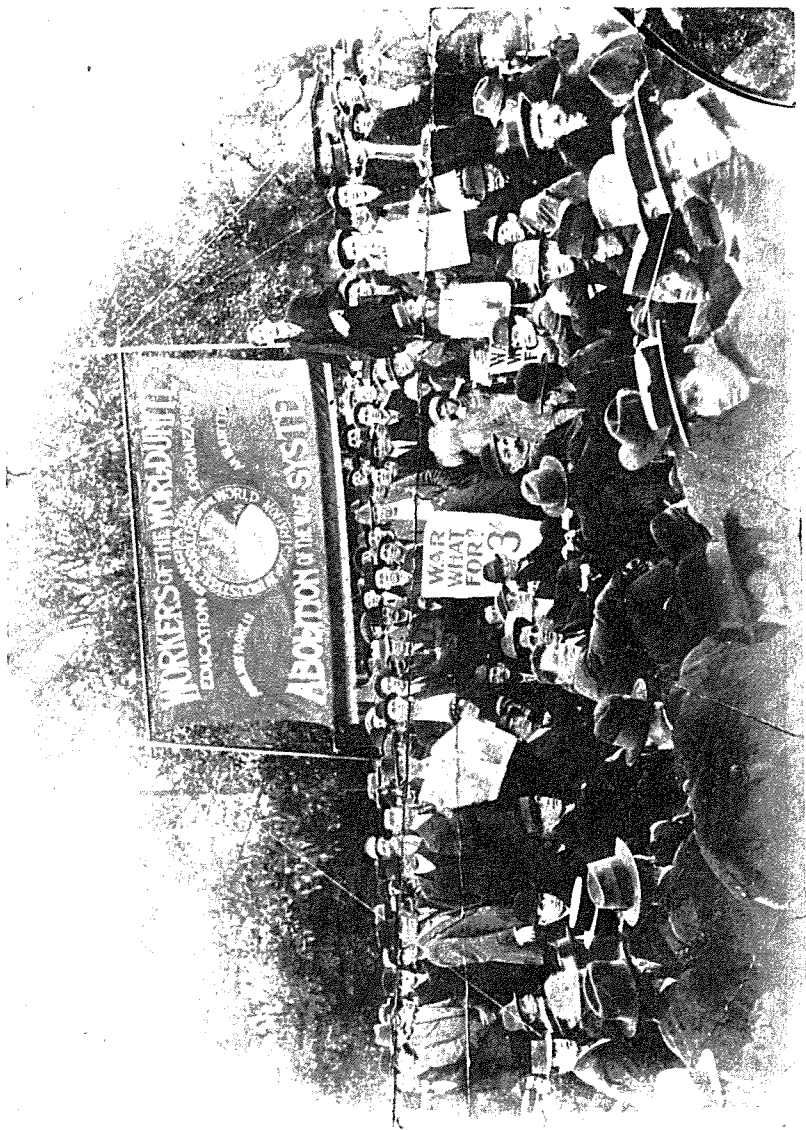
'Goldstein seemed a bit uneasy about the answers he was making and seemed to fear that he would say something in contradiction of his statement. He partly rose from his chair and seemed anxious to get away. He kept saying, "You have my statement there,* and that is all I am going to say."

'Mr Windeyer asked Goldstein about my connection with the cases. Goldstein said that I had acted fairly, and did not know that he was going to deny these statements. Mr Windeyer said, "As you admit that Mr Judd's conduct has been honest throughout, will you write this on the end of that statement for me?" Goldstein got hold of a pen and looked towards Mr Windeyer and said, "Tell me all that you want me to put down." Mr Windeyer told Goldstein what he wanted him to put. That was to the effect that the statements in the document he had given me had all come out of his own mind, and had not been suggested to him by anyone. Goldstein seemed to be quite willing, and he wrote on the bottom of the page what Mr Windeyer asked him to put.

'Mr Windeyer tried to ask him further questions, but he was anxious to get away. When he got up to leave, he threw his arms out and said, "Here is my carcass gentlemen, you can do with me what you like." He said, "I am sick of the whole affair," and that during the last two years he would have been better in gaol than at liberty.'

If Judd's evidence of this final encounter can be accepted (and it has the ring of truth and was confirmed by Windeyer in all essentials) Goldstein's demeanour was not that of virtue triumphant, of a man who was at last at peace with himself because he had

* Appendix F of Mr Justice Street's Report.



1 The 'Wobblies' on the Sydney Domain, May Day, 1914.
(Donald Grant is speaking; Tom Barker is on Grant's left, holding *Direct Action*; Bill Teen, in dark hat, stands to the right of Grant, under the second 'S' in SYSTEM.) By courtesy of Tom Barker.

Pay No Rent, No Debts! Give the Employer a Chance To Show HIS Patriotism.

DIRECT ACTION



NO. 11 VOL. 1

Registered at G.P.O. Sydney. SYDNEY, AUGUST 10 1914.

ONE PENNY.

WAR! WHAT FOR?



WAR! WHAT FOR? FOR THE WORKERS AND THEIR DEPENDENTS: DEATH, STARVATION, POVERTY AND UNTOLD MISERY. FOR THE CAPITALIST CLASS: GOLD, STAINED WITH THE BLOOD OF MILLIONS, RIOTOUS LUXURY, BANQUETS OF JUBILATION OVER THE GRAVES OF THEIR DUPES AND SLAVES. WAR IS HELL! SEND THE CAPITALISTS TO HELL AND WARS ARE IMPOSSIBLE

2 Direct Action greets the outbreak of war.



(The Commonwealth Government is floating a further £10,000,000 for the War Chest. The prospectus calls upon investors to "show a patriotic spirit . . . especially as no sacrifice is entailed . . . the rate of interest being far higher than in normal times.")

FAT (Intoxicated with "patriotism"): "LONG LIVE THE WARI HIP, HIP, 'OORAY! FILL 'EM UP AGAIN!"

3 The *Direct Action* cartoon which earned Tom Barker a sentence of twelve months' hard labour.

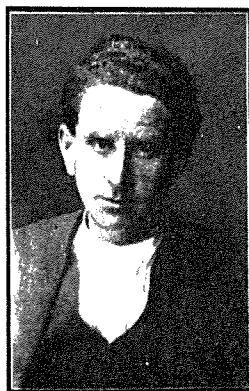
4 THE TWELVE



JOHN HAMILTON



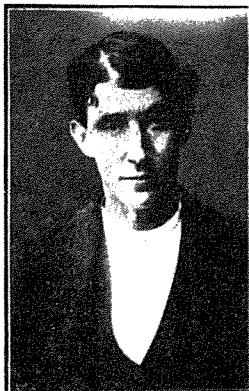
PETER LARKIN



DONALD GRANT



JOHN BENJAMIN KING



THOMAS MOORE



CHARLES REEVE

By courtesy of the Public Library of New South Wales.



MORRIS JOSEPH FAGIN



WILLIAM TEEN



THOMAS GLYNN



DONALD McPHERSON



WILLIAM BEATTY



BOB BESANT



5 Mr Justice Robert Darlow Pring
By courtesy of the Mitchell Library, Sydney.



6 A recruiting sergeant, his propaganda, and two converts.

From the *Australasian*, January 15, 1916. By courtesy of La Trobe Library, State Library of Victoria.



THUMBS DOWN!

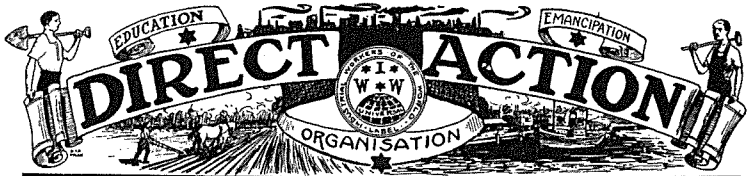
7 Norman Lindsay's reaction to the 'No' victory.

From the *Bulletin*, October 19, 1916. By courtesy of the Public Library of New South Wales.



8 Henry Ernest Boote

SPECIAL MAY DAY ISSUE

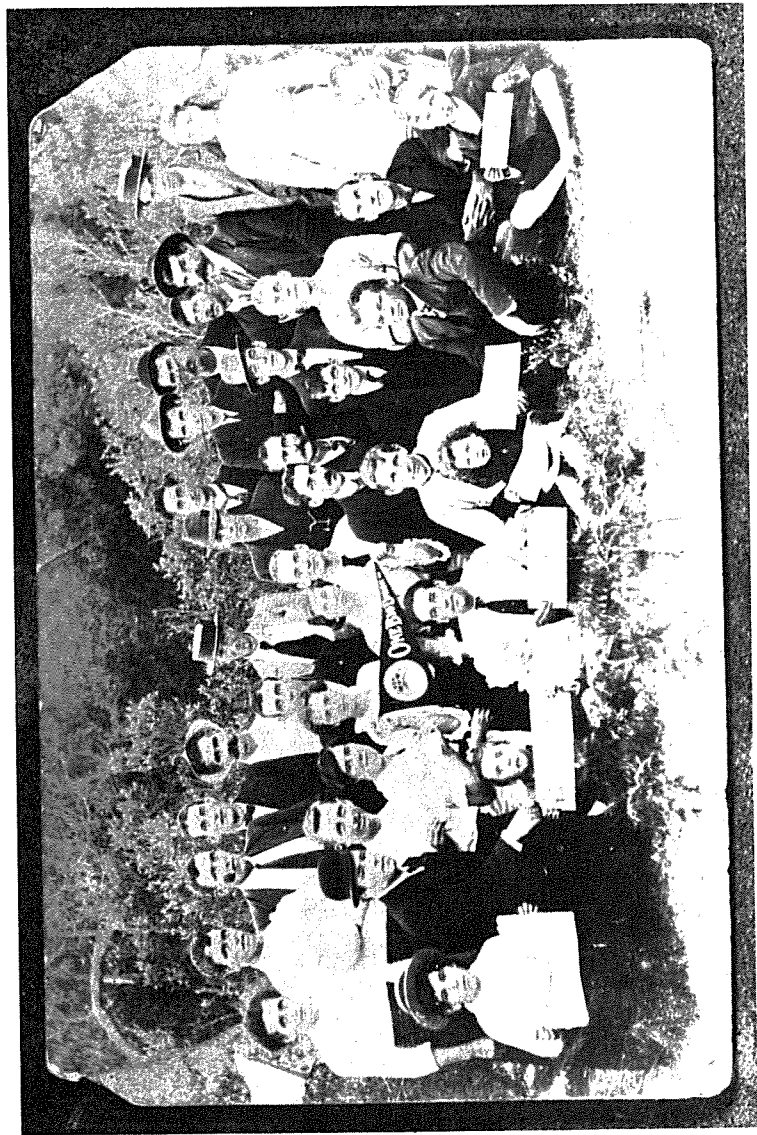


VOL. 4., NO. 120 Registered at the General Post-office, Sydney, for Transmission by Post as a Newspaper. SYDNEY, May 5th. 1917. Two Pence.

“An Injury to One an Injury to All.”



9 The special May Day issue of *Direct Action* calling for the release of The Twelve.



10 A 'Wobbly' picnic.

(Tom Barker, in white shirt, is third from left in the front row, next to man with bowler hat; Don McPherson is fourth from the left in the back row; Jack Hamilton is the right hand one of the two moustached men kneeling to the right of the One Big Union banner; Charlie Reeve is sitting under the banner.) By courtesy of Tom Barker.

EUREKA, 1854

TO

I. W. W., 1917!

Sixty-Three Years Fighting
for YOU!

IS THE CAREER OF

MONTY MILLER

86 Years old
and Still
Fighting for
**INDUSTRIAL
FREEDOM!**



One Big Union
PIONEER
The Grand Old Man
of the Labor
Movement

THE GRAND OLD MAN OF LABOR, SETTING OUT IN 1917 FROM W.A. TO TOUR AUSTRALIA, ADVOCATING THE ONE BIG UNION, WAS ARRESTED AND PUT INTO JAIL DURING THE LAST GREAT STRIKE, AND WAS COMPULSORILY RETURNED TO W.A. UNDAUNTED, He is Returning.

WILL SPEAK IN MELBOURNE SHORTLY!
WATCH FOR DATES!

*Smithson Bros., Print.
P. O. Place, Melb.*

11 Monty Miller campaigns for the release of The Twelve.

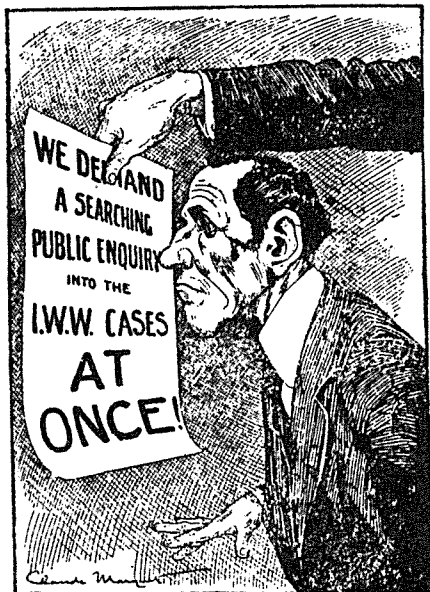
ONE BIG UNION

PROPAGANDA LEAGUE

KING,
BEASANT,
LARKIN,
REEVES,
GLYNN,
FAGIN,

1916
to
1931!

Lost their
Liberty that
You and I
Should be
FREE.



No Side-Stepping This!

MOORE,
BEATTY,
McPHERSON,
GRANT,
TEEN,
HAMILTON.

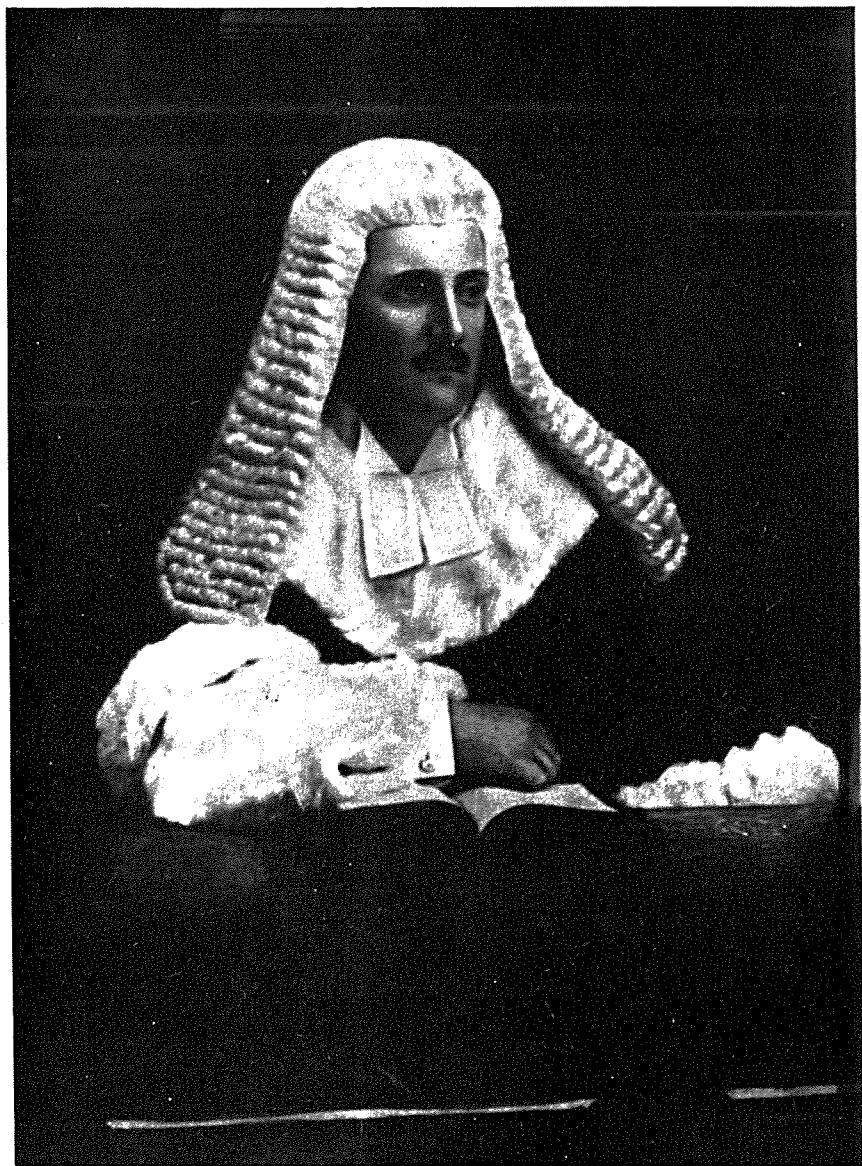
1916
to
1931!

Their Fight
was for
Education,
Organisation,
Emancipation.

Demands the Immediate Release of their Twelve Mates in Jail

12 W. A. Holman, Premier of New South Wales, is confronted with a demand for an enquiry into the case of The Twelve.

A leaflet reprinting a *Worker* cartoon by Claude Marquet.



13 Mr Justice Phillip Whistler Street
By courtesy of the Mitchell Library, Sydney.



14 Mr Justice Norman Kirkwood Ewing
By courtesy of the State Library of Victoria.



15 Ernest E. Judd

forsaken revenge and deceit for honour and truth. It was rather that of a man who had given way under pressure, who had carefully drilled himself (or been drilled) in how he must behave, but whose conscience flickered once more in his last dramatic exit line.

The rest is soon told. Davis Goldstein left the original copy of his statement with Windeyer, and returned to Dallington Hall. Louis arrived and they went in search of a Justice of the Peace, so that Davis could attest the carbon copy of his recantation. They went first to Darlington Police Station, but the bail magistrate was not there; then to another Justice, who, because it was Sunday, would not witness Davis' signature. Finally Louis suggested that they go to Paddington Police Station, where Pauling might be able to advise them. But Pauling was not there—Louis, be it noted, no longer knew his movements. Detective Jones (who had been present the previous night when they met Pauling) took them to several places until at last they found a publican J.P. before whom Davis could swear.

They returned to Paddington Police Station, where Davis wrote a covering note to Superintendent Walker.* As they left the Police Station, Davis gave the attested statement to Louis to give to the Superintendent.

The Royal Commission was to open at ten o'clock on the morning of Monday, August 19. Davis' recantation—like his decision to give evidence in the trial of the Twelve—was received just in time. That morning, Louis turned up early at the detective office. As Superintendent Walker had not arrived, he spent half an hour talking to the detectives. When Walker came, Louis gave him the two documents and went directly to the court where the inquiry was to be held.

Davis spent the day 'in smoke'—he went walking, he said, in Centennial Park. No, he did not know he had been summoned to attend the Commission. No, he did not visit the detective office. No, he did not know where Louis was.

The detectives turned up at Louis' lodgings in search of Davis; they left a subpoena for him which he collected later in the day. That night, the brothers went to the Criterion Theatre to see a play called "Business Before Pleasure". The next day, Tuesday, Davis appeared before Mr Justice Street.

To say that the balance of evidence—historical, if not legal—is that Davis Goldstein recanted his confession under police

* Davis at first said that he had written this letter at Dallington Hall. Then he admitted that it had been written in the presence of Detective Jones at Paddington, but said that Jones did not know the contents either of the letter or of the statement for which he had sought out the Justice of the Peace. However, Jones' evidence before the Royal Commission implied that he knew that the statement concerned the I.W.W. case.

pressure, is not to say that his recantation was untrue. To be readily accepted, a statement must not only be true but must appear to be true. Indeed, the appearance of truth may well be more important than the reality.

Proof of police pressure on Davis Goldstein would have gone a long way towards destroying the appearance of truth in his recantation. So it is not impossible that the police, knowing this, put pressure on Goldstein—perhaps the threat of prosecution for perjury—to persuade him to repudiate an untruthful ‘confession’, and then did their best, in order to maintain appearances, to conceal this pressure.

Before the Commission, Davis Goldstein asserted that his original trial evidence had been truthful; that, driven by his desire for revenge, he had lied in his confession to Judd, and that Judd knew he lied; and that, in his recantation and his evidence to the Commission, he had returned to the truth. The defence, obviously, asserted the opposite; the police, obviously, gave what support they could to Goldstein. Mr Justice Street had to decide on the truth.

Preparing for the Commission: Harry Scully

A HURRIED RETURN FROM SAN FRANCISCO: DID HE COME OR WAS HE SENT?

The *Ventura*, with Harry Scully aboard, was due in San Francisco on July 15. Two days earlier, the Inspector-General of Police had cabled his opposite number in San Francisco asking him to try to persuade Scully to return to Sydney.

The stories differ on what happened to Scully on his arrival in America. The defence side alleged that the Sydney police, operating through the American consul, had let the American immigration authorities know that Scully was an undesirable character; Scully had thereupon been refused permission to land. But this seems inconsistent: if the police had smuggled Scully out of the country, why should they now take the initiative to get him back? The official files did, however, convey the impression that Scully had been deported from the United States.*

But an Australian newspaperman who was on the spot gave a different account. He said that Scully had in fact landed at San Francisco, and, when interviewed nine hours after his arrival, had seemed reluctant to agree to go back to Sydney. This more or less agreed with Scully's version, which was that the San Francisco police had interviewed him on arrival, showed him the cable from Sydney, and asked him whether he was willing to return; he had said immediately that he was. He did not, however, know just why it was he was wanted. (Two days after his arrival, Scully was arrested by the U.S. immigration authorities and held in custody until the *Ventura* sailed for Sydney.)

Scully returned to Australia, with an American immigration official to see that he got there. The New South Wales Government paid Scully's fare and the fare and wages of his escort. Scully had

* Unfortunately, I have not been able to find the papers dealing with this episode; the report of the impression they conveyed comes from a contemporary journalist who inspected the file.

agreed to go back—but, had he not agreed, he would have been deported.

In Parliament on August 13, 1918, Jack Brookfield sought an undertaking from the Government that they would take steps to ensure that the police should not make contact with Scully when he arrived, but that he be 'made available to any of his friends'. The Attorney-General replied that Scully would not be met by the police, and would not be available to anyone.

The *Ventura* arrived back in Sydney, with Scully aboard, on August 20, the day after Mr Justice Street opened his inquiry. Scully was served with a summons, placed in the custody of the Sheriff, brought ashore and taken directly to the court. There, the Commissioner told him that he had power to grant immunity from prosecution—provided that he was satisfied that he [Scully] was telling the whole of the truth.

The Street Commission

Mr Justice Street's 'Inquiry under the Police Inquiry Act, 1918' opened in the No. 3 Jury Court room in King Street, Sydney, on Monday, August 19, 1918. It sat for forty-seven days and heard ninety witnesses answer 32,000 questions and counsels' addresses lasting more than thirty hours, all of which took 872 foolscap-sized pages of transcript to record. Among the witnesses were two Ministers of the Crown and eighteen members of the police force.

On nearly every one of the thirty-nine days on which evidence was taken, queues of people waited outside the court for seats in the limited gallery. Hundreds were disappointed. Conspicuous among the spectators were lawyers, city aldermen, Members of Parliament—including on occasions the Premier and other Ministers.

Mr A. B. Shand, k.c., and Mr Manning appeared for the Crown, Mr Windeyer, k.c., and Mr C. M. Collins for the defence interests.

From the second day of the inquiry, Mr Windeyer asked the Commissioner to seek an extension of his terms of reference so that he might inquire into the whole of the I.W.W. case. At first Mr Justice Street replied that he was not prepared to recommend this. However, after a fortnight, he commented that he could not seek an extension

'unless I have some evidence before me to show that the men have not had a fair trial. Taking the inquiry as it stands now, if I come to the conclusion that these men have been convicted on false evidence procured by the police, then I must recommend a new trial.'

Under heavy pressure from the Labor Party, the Government finally agreed to a limited extension. Attorney-General Hall wrote to the Commissioner (the letter was released to the press on October 1, 1918):

'If, in the course of your inquiry, any facts should be established which raise, in your mind, a doubt as to the guilt of any person now in gaol, the Government will be favoured if you will report such facts.'

This did not re-open the whole case; it referred only to doubts which might arise in the Commissioner's mind incidentally to his inquiry into the behaviour of the police; but it went some way towards meeting the defence's demand.

The Government was prepared, Hall indicated, to grant an extension of Mr Justice Street's Commission if the judge wanted to hear any additional evidence.

At the time, it seemed that the defence had at last made its point, and hopes were high. The Commissioner noted in his report that he 'undertook this additional responsibility'. But in the event it proved harder to raise doubts in the cautious, conservative mind of Mr Justice Street than the defence expected. Indeed, it proved impossible.

On the second day of the inquiry, the Opposition leader, John Storey, asked whether the Government would consider paying the costs of the defence side. The Chief Secretary said that it would be considered.

Early in September, the defence grew alarmed by the threatened length of the inquiry; their funds were already running short. The Premier saw Messrs Mutch, Brookfield and Judd, and later announced that the Government would meet the defence costs over and above the funds they were able to collect by public subscription. The inquiry had reached a stage, he said, at which it would be 'a profound misfortune' for all parties if its effectiveness were jeopardised by a shortage of defence funds. The allegations against the police must be presented adequately, and the affair brought to a 'satisfactory end'. However, the Government would only meet the costs of the presentation of evidence certified as material by the Commissioner.*

The total cost of the Commission to the Government (including its contribution towards the fees of defence counsel) was £4,736.1.1; this did not include the expenses of the police department, or the cost of court reporting.

The inquiry was not without its moments of drama. On one occasion Mr Windeyer complained that a well-known fizzgig, 'Angel' Gabriel, was sitting in the gallery and taking notes of the evidence which he was supplying to detectives waiting their turn outside the court. 'Angel' was called to the floor of the court. 'It's a bare-faced lie,' he stammered, 'you can search me.' The judge contented himself with a general warning against note-taking.

* One indignant citizen, in a letter to the Premier, found it 'simply damnable' that the Government should pay for 'these cursed Labor yelpings. . . .'

On another, Superintendent Walker was caught flat-footed in a lie. He had agreed to Mr Windeyer's suggestion that he had a bundle of notes in his pocket, but said that most of them had nothing to do with the case. But when he was directed to produce them, they were all 'for the purpose of refreshing his mind on questions he might be asked'. Pinned to the notes was a statement of the records of certain detectives; the Superintendent said that this must have been pinned on by mistake. But when Mr Windeyer pointed out that the list only included the detectives concerned in the inquiry, the Superintendent agreed that it must have been compiled for this occasion.

His Honor (to Supt. Walker): 'Have you any objection to leaving your notes with me?'

Superintendent Walker: 'None whatsoever.'

His Honor: 'Well, give me the one you are putting in your pocket.'

The Superintendent left the witness box an unhappy man.*

The great moments of the Commission were, however, the appearance of the main Crown witnesses.

Harry Scully had been brought direct from the *Ventura* to the court. He had been told that he might be granted immunity from prosecution for perjury, but warned that he must now tell the truth. In the early days of the inquiry, he asked to be represented by counsel; Mr Justice Street said that he did not think it necessary. Nevertheless, Scully's solicitor turned up at the court and the Commissioner admitted him. The solicitor objected to Scully being held in the custody of the Sheriff. Mr Justice Street said that it was a matter entirely for Scully; there was no compulsion. Scully said: 'I say yes. I will probably be giving evidence again. I would not like it said that I was swayed in any way.'

Scully was an extraordinary witness. Clean shaven, tanned from his sea journey, he was alert and intelligent. Mr Windeyer described him as 'a man of subtle glib tongue.' He answered three days of intensive questioning in a low, monotonous tone, sometimes with a flash of sarcasm or humour. When puzzled by an intricate question, he would pass his hand over his brow as if searching his memory for the answer. He was respectful to the court, never showing resentment or anger. He played his role well, although it was not the most satisfactory or consistent of parts.

His evidence was a disappointment to the defence. Time and

* His Honor's final comment does not appear in the Minutes of Evidence. It, and the report of the Superintendent's demeanour are taken from the *Worker*.

time again, when confronted with a specific allegation he had made against the police, he qualified it out of existence, saying that it was 'a suggestion for investigation' rather than a statement of fact. And a number of his earlier statements he simply repudiated.

Mr Windeyer asked him: 'Can you explain why you qualify everything when a charge is made against a detective?' Scully said that he could not explain it, except that he was now on oath and more careful in his use of words. This was cold comfort for the defence. However, he did re-assert his belief in the innocence of the six prisoners whom he had named in his original statement to Judd.

After his dramatic recantation on the eve of the Commission, the defence could expect nothing from Davis Goldstein, unless they were able to crack him in cross-examination. And this they did not succeed in doing.

Davis Goldstein was a belligerent witness. He shouted his answers; often he could be heard outside the court. On several occasions, the Commissioner asked him to moderate his voice. Occasionally he stumbled over his answers, but mostly they came pat, and defiantly. Through a rigorous cross-examination, he stuck to his story that he had concocted his confession to Judd in order to revenge himself on the police, and that both Scully and Judd knew he was lying.

Louis Goldstein was a nervous witness, often mumbling so that he could not be heard. He hesitated over many answers, as if frightened that he would be trapped. He often took refuge in a 'bad memory' to explain his failure to answer on an important point, so much so that on one occasion, Mr Windeyer asked him: 'Have you been told by anybody to say today you do not remember anything?' (Goldstein, of course, denied this.) He, too, insisted that all was well with the police handling of the case; but there was much that he left unsaid.

The police witnesses—as police witnesses characteristically do—gave their evidence flatly, without emotion, answering only the questions that were put to them and never embroidering their replies. In the course of their investigations, they had made out regular reports of observations and interrogations; they retained carbon copies of these, and it was on these reports that their stories were based. Many of the reports themselves were produced as exhibits in the course of the inquiry. Cross-examination revealed contradictions and unsatisfactory features, but did not destroy the case.

Mr Justice Street heard the last of the witnesses on Friday,

October 18. On the following Wednesday, and for seven days thereafter, he listened to the final addresses of counsel—Mr Windeyer for the defence interests, Mr Shand for the police, and Mr Windeyer in reply.

Since the Commission was investigating allegations of misconduct against the police, the onus was on Windeyer to establish positively that the police had acted improperly, rather than negatively, that a sufficient doubt existed as to the validity of the case against the Twelve to justify a new trial. Windeyer was the attacker, Shand was in defence, and Windeyer had the more difficult brief.

Windeyer concerned himself almost exclusively with the accusations of arson, and with allegations of improper relations between the Goldsteins and the detectives in connection with the forgery case. His only positive evidence that the arson case had been framed, in whole or in part, and that improper relations had existed, was contained in the admissions of Davis Goldstein and Scully to Judd, which were supported at some points by other witnesses. However, before Mr Justice Street, Goldstein repudiated his confession in whole, and Scully his in large part; and—as Shand was quick to point out—since both these witnesses admitted that they had lied under oath, they could not be accepted as witnesses of truth. Stripped of his trump cards, Windeyer was left only with internal inconsistencies, inherent improbabilities, and surrounding circumstance. He did his best, but it was a poor hand that he had been left to play.

Shand held much stronger and better balanced cards. He placed great emphasis on the sedition charge—much more than did Windeyer, or for that matter than does this book—and here he was on solid ground. As to the arson charge, he argued powerfully that the evidence before the Commission went to consolidate the Crown case against the Twelve. True, neither the Goldsteins nor Scully could be accepted as witnesses of truth; but their evidence was confirmed at so many points by the police witnesses, all honourable men, and by contemporary documents, that, in its essentials, it must stand. The confessions of Davis Goldstein and Scully could be dismissed as the products of greed, or the desire for revenge. Independent evidence which purported to authenticate these confessions could be explained by witnesses like Judd having accepted in good faith statements which were now established to be lies, or by the low intelligence of Russian Jewish immigrants. Shand had a good hand, and he played it strictly according to the book.

Both men, of course, spoke as advocates. Although Windeyer did say: 'It is not for me to argue, and I do not argue, that I can

show that all the men were innocent,' he nevertheless sought to throw doubt on all aspects of the Crown case, even those least susceptible to challenge. And conversely Shand argued that no case had been established against the police—not even where they were most vulnerable—and that no new circumstances had been adduced to throw any doubt on the validity of the conviction of the Twelve. Here too Shand held the more favourable position: it was easier to argue the innocence of twelve detectives than that of twelve members of the I.W.W.

Undoubtedly, Shand won the legal battle. But, in my view, for reasons which are discussed below, the verdict of history must be on Windeyer's side.

Having heard the addresses of counsel, Mr Justice Street withdrew to prepare his report, leaving the Jury Court to return to its normal criminal pursuits.

The defence interests were understandably anxious that the proceedings should be finalised quickly. Despite their difficulty with the Crown witnesses, they believed that they had established sufficient holes in the Crown case, and sufficient evidence of police misconduct, to secure a favourable report. They were confident that the 'boys' would be out for Christmas. (In the event, this hope waited almost as long for its fulfilment as the 'home for Christmas' promise of August, 1914.)

A week after the Commission rose, Brookfield asked the Premier to have the Minutes of Evidence printed and made available to Members of Parliament. Holman replied that the evidence was 'extraordinarily voluminous' and that he did not think that the expense of printing the whole would be justified; he agreed, however, to see what could be done about making copies available to Brookfield and Mutch. The Government Printer was instructed to pull copies of the evidence, from the type that was already standing, for the two Labor men; they were given these early in the new year, three weeks after the content of Mr Justice Street's report was known.*

Late in November, the Labor Opposition began to press the Government for the release of Mr Justice Street's report. The

* Three months later, the Government Printer was concerned that so much metal was tied up in the Report and Minutes. He wrote to ask whether these documents were to be presented as Parliamentary Papers; if so, he could run them off immediately and release the metal. The Premier asked how much it would cost to print the 386 copies of each document which would be required for this purpose; the Printer replied £8 for the Report and £100 for the Minutes. The Premier decided in May 1919, that the Report should be issued as a Parliamentary Paper, but that 'all practical purposes would be served by . . . twenty copies [of the Minutes] being printed—one going to each Department concerned, and the others remaining in stock at the Government Printing Office'. These copies were printed and the type was then distributed. The cost was £17.

long summer recess was uncomfortably close; unless the report was tabled no action would be possible until well into the new year, and the Opposition was beginning to suspect that this was what the Government wanted.

On December 3, the Secretary of the Premier's Department told Premier Holman that he had 'ascertained confidentially' that the report would not be ready for another week, but that Mr Justice Street did not want this information given to Parliament. Nevertheless, the Attorney-General put the question to the Commissioner officially, and told Parliament three days later that the report could be expected in a week's time—by which time the House would have risen. Still confident of the outcome, Labor leader Storey asked whether the House would meet to consider legislation following receipt of the report, and Labor member Buckley (a one-time I.W.W.) asked whether the House would be recalled to discuss the report. The reply left the Government with the initiative: if this were considered necessary, it would be done. The House then rose.

There is nothing in the documents, public or private, to suggest wilful delay in the presentation of the report on the part of Mr Justice Street or of the Government. But it certainly worked to the Government's advantage that the House had risen before the content of the report became known. This meant that the Opposition was deprived of its most valuable forum for criticism. The merits of the report would be debated in the press instead of in Parliament, and in that arena the Government enjoyed a considerable advantage.

Mr Justice Street's report is dated December 11, 1918; it was presumably presented to the Premier on that day. A week earlier, Holman had told the Leader of the Opposition that he could not give the House an assurance that Parliament would have copies of the report before the press; the 'usual procedure' would be followed. In the event, the Opposition's first knowledge of Mr Justice Street's findings came from the morning papers of December 12, and Brookfield first received a copy of the report (after the Government Printer had been instructed to rush through a few copies) on Christmas Eve.*

No record remains of the immediate reactions of the Government and the defence supporters to Mr Justice Street's report.

* In February 1919, still before the Report had been presented to Parliament and had thereby become a public document, the Premier approved the printing of fifty more copies for sale to persons approved by the Attorney-General. In March, the Attorney-General approved sale to anyone who wanted a copy. The Report was finally ordered by the Legislative Assembly to be printed on August 28, 1919.

But, from their later behaviour, it is not hard to deduce the first impact. Government members and supporters were gratified, even elated. The defence interests, who had expected so much and received so little, felt first unbelief, then consternation, and finally bitter anger.

What Mr Justice Street had done was to justify fully the initial refusal and later reluctance of the Holman Government to re-open the case of the Twelve. His detailed findings will be discussed later; for the moment, it is sufficient to note his conclusions:

'I have to report . . . that the charges of misconduct made against members of the police force in connection with the case *King v. Reeve* and others have not been established as a fact, and that nothing has been brought before me which raises any suspicion in my mind that misconduct, in fact, took place, though it could not be proved. . . . I have to report that no fresh facts have been elicited before me raising any doubt in my mind as to the guilt of the convicted men. . . .'

PART

2

**THE CASE AGAINST
THE TWELVE**

'I am more convinced than ever that THE MEN DID NOT GET A FAIR TRIAL; that their liberty was FALSELY SWORN AWAY, and that they are the victims of class passion, and of unscrupulous crooks who sacrificed them to save their own skins.'

H. E. Boote

'There has been no miscarriage of justice against the I.W.W. men, and the workers who have spent money and time in agitation in their interests have been deceived.'

W. A. Holman

With the conclusion of the Street Commission, all the essential evidence was in the public arena, and the time has come to ask the central question: were the I.W.W. Twelve guilty of the crimes alleged against them?

This examination is concerned almost solely with two of the three charges: conspiracy to commit arson, and conspiracy to secure the release of Tom Barker by unlawful means (i.e. arson). The fires were the heart of the I.W.W. story. The third charge, seditious conspiracy—that is, conspiracy to create disaffection towards the Crown, or to create hostility between different classes of the Crown's subjects—is a different matter, which can be dealt with briefly.

Sedition is essentially a political offence. The aim is to prevent or limit advocacy of the overthrow of the existing Government or social order. Since overt acts which threaten the Government or social order constitute offences in their own right, the charge of sedition is characteristically used against propagandists—speakers, writers, publishers. The definition of sedition is so wide as to offer a considerable margin of discretion to the Crown authorities who decide on prosecution and the judges and juries who determine the cases. What is considered seditious at one time will be accepted as tolerable criticism at another. It is in times of crisis—whether arising from domestic turmoil or involvement in war—that Governments are most likely to accuse their opponents of sedition. It is in these times that juries, reflecting the panic which sweeps the community, are most likely to convict.

The evidence of sedition in the I.W.W. case consisted in the reported speeches of some of the accused; if these were seditious, then evidence of their association would have established the presumption that they had conspired to be seditious.

Certainly the words alleged against the Twelve were violent enough. They were words calculated to inflame men's passions, and—if accurately reported—might, in the existing state of the law, be held seditious.

This evidence did not go unchallenged. Defence counsel and J. B. King (defending himself) made not-so-gentle fun of the police witnesses by challenging them to repeat passages read to them in court of similar length to the passages they claimed to remember of the prisoners' speeches in the Domain. The police witnesses failed this test.

But this was by-play. Let the alleged speeches—or something which vaguely resembled them—stand* and what do they amount to? The language of the revolutionary movement is always violent; its imagery is of storm and flood and earthquake and fire. That the I.W.W. men used these metaphors might have indicated their hopes of creating disaffection, but did not necessarily connect them with arson. As Charlie Reeve said, when he was about to be sentenced:

'Perhaps in some of my moments as a speaker, I may have committed myself in what *you* may call seditious conspiracy, but I wish it to be remembered by all who hear me that as for arson, before God, I had nothing to do with it.'

So it is to the allegation of arson that we must turn, and we will test it in three ways.

Firstly, the case against the Twelve stands or falls on the evidence of the four principal Crown witnesses, Davis and Louis Goldstein, Scully and McAlister. If their original evidence was credible, then the Twelve (or most of them) were guilty. Their credibility will be tested in two ways: the relations between the witnesses and the police, and the relations between the witnesses and the alleged crimes.

Secondly, Australian criminal law (following the British model) requires that an accused person must be found guilty, beyond reasonable doubt, of some specific and particular offence against the law, before he can be convicted and sentenced. So we must ask: does the evidence available to us establish beyond reasonable doubt that the I.W.W. Twelve, or any of them, were guilty of setting fire to particular buildings in Sydney, or of joining in a specific conspiracy to set fire to buildings? Since every accused man must stand his own trial, it will be necessary to examine one by one the case of these twelve men (or rather eleven, since J. B. King was convicted only of seditious conspiracy).

Thirdly, we will examine the fires themselves, to see whether what is known about their origins links them with the Twelve.

And finally, having tested the evidence in these ways, we will look briefly at some admissions made by the Goldstein brothers about their knowledge of the guilt or innocence of the Twelve.

Only then, when this analysis has been made, will it be time for me to state my own conclusions. They will be the conclusions of an historian and not those of a lawyer. Confronted with a vast

* In fact, Mr Justice Ewing found that there was no adequate evidence to convict six of the Twelve on this charge, but that the remaining six had been properly convicted.

amount of evidence of various degrees of credibility, I have not asked what, in terms of the laws of evidence, is admissible, but what appears most credible—or sometimes least incredible—and what provides the most coherent account.

What appears credible and coherent to me is naturally determined by my assumptions as to social institutions and to human nature, and perhaps it is important to make some of these explicit here. I start from the propositions that:

The history of the labour movement demonstrates that, whatever arguments may occur over individual cases, radical agitators are likely to be removed from the body politic by being framed for crimes they have not committed.

Some policemen manufacture evidence and frame criminals, and in doing so commit perjury, and some policemen are corrupt; ministers of the Crown and senior public servants are sometimes party to, or cognisant of, such concoction or corruption.

The police forces are socially conservative institutions, staffed overwhelmingly by conservative men.

Most men are subject to the conflicting pulls of personal interest and social conscience; if the contradiction becomes acute, personal interest usually wins.

Australian institutions and men have no special claims to innocence in these respects.

Given these starting points, I have set out to analyse the evidence against the Twelve as objectively as I can. And in case prejudice is argued against me, I should say that the conclusions which I have reached are considerably less favourable to the Twelve than those which I had anticipated before I began this study.

The Witnesses

THE GOLDSTEINS AGREE TO GIVE EVIDENCE

In a criminal case, the credit of a witness—and therefore the credibility of his evidence—may be shaken, or even destroyed, by the suggestion that the witness had some ulterior motive, other than the desire to tell the truth, in giving the evidence he did. Evidence should not only be true, but should appear to be true, and the appearance of truth may be severely damaged, or even destroyed, if it can be established that a witness has an obvious self-interest in the story he tells. This is the problem of the Goldsteins.

To recall the association of the Goldsteins with the forgery case, as it publicly appeared: on September 8, 1916, Davis Goldstein was arrested on a charge of forgery. The following day Louis Goldstein was also arrested. They were remanded and released on £400 bail. During the preliminary hearings, the principal Crown witness (one of the accused who had turned King's evidence) gave only hearsay evidence against the Goldsteins. Louis was discharged, but Davis was committed for trial and released on £800 bail. Three weeks later, Davis gave evidence against the Twelve—most importantly, that Jack Hamilton had, on September 15, 1916, enlisted him as a 'fire-bug' and given him some fire-dope which he and Louis had promptly taken to the police. When the forgery case came up for trial a fortnight later, the Crown announced that it was entering a *nolle prosequi* in the case of Davis Goldstein.

On the face of it, it seemed probable that there had been a deal. If the defence could establish that the Crown had come to an agreement with Davis Goldstein to withdraw the forgery prosecution on condition that he gave evidence against the Twelve, it must have thrown considerable doubt on his evidence.

Goldstein himself strenuously denied the existence of any such agreement, as did the police. Goldstein's story was that, while he was out on bail, he had met Jack Hamilton at the I.W.W. rooms; that Hamilton had sympathised with him, told him of the I.W.W.'s use of arson as retaliation against the master-class, and

offered to get him some fire-dope; that he had picked up the fire-dope from Hamilton later that day. As a good citizen, he was horrified by the threatened wholesale destruction. He resolved to 'save the city from a catastrophe'. He picked up his brother Louis and took both his information and the fire-dope to the detective office, where he and Louis saw Detectives Pauling and Turbet. There was no question of a deal with the detectives. He had not approached them before this day; his brother did not know in advance that he intended to go to them; he had no knowledge that his brother had already approached them.



Davis Goldstein



Louis Goldstein

By courtesy of the Public Library of New South Wales.

It was a plausible story, and it was initially supported by Louis Goldstein and the detectives. The only trouble was that, as more and more evidence was produced before Mr Justice Street, it became clear that it was not true. What had really happened was this.

Late in August 1916, the police arrested Fred Morgan, a leading I.W.W., on a forgery charge. He was released on £400 bail. The nominal bailor was one Morris, a clerk in the office of

Morgan's solicitor. In fact, the money was put up by Davis Goldstein. (Goldstein later claimed that he had supplied the money under duress from Tom Glynn, but there was no other evidence to support this.)

When Davis and Louis Goldstein were arrested on the forgery charge on September 8-9, they were also released on £400 bail. The money was originally supplied by their publican friend, 'Little Tich' Lazarus, but on September 10 another friend, Meyer Crook, took over from Lazarus as bondsman for Davis Goldstein, leaving Lazarus with one bond of £400.

The evidence against the Goldsteins in the forgery case was that several of the accused had identified them as being present at 'Iona' while the forged notes were being manufactured; and that it was said among the forgers that the Goldsteins had given Fred Morgan the money to finance the scheme. Against Davis, there was the additional evidence that in his pocket diary, found on him when he was arrested, was written one of the serial numbers used for the forgeries.

As to the serial number, Davis at first had no explanation, but later remembered that 'Little Tich' Lazarus had told him that a forged note had been passed in the pub and had given him the number. (In view of Lazarus' role in the case, this story may perhaps be treated with reserve.) As to the identification, Goldstein said that he had heard from his fellow accused that this was rigged by the police; but there was nothing to support this, and in the event no direct evidence was offered against him.

The Goldsteins consistently denied any knowledge of the forgeries; beyond this, Davis specifically denied that he even knew that it was alleged that they had financed the forgeries. Against this might be put the evidence of David Nord, a Swedish seaman, who said that Davis had offered him £500 to get him a berth on a ship out of Newcastle during the police court proceedings in the forgery case. (Goldstein admitted the discussion with Nord, but said that he had been merely fishing for information about Fred Morgan, whom he believed Nord to have helped to escape.)

The Street Commission investigated at length the allegations that the Goldsteins had financed the forgeries.

Detectives Turbet, Pauling and S. Mitchell were in charge of this inquiry. They took possession of the Goldsteins' books. They questioned the Goldsteins about their outgoing payments, but said that they were satisfied with the explanation that these were on account of wages and betting losses. And they claimed that they had approached the Goldsteins' bank manager for information,

but that the manager had refused to provide any unless he was subpoenaed.

The detectives' investigations showed up in a poor light before the Street Commission. An examination of their financial records showed that the Goldsteins had withdrawn nearly eight times as much from their bank account between March and July, 1916 (when the forgers were doing their preliminary work) as they had in the previous five months. There was no satisfactory explanation for this—the Goldsteins' wages bill had not changed substantially, and, when Davis provided a detailed account of betting transactions, it was shown to be fraudulent.

The bank manager denied that the detectives had approached him for information. The detectives were caught out in a lie on this—Mitchell denied, but Turbet admitted, that the two of them had discussed the evidence they would give on this point before they went into the box.*

Finally, it is significant that Detective Turbet did not include any reference to the allegation that the Goldsteins had financed the forgeries in the summary of evidence he gave to the Crown Prosecutor, Mr Bathgate, before the case opened. Mr Bathgate said that, since the Crown Solicitor had instructed him not to raise the matter of Davis Goldstein providing Morgan's bail, he had not inquired into the Goldsteins' financial affairs.

Mr Justice Street was not happy with this aspect of the case. 'The attention bestowed upon [it] does not reflect very much credit upon any of those concerned,' he reported. ' . . . I cannot avoid coming to the conclusion that the detectives accepted too readily what the Goldsteins told them, and that their investigation was of a very perfunctory character.'** There was a great deal of money (some £800) unaccounted for, but Mr Justice Street could not establish where it had gone: 'The matter is left in obscurity.'†

From the evidence before the Royal Commission, we know that the detectives' investigation of the Goldsteins' financial affairs

* Of this, Mr Justice Street said: 'One knows that witnesses very often untruthfully deny that they have talked over their evidence before coming into court, and the question is very often put for the purpose of testing veracity; but one does not expect to find a detective officer resorting to a clumsy lie of this kind.' He concluded that Mitchell had lied, but did not go on to speculate why. Two possibilities are that Mitchell wanted to cover up the inadequacy of his investigation of the Goldsteins' finances, or that this was part of a general scheme to conceal the Goldsteins' links with the forgeries.

** However, the Commissioner also said: 'I do not attribute any intentional neglect, based on improper motives, to the police in this respect.' He was more inclined to hold the Crown Prosecutor responsible for the failure to bring the matter out.

† Scully's story was that Davis Goldstein had supplied £400 or £500 to finance the forgeries, and had agreed to give evidence against the Twelve when it became apparent that his brother and sister would be implicated in his crime.

was proceeding at the same time as the negotiations for the Goldsteins to give evidence against the Twelve—but Mr Justice Street did not pose the question of just why these investigations were of 'a very perfunctory character'.

Davis Goldstein told Mr Justice Street that he first heard of I.W.W. incendiarism on September 7, the day before he was arrested—that one of the Wobblies had revealed that he intended to fire a city store, and that he (Goldstein) had 'strongly advised' against it. About this date, too, Goldstein provided the police with information which purported to link Bob Besant, one of the Twelve, with the forgeries.

On September 11, two days after his arrest, Louis Goldstein went to see Detectives Pauling and Turbet. He offered to get information from his brother Davis 'about the I.W.W. and the fires that were taking place', if his name could be kept out of the forgery case. Later in the day, the two detectives saw Davis Goldstein, who told them that the I.W.W. were starting fires with phosphorus, and that, 'being in the confidence of members of the I.W.W., he was in a position to find out what was being done'. Davis offered to get more detailed information, and the detectives told him to go ahead. Davis also told the police that Harry Scully had lectured to the I.W.W. about chemicals. It was presumably on this occasion that Pauling told Davis that 'the police would do their very best to conserve our contracts'.*

On September 12 or 13, Davis Goldstein told the detectives that Hamilton was the principal distributor of the fire-dope, and that Teen was his go-between. To test his credibility they instructed him to try to get some of the dope.

On the morning of September 14, Louis Goldstein went to his solicitor, E. R. Cohen, and told him that he and his brother had information about the fires. They had discussed the matter and decided that, as loyal citizens, they should tell the police.

The solicitor took the two Goldsteins to see their counsel, Messrs Gannon, k.c., and F. S. Boyce. The story about the fires was repeated, and Davis said that he could get a bottle of fire-dope. (It is perhaps significant that this was the day *before* the alleged meeting between Davis Goldstein and Jack Hamilton, at which the

* Detective Pauling did not reveal this meeting with the Goldsteins at the trial, nor in the early stages of the Street Commission. It came out only when the police were ordered by the Commissioner to produce their internal documents concerning the affair. Mr Justice Street, however, found that 'I see no reason to suppose that [Pauling's] mis-statement was a deliberate lie, nor can I extract from it, when read in connection with the other facts of the case, any indication of a desire to give false evidence or improperly to shield the Goldsteins.' But the shield here covered not so much the Goldsteins as the police case against the Twelve.

latter offered to hand over some dope.) Gannon advised them to take their information to the police. According to Cohen's recollection, Louis Goldstein at this time mentioned a specific confession by Teen of his knowledge of the fires; Mr Boyce on the other hand thought they had spoken only in general terms.

At this interview, the matter of Morgan's bail also came up. The police had known that the Goldsteins had provided Morgan's bail money from the time they arrested Davis on September 8. Cohen's original advice had been that they should withdraw their bail, lest this connection with another prisoner should prejudice their defence. However, when Gannon heard Davis's story of the I.W.W. and the fires, he recommended that the bail should not be withdrawn lest Davis prejudice his sources of information in the I.W.W. Despite this, Davis told Detectives Pauling and Turbet the next day that he thought Morgan was going to abscond. The two detectives reported this to Superintendent Walker, who suggested that Morgan be re-arrested. (Mr Justice Street later commented: 'I do not know why he [Walker] did not insist on this being done.') However, Pauling and Turbet didn't agree. According to Davis, 'they told me that it would be inadvisable [to withdraw from my bond], as members of the I.W.W. would suspect that I had dealings with the police, and it might prejudice my position in securing information *re* fires and the I.W.W.' The detectives went to see Morgan's nominal bailor, Morris, who ridiculed the whole idea, saying that he had an appointment with Morgan the next day. Morris later said that Morgan kept this appointment. However, Morgan failed to answer to his bail two days later, and Davis Goldstein's £400 was forfeited to the Crown.*

On the day after the interview with his lawyers, Davis Goldstein also reported to the police on his conversation with Hamilton, and handed over the parcel of fire-dope. (This was the occasion which the police and the Goldsteins later suggested was their first contact.) Louis Goldstein said that he had asked to see Detective Pauling.

Windeyer: 'Why?'

Goldstein: 'Because he was the man we were doing —.'

Windeyer: 'Doing business with?'

Goldstein: 'No.'

Windeyer: 'What were you going to say?'

* This became one of Davis Goldstein's most bitter grievances. His repeated applications for the refund of his £400 were unsuccessful, Superintendent Walker opposing its return on the grounds that Goldstein's action in finding the bail money in the first place had enabled 'the arch-criminal . . . to escape'!

Goldstein: 'He was the man we had mostly to do with.' [I.e. in the forgery case.]

However, a few minutes later, Goldstein denied that there had been any discussion of the forgery case at this interview.

According to police evidence, Davis told the detectives on September 21 of a conversation with Tom Glynn, in which Glynn acknowledged the I.W.W.'s responsibility for the fires. On September 22, the Goldsteins met Pauling and Turbet at 'Little Tich' Lazarus' hotel, and Davis told them that Fagin had told him about Scully supplying the dope. That night, Teen talked to Louis Goldstein about the fires; Louis passed this on to Turbet the next day and to Pauling on September 25.*

Throughout these weeks, there were almost continuous discussions between the Goldsteins, their lawyers, the police and the Crown Law authorities. On one occasion, Detective Pauling told the Goldsteins' solicitor just what evidence Davis Goldstein could give—if he wanted to. On another, Goldstein refused to give any further information unless the charge against him was withdrawn. On another, the Goldsteins' counsel told the Crown Solicitor that Davis knew of a 'plot to burn down the whole of Sydney', about which he would be prepared to testify—provided that the forgery charge was dropped.

According to police evidence, on October 3, without any promise being given, Louis Goldstein agreed to give evidence in the I.W.W. trial, regardless of what Davis did. This was already a fortnight after he had been discharged in the forgery proceedings—but the case against Davis was still pending, and the police were still holding the Goldsteins' financial records. Again without any promise being given, on October 13 Davis voluntarily saw the Crown Solicitor and announced that he too would give evidence for the prosecution. He gave his evidence against the Twelve, and his *nolle prosequi* followed on the day he was due to stand his trial, October 23.

Despite this sequence of events, all parties agreed that there had been no bargain. The police insisted that they had done all they could to get a conviction against the Goldsteins in the forgery case, and had never held out any hopes that the prosecution would be discontinued. Davis Goldstein said that he did not even know that any negotiations between the Crown and his legal advisers were taking place. The Crown Solicitor said that he had refused to do a deal. The Attorney-General said that he had directed that

* Louis was confused about the date of this report, putting it a fortnight later. This is discussed in relation to Teen's case.

there should be no promise of a *nolle prosequi*. Definitely there had been no arrangement.

What really happened came out before the Street Commission. Even after Davis Goldstein had given his evidence in the I.W.W. case, the Crown still refused a *nolle*. The Crown Solicitor said that this was because he was not satisfied that Goldstein had told all that he knew. After more negotiations, Goldstein made a further statement on October 20 (it concerned Besant's alleged participation in distributing forged notes). The same day Mr Lamb, K.C., advised the Attorney-General that he thought it advisable that a *nolle prosequi* be filed. The Attorney-General concurred.

The Crown Solicitor said that the Crown had been guided by Mr Lamb's view as to 'what was in the best interests of justice taking both cases into consideration'. Mr Lamb said that he had advised that no bargain should be made—the problem was whether the Crown should proceed with the forgery prosecution and lose Goldstein's evidence in the I.W.W. case, or enter a *nolle prosequi* in the forgery case, leaving it open for Goldstein to refuse to give evidence in the I.W.W. case. He thought it best to leave the matter open. However, his view of the evidence was that there was no chance of convicting Goldstein on the forgery charge (he knew nothing of the Goldsteins' finances), and that therefore there was no point in running the risk of losing his evidence in the I.W.W. case. Accordingly, once Goldstein had committed himself, the Crown might enter a *nolle*. Even so, this was left until the last possible minute, and the police held the Goldsteins' financial records until after Davis had been discharged.

In Superintendent Walker's view, Davis *nolle* was an *ex gratia* payment for services rendered. In a report dated January 14, 1918, he wrote: '. . . as [Goldstein] offered, and subsequently gave valuable evidence for the Crown, . . . the charge against him was not proceeded with.' But there had been no deal.

Others on the Crown side were, in private, equally definite that there had been a deal. There was, for example, the letter (produced before the Street Commission) written by the Clerk of the Peace to the Solicitor General on January 16, 1917:

'Goldstein himself was committed for trial on the bank-note charge, but the Crown did not proceed against him on the condition that [he] gave evidence against the accused in the I.W.W. conspiracy case. There is no question that Goldstein was implicated in the [forgery]; and there can be little doubt that he gave evidence in the conspiracy case to save himself from the consequences of his participation in the forgery.'

Mr Justice Street did not find directly on the matter, commenting only:

'The question whether the Goldsteins were or were not to be prosecuted in the note forgery case, or whether any bargain was to be made with them in the matter of giving evidence in the I.W.W. case, was not a matter which rested with the police.'

This was, of course, formally true; it was up to the Crown to decide whether it would prosecute or not. But the Crown sought the advice of the police in these matters; and in any case, the police had (and used) a wide discretion in deciding what evidence should be given against the Goldsteins, and there was certainly nothing to stop them going easy on the forgery charges in return for assistance in the matter of conspiracy. The evidence suggests that this is what they did.

The existence of a deal of this kind does not, of course, prove that the Goldsteins' evidence was false. Nor does the fact that the detectives attempted to conceal the truth of their relations with the Goldsteins. But the Goldsteins' precarious position at least made them extremely vulnerable to police pressure.

THE GOLDSTEINS SHOOT THEIR MOUTHS

The preliminary proceedings in the forgery case were heard on September 19, 1916. Louis Goldstein was discharged. Davis was committed for trial and released on bail of £800. Meyer Crook and 'Little Tich' Lazarus became his bondsmen, at £400 each.

On this day, after he had been discharged, Louis Goldstein returned to his factory. According to Edward Thompson, a cutter in his employ, Louis said that his brother could get out of the charge too—if he did what the police wanted; but 'Davis will see them in hell first'. But, as Mr Justice Street pointed out, this did not carry any necessary implication of perjury; the police may merely have wanted Davis to tell the truth.

That evening, Louis went to 'Little Tich' Lazarus' hotel with Davis' bondsman, Meyer Crook, and a friend named Simon Karpinsky, to celebrate. Karpinsky told Mr Justice Street that, at the hotel, Goldstein said to Lazarus: 'Well, it turned out as you said.'

Harry Lachter, a tailor's presser who was working for the Goldsteins at the time of the trial, told Mr Justice Street that he had seen Davis Goldstein at the Randwick house of one of the Karpinsky brothers on the Sunday before Goldstein gave evidence against the Twelve.

Goldstein told Lachter that he was going to give evidence against the Twelve. Asked why, he said that he was in trouble about the £5 notes.

Lachter said: 'Surely, if you are in trouble, you don't want to get other people into trouble?' Goldstein replied that he was a materialist and didn't care if the world went down so long as he got on. He told Lachter: 'You can give evidence, too, and get money.'

Lachter declined this offer.

On the Day of Atonement, an important Jewish religious festival, which fell between the preliminary hearing and the opening of the trial, Karpinsky, his brother and his brother-in-law met Davis Goldstein at the synagogue. On Goldstein's suggestion, they went to Lazarus' hotel for a drink.

Karpinsky told Mr Justice Street that Goldstein had asked Lazarus: 'Well, how do you think I will get on?'

'You need not worry,' Lazarus replied. 'I have told you, and it actually happened like that, that Louis will come out and you will be committed for trial. . . .'

Goldstein commented that he had to face a jury.

'Oh, you will never face a jury,' Lazarus said, 'you will come out all right, but you cannot come out yet.'

As they were leaving the hotel, Karpinsky asked Goldstein whether he could depend on what Lazarus had said. Goldstein gave Karpinsky to understand that Lazarus was working on his behalf with the police, and said that it had cost him £750 already.

Of this episode, Mr Justice Street said:

'These witnesses are of humble origin, and they are evidently in poor circumstances, but, so far as I know, nothing is known against them. They do not impress me however as men of a very high level of intelligence, and I do not think that it is probable that Davis Goldstein and Lazarus would talk so freely as they are reported to have done, and in any event this evidence carries the case no further against the police. Obviously, it is not evidence on which they can be convicted of accepting bribes. . . .'*

Mr Windeyer described these witnesses as 'simple, childlike people, evidently anxious to tell the truth'. The Goldsteins claimed that their evidence was wholly fabricated.

* Of this comment, H. E. Boote wrote, in his pamphlet *Set The 12 Men Free*, 'Than that, a more flagrant example of what may be described as "snob-consciousness" I have never met. . . . A snobbish bias of mind is indicated by that "but". It suggests that men who are poor and humble might reasonably be suspected of having a dis-creditable record.' He went on to say that Karpinsky and his friends were neither lacking in intelligence nor particularly poor.

THE GOLDSTEINS AND BRIBERY

The evidence of Karpinsky related directly to an allegation made by Davis Goldstein in his statutory declaration of July 18, 1918, that he had paid over £750 to a go-between for the detectives in the forgery case, 'to make things run smooth'. The go-between was 'Little Tich' Lazarus, the original bondsman for the Goldstein brothers.

There is no doubt that the Goldsteins paid over a great deal of money to Lazarus. Their story was that on September 12, 1916, Louis had given Lazarus £600, as security for the bail.* But this was two days after Meyer Crook had taken over Davis' bond from Lazarus, leaving him responsible only for Louis' bail of £400. Davis could not say why Lazarus should have been paid £600 as security for an obligation of £400. (Lazarus' obligation on behalf of the Goldsteins continued to be £400, for at the same time as he was released from his bond in respect of Louis, he took over the £400 additional bail ordered for Davis when he was committed for trial.)

Lazarus paid the £600 into his bank. On the same day, he withdrew £250. Davis was asked why Lazarus would have paid out money he had received as security; he said he didn't know and agreed that there were no races on that day. On October 19, while Lazarus was still liable for his bond (this was after Davis had given evidence against the Twelve, but four days before the Crown entered the *nolle prosequi* in the forgery case), he paid out another £250.

The Goldsteins also paid £200 to Meyer Crook, Davis' other bondsman. He repaid this on October 11—before Davis' evidence in the I.W.W. case. The Goldsteins put the £200 back in their bank.

What happened to Lazarus' £600? The publican said that he had paid the two lots of £250 back to the Goldsteins because they wanted money for legal expenses, or 'something to that effect'. This was clearly false; they could not have wanted the first £250 back the same day as they paid it over. The Goldsteins said, on the other hand, that Lazarus had repaid the whole £600—still in cash—in two lots of £250 and one of £100. Louis had asked Lazarus for it, although he had £1,000 in his own account at the time. The money had not gone back into the Goldsteins' bank; Louis had backed the same horse twice in one week, but it had run second both times, and he had lost £500. (There were no records of these bets, and, besides, the dates did not fit.)

* The £600 was paid in cash. Asked whether this was so that it could not be traced, Louis Goldstein replied: 'Not necessarily.'

This story was wide open to attack. There was a discrepancy between the £750 Davis had told Judd he had given Lazarus (saying that Lazarus had paid £600 to the detectives while the other £150 had 'stuck to his hand') and the £600 that Lazarus acknowledged receiving. But there was still a large sum to be accounted for. The defence plumped for bribery.

Mr Justice Street proceeded to examine the financial affairs of the detectives. There was no evidence that any of them had received any bribes. The fate of the Goldsteins' £600 remained, as Mr Justice Street said, 'shrouded in mystery'.*

THE GOLDSTEINS AND THE DETECTIVES: SIX SUITS OF CLOTHES

One of Davis Goldstein's allegations against the detectives was that, after the forgery case, the six detectives most intimately concerned 'put it on' him and Louis for free suits of clothes. Mr Justice Street set out to establish the truth of this affair.

There was no question that the detectives had each received a suit, what was at issue was how they got them. It began, according to Louis, when Pauling and Surridge came to the Goldstein factory. 'The question of clothing cropped up, and they asked me whether I could make a good suit. I told them I could introduce them to a man who could make a real good suit.' . . . †

Louis referred the detectives to a tailor in a small way of business, named Lazarus Pura, who had previously made suits for the Goldsteins. He saw Pura and got a quote of £5 a suit. He arranged with the police that they should pay him five guineas, and he arranged with Pura that the receipts be sent direct to the detectives for 'the usual amount the suits would cost'. Six detectives got suits from Pura and paid him (Louis) their five guineas each, in cash, which he banked. He had told his brother, Davis, about this arrangement at the time.

The detectives involved—Pauling, Surridge, Turbet, Mitchell, Hooper and Miller—gave a different account. Setting aside some minor internal inconsistencies, it came to this: they had, on various

* One suggestion (from the police side) was that it had gone to Tighe, the principal witness for the prosecution in the forgery case, to ensure that he failed to identify the Goldsteins. Louis Goldstein denied this. The Crown Solicitor said that he had decided to use Tighe as a Crown witness because he 'was not so much involved' in the forgeries as the others. He had thought that Tighe would have been able to identify the Goldsteins as having been present at the Maroubra cottage where the forged notes were printed, but, in the witness box, Tighe 'could not or would not' identify them.

† Mr Justice Street asked Pauling how he came to have dealings with a man like Louis Goldstein. Pauling replied: 'Well, Goldstein was a business man, and he was not, as far as I know, connected with the note cases or with anything dishonest.' This was on the first day of the Commission. Later, under cross-examination, Pauling and the other detectives conceded that they believed that Louis had been involved in the forgeries, even if not so deeply as his brother, and that they were at least 'unwise' in doing any sort of business with him.

occasions, met Louis Goldstein after the forgery case, and Goldstein had in each case (sometimes after commenting disparagingly on the suits they were wearing) suggested that they should go to Pura who would make them suits at wholesale price. Goldstein would arrange the deal, and they should pay him their five guineas. The receipts would, however, come from Pura, and were to be for the usual price.

The major difference between this story and that of Goldstein was on the point of who took the initiative.

However, Lazarus Pura, the key man, told quite a different story, Pura was a young tailor, who ran his own business at the Harbour end of Castlereagh Street. He had never been associated with the I.W.W. He said that the Goldsteins had come to him and told him to make suits for six detectives for which they (the Goldsteins) would pay. The Goldsteins subsequently paid for six suits (and for one each for themselves) at the full price of £6 to £6 10s., in three cheques which he banked. At Davis Goldstein's suggestion he gave receipts to each of the detectives, for five or ten shillings more than he was paid. His financial records confirmed his account.

Late in July 1918—after the Government had agreed to grant an inquiry into the I.W.W. case, but about three weeks before it opened—Detective Turbet again went to Pura to order a suit.

Pura's story was that, in the course of ordering his suit, the detective said: 'You will do me a great favour if you say I paid cash.' He replied that he could not do that, because he could be prosecuted for perjury. Turbet commented: 'Well, the only thing for us to do is to say that we paid the Goldsteins.'

Turbet's account was different. Pura had wondered whether Davis Goldstein might reveal that he and his brother had paid for the detectives' suits. Turbet had replied: 'If he did, I don't know what harm he could do, but in any case if they do ever ask any questions, you simply tell the truth . . . that Goldstein paid you for my suit.'

It was a confused story, which Mr Justice Street found contained 'a number of very suspicious features'. He rejected the Goldsteins' story completely, as indeed he had to. The written record showed that the Goldsteins had paid the full price for the suits. And Louis' claim that he had banked the money he had received from the detectives was shown to be false when the record of his account was produced and showed no such deposit.

Turning to the story told by the detectives, Mr Justice Street found that there were 'difficulties in the way of accepting that', as well. The price of five guineas was not so far below the normal retail price as to be very attractive, and it was odd that all six detectives should have happened to want new suits at just this time. It was strange, too, that 'men of the world', like these detectives, should engage in business dealings with the Goldsteins, knowing their reputation, without taking the precaution of establishing the precise nature of the transaction through documents.

On Turbet's recent visit to Pura, Mr Justice Street found that it was not necessary for him to decide whether Turbet had revealed to the tailor that the police intended to perjure themselves. His task was to determine whether the police had in fact given false evidence, and on this he found:

'I am not free from doubt, but I am inclined to think that they have. I hesitate to come to the conclusion that they added to the comparatively venial offence of taking a small present from the Goldsteins the more serious offence of combining to swear falsely in order to conceal what they had done, and yet, on the other hand, there are features in the case which prevent me from feeling that I can safely and satisfactorily accept their story.'

On the evidence, there is no doubt that the Goldsteins—whether on their own initiative or on that of the detectives—had simply arranged to give each of the detectives who had been intimately concerned with the forgery case a new suit of clothes, and that they had further arranged with their tailor, Pura, that the receipts should go to the detectives, to cover up this highly improper gift. There was, at the time, no reason to think that the transaction would ever become public, but the receipts were a sensible precaution.

There the matter rested until July 1918—just before the Street Commission—when Davis Goldstein gave Judd his statutory declaration, which included the story about the six suits.

It was obvious that, as soon as the inquiry was announced, the police would set about discovering what charges they would have to meet. It is known that they had the opposition under observation. Turbet's visit to Pura, following immediately on Davis Goldstein's visit to Judd, demonstrated to Mr Justice Street that Turbet was 'uneasy in his mind'. A less sympathetic approach might have found it a clear admission of guilt.

Before the Commission, Goldstein said that he had invented the story that the detectives 'put it on him' for suits, for his own

purpose of revenge, and that he had gone to Pura as a friend and asked him to 'make it hot'. Pura throughout denied that his story was concocted, and Judd denied Goldstein's allegation that he knew that Pura was lying.

The tale of the detectives and the six suits is significant for this reason: if Mr Justice Street was right, and both the detectives and the Goldsteins lied, they must have colluded for their stories were very much the same. And if they conspired to perjure themselves in this, why should they have not similarly conspired to perjure themselves in the case of the Twelve?

And, conversely, if Davis Goldstein had told the truth about this episode in his statutory declaration, why was the rest of this document dismissed out of hand?

THE GOLDSTEINS AND THE DETECTIVES: THE WYONG PUB

Soon after the episode of the suits, Louis Goldstein nominated Detectives Turbet and Pauling as references in support of his application for the licence of the hotel at Wyong. Turbet obliged with a favourable report and Goldstein got his licence.

The two detectives were pressed very hard on this before Mr Justice Street. Both admitted that they still believed that the Goldsteins were implicated in the forgeries.

Mr Justice Street was scathing. Louis Goldstein's selection of Turbet and Pauling as references struck him as 'savouring of considerable impudence, or surprising confidence'. As to Turbet's action in supplying the favourable report, he wrote:

'Knowing what Turbet did of the extent to which [Goldstein] was said to be implicated in the forgery scheme, and knowing how important it is that men who hold publicans' licences should be men of good character and respectable associations, I am surprised that he should have looked upon him as a fit and proper person to hold a licence, or that he considered that he was furnishing such a complete statement of the facts as to his past career, so far as he knew them, as to enable the licensing authorities to form a proper judgement. . . . The circumstances suggest a misconception of his duty or an indifference to the proper performance of it, either of which calls for strong condemnation.'

In the light of the reference Turbet supplied for Louis Goldstein, 'confidence' seems a more appropriate word than 'impudence' to describe Goldstein's nomination of the detective. And, in the light of their other dealings, it was hardly 'surprising'. Turbet's action was part of a pattern of relations between the Goldsteins

and the detectives of a degree of intimacy which Mr Justice Street was never prepared to admit. For to admit this would have meant jeopardising the whole of the Goldsteins' evidence against the Twelve.

SCULLY THE ACCOMPLICE

Scully from the beginning had a foot in both camps. As well as his friendship with the Wobblies, he maintained a close association with Detective Arthur Surridge, whom he had known of in Queensland before the war and had met in Sydney in 1914. Scully agreed that he and Surridge were 'pretty intimate'; the detective would go no further than to say: 'I was friendly with the man . . . there was nothing intimate between us.' Whatever the case, both agreed that they did not talk about the I.W.W. until Scully was picked up for questioning by the police, seven days after the first of the Twelve were arrested.

The police were on the lookout for the source of supply of the chemicals used in the fire-dope. They knew that Scully had lectured to the I.W.W. on chemicals a couple of years earlier, and presumably they had him in mind. On September 21, Detective Robertson was keeping an eye on Cole's chemist shop, where Scully worked. He fell into conversation with a rather drunk Wobbly, who told him that Scully was still mixed up with the I.W.W. Robertson's interest grew. He told Scully's friend Surridge, who was just back from Melbourne, about this on Saturday, September 23, and they decided to keep a watch on Cole's shop.

Meanwhile, on September 22, Davis Goldstein reported to Detectives Pauling and Turbet that Fagin had told him that Scully was the source of supply. This information was reported to Walker. Robertson and Surridge were assigned to watch Cole's shop from September 25.

That afternoon, Cole saw Robertson outside the shop, and went out to express his concern. He told Robertson that Scully had ordered and sold quantities of carbon bi-sulphide and phosphorus.

Presumably Cole also told Scully that the police had him under observation. Whether this was so, or whether Scully had himself seen the police, or (an outside chance) had been tipped off by his friend Surridge, or whether he had been frightened by the raids of September 23, Scully took two steps. He warned Fagin that they were in danger, and tried to recover the phosphorus from him; and he contacted his solicitor and asked what he should do. The reply was: turn King's evidence, which was what Scully in fact did, when

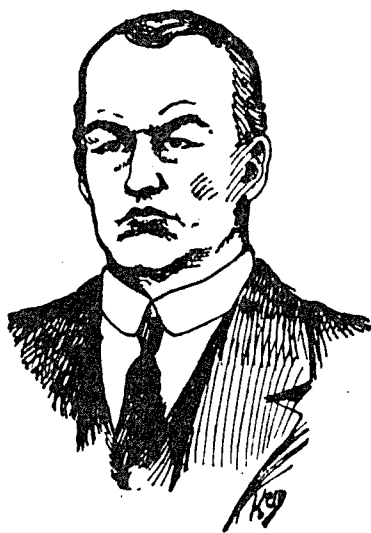
Detectives Robertson and Surridge picked him up on the morning of September 30.

Scully defended his position as best he could. He had, he said, instructed his solicitor to contact the police and tell them that he was willing to talk. Unfortunately, this message had gone astray.

But, no matter how he juggled, he could not rid himself of the chemicals he had supplied. He tried hard to establish that he had supplied phosphorus only after the crop of attempted fires between September 8 and 12. It was only then, he said, that he realised definitely that the chemicals ordered through him were to be used to create fires. But, even on the best of the conflicting stories he produced, he had to agree that he had supplied phosphorus to Fagin and carbon bi-sulphide to Beatty after he had realised that it was his duty, as a good citizen, to report what he knew to the police. He was, he explained, 'very mixed' at the time.



Mr Richard Windeyer, K.C.



Henry Christopher Scully

By courtesy of the Public Library of New South Wales.

The simple fact is that Scully was an accomplice. On his own story, he had supplied Fagin, Teen, Hamilton and Beatty with chemicals and instructed them in their use. His primary concern was, as the Crown Solicitor said, to save his own skin.

There can be little doubt that, had he not turned King's evidence, Scully would have been convicted of arson conspiracy. He was buying immunity, and his evidence, therefore, is subject to grave doubt.

McALISTER THE INFORMER

McAlister's role was that of a paid informer. To obscure this, he concealed his close association with Detective George Fergusson and his membership of the I.W.W., and denied that he had been paid.

Fergusson was a cousin of McAlister's son-in-law. McAlister met him a year or so before the arrest of the Twelve. The detective took a liking to the wharfie. McAlister often called at Fergusson's home. But, according to the detective, they never spoke of McAlister's work on the waterfront, of his political views, or of the I.W.W.—until September 3, 1916, when McAlister came to Fergusson with his story about the I.W.W. plot to burn down Sydney.

Whether this was true or not, McAlister was almost certainly lying when he said that he had only joined the I.W.W. on Fergusson's suggestion, after he brought in the dope he got from 'Andrew'. His name appeared on the I.W.W. membership lists in a position which made it likely that he was a member long before the date he gave. Fergusson himself agreed that McAlister had said only that he was 'unfinancial' in the I.W.W.

McAlister was at first reluctant to give evidence, claiming that he feared reprisals. However, he finally agreed. Scully maintained that McAlister had told him that Superintendent Walker had said that he (McAlister) would not get a cut of the reward unless he gave evidence. Walker denied this.

McAlister's evidence implicated McPherson, Moore and Teen. He also swore at the trial that he had had no money from the police; in fact, he was on the police payroll from sometime in September. And, of course, he later received £250 of the reward money.

In his statement to Judd, Scully had told an interesting story about McAlister. During the trial, McAlister and Fergusson spent a week-end at a hotel at Moss Vale, south of Sydney. The New South Wales Chief Secretary, Fuller, was in the hotel on the same night. According to Scully, McAlister told him that he had talked over the case with Fuller, and that Fuller had told him to get stuck into the Wobblies, saying: 'This case is going to win us the conscription campaign and also the elections.'

The Chief Secretary conceded that he had stayed in the same hotel as McAlister and Fergusson—indeed, he could hardly deny it, as all three names appeared on the hotel register. It was, he said, where he always stayed when he visited Moss Vale. He had seen the detective but had not asked his business. He had never spoken to McAlister.

McAlister may have been big-noting himself. However, whatever the truth of that, there was at least clear evidence of a much closer relation between McAlister and the police than either side admitted.

THE JUDGE AND THE WITNESSES

These were the principal witnesses against the Twelve—two buying immunity from a charge which could have earned them up to fourteen years' gaol, one a confessed accomplice, and one a paid informer who had lied about his situation.

By the time of the Commission, McAlister was dead. Of the other witnesses, Mr Justice Street said:

'Scully impressed me as a criminally-minded man of a dangerous type. He has a smooth and plausible manner; he is possessed of an excellent memory, and he exhibited considerable constraint until aroused, which was not often. He is, I have no doubt, a man of cold and calculating temperament, treacherous, and quite unscrupulous. I dare say that he tells the truth if he thinks it suits his purpose to do so, but I am equally certain that he departs from the truth without the slightest hesitation if he thinks the occasion requires it, and his ability and his resourcefulness enable him to produce a blend of truth and falsehood, in which it is very often hard to distinguish the false from the true. . . .

'Davis Goldstein is evidently a man of not much education, but he has considerable natural ability; he is fluent of speech, very vain, probably very arrogant and overbearing among his associates, reckless, and unprincipled. . . .

'Louis Goldstein is cast in a different mould. He is no better educated than his brother, and probably is just as unprincipled, but he is colder-blooded and more cautious, and less liable to be carried away by vanity. . . . His dominant idea, probably, was to make as much money as he could, while keeping on the windy side of the law.'

Given their situation, what was the evidence of these witnesses worth? Yet it was supported at certain points by the evidence of the police. Mr Justice Street accepted this evidence in preference to the later confessions of Scully and Goldstein, and so enabled himself to exonerate the police and uphold the convictions of the Twelve.

The Prisoners

THE CASE AGAINST HAMILTON

(Fifteen years)

The principal evidence connecting Jack Hamilton with the arson was that of Davis Goldstein.

According to Goldstein, on September 15—a week after his arrest on the forgery charge—he met Hamilton in the street outside the I.W.W. rooms.

After a few exchanges, Hamilton said:

'You know all the fires that have been lit recently? [This was three days after the report of the series of unsuccessful fires had appeared.] Well, we done them, and if you are game I will give you some of the stuff, and you will be able to do some of them yourself. There is no risk, and it is easy enough. Wait a minute and I will go into the hall and get some of the stuff for you.'

Hamilton described the use of fire-dope, and then went into the I.W.W. headquarters, returning with a parcel wrapped in newspaper. Goldstein opened the parcel and found that it contained some cotton waste and a bottle containing some liquid. The two men arranged that Goldstein should set fire to Nat Lewis' store in Liverpool Street that same night.

Detective Lynch had been keeping watch on the headquarters through the window of a vacant building across the road. He said that he had seen Hamilton come out with one of the Goldsteins (a different version from that of Goldstein), return inside, and again appear and hand Goldstein a piece of rolled-up newspaper.

The same evening Goldstein, with his brother Louis, went to the detective office and handed the parcel over to Pauling. The police arranged with Nat Lewis and the newspapers that a fake report should be inserted in the press of the discovery of an unsuccessful attempt to fire Lewis' store.

The next day, Goldstein again ran across Hamilton, who commiserated with him on his lack of success.

This story was inherently improbable. Was it conceivable that

Hamilton, proposing a serious crime and presumably knowing that the organisation was under police observation, would have carried out this transaction on the footpath, in full public view, when the privacy of the I.W.W. headquarters was a few yards behind him? And with a man with whom, as Goldstein said, he was not 'on intimate terms'?

What then happened? In his trial evidence, Davis Goldstein suggested that he first approached the police when he went with the fire-dope he had received from Hamilton. But, as was later established, this was not true. Goldstein had told the police, on September 12 or 13, that Hamilton was the principal distributor of fire-dope and that Teen was his go-between. In the statutory declaration he gave to Judd, Goldstein told a much more convincing story:

'I was asked by Detectives Pauling and Turbet to get some fire-dope from some of the men. I asked Hamilton to get me some. He gave me the stuff the same day. I took it to Detectives Pauling and Turbet that same evening. The evidence in connection with Hamilton giving me the fire-dope is not correct in so far that Hamilton gave me the fire-dope at the back of the I.W.W. rooms [that is, in a position which was not visible from Detective Lynch's vantage point across the road], but I did speak to him in front of the hall. Detective Pauling suggested that I say Hamilton gave it to me in front of the hall. . . . With regard to . . . Nat Lewis', I was told by Detectives Pauling and Turbet that when suggesting a fire to Hamilton I should suggest Nat Lewis', as they knew him well, and he would always fall in with their ideas. After I delivered the bottle of fire-dope to them they told me that I would see a bogus report of the fire at Nat Lewis'.

As to Detective Lynch's corroboration of Goldstein's original story, there was no mention in the detailed contemporary report of his observations which Lynch prepared for his superior officers, of Hamilton giving Goldstein a bottle of fire-dope—or even of their having been together; nor was the incident mentioned in the brief the detective prepared for the Crown Prosecutor in the preliminary hearings. Lynch admitted that he had recognised Goldstein as 'the Goldstein who was charged with forgery' but he did not think this important; he had not realised the significance of what he had seen until 'some time later', when he heard from the other detectives that Hamilton had given Goldstein some fire-dope. This might have explained the earlier omission, but it could hardly explain the later one.

Detectives Turbet and Pauling handed over the dope they had received from Goldstein to Superintendent Walker on September

21, six days later, with the comment: 'As the matter is one of a specially urgent nature, perhaps it could be expedited.' The dope went to the Government Analyst that day.

In evidence before the Street Commission, Goldstein repudiated his confession—including the police request that he should get some dope, for which there was some documentary evidence. He said that Scully had put him up to fabricating the story, in Judd's presence. Judd denied that he knew Goldstein's statutory declaration to be false. The police witnesses denied that they had conspired with Goldstein to fake evidence against Hamilton.

Mr Justice Street did not comment on the allegation that Pauling had put Goldstein up to give false evidence, but of Detective Lynch he said: 'I believe that he told the truth to the best of his ability, and I do not believe for a moment that he swore falsely at the trial for the purpose of corroborating . . . Davis Goldstein.' But, in the light of the improbabilities inherent in Goldstein's trial evidence, and the initial concealment of the true relations between the Goldsteins and the detectives, the story Goldstein told in his statutory declaration seems much more likely to be true.

Harry Scully also gave important evidence against Hamilton. This concerned a number of discussions about arson.

On the night of July 3, 1916, ten days after Winn's warehouse was burnt out, Scully met Hamilton, Fagin, Teen and Beatty in Fagin's room. They discussed what they should do about prescription, and agreed that, if it were introduced, they would 'break shop windows, create rioting, and if necessary burn Sydney down'.

Later—about the middle of August—these same four discussed with Scully a fire-dope with which they were experimenting; it would not burn properly, and they sought his advice on improving it. After this, Hamilton ordered a supply of carbon bi-sulphide from Scully, and collected it from the chemist shop at a time when Scully was not on duty.

Finally, early in September, the same four were involved in another discussion; on this occasion, they ordered phosphorus.

There was no confirmation of this evidence. Scully's own story made him an accomplice, and whether it is acceptable or not depends entirely on Scully's credibility.

In his statement to Mutch and Connolly, Scully said that Hamilton was one of those implicated in arson. Davis Goldstein, in his statutory declaration of July 18, 1916, omitted Hamilton from those he believed 'absolutely innocent of the crime upon which they are convicted'.

THE CASE AGAINST McPHERSON

(Fifteen years, reduced on appeal to ten.)

It was the evidence of 'Mac' McAlister, which linked Don McPherson, his fellow wharfie, with incendiarism.

McAlister's story was that he met McPherson—whom he knew as 'Andrew'—in King Street between midday and 1 p.m. on August 30, 1916. 'Andrew' told him that the Wobblies 'had an effective way of dealing with the bosses, that would make them quake in their boots'. McAlister asked what it was. 'Andrew' then asked would he be prepared to use it. McAlister replied, 'Yes, I would,' and asked when he would get it. 'Andrew' said, 'On Saturday next.' That was September 2.

McAlister was working on the wharves on the Saturday and did not see 'Andrew'. However, he went to see Detective Fergusson on the Sunday and told him of the conversation. The next day (September 4) he met 'Andrew' again (at the same time and place, but with no prior arrangement), and 'Andrew' handed over a packet of fire-dope, saying: 'Whilst three members of the organisation are kept in gaol it will cost the capitalists £10,000 a day.'

'Andrew' mentioned five or six fires which the I.W.W. had started (including Winn's and Stedman's), and arranged to meet McAlister on the following Thursday. 'If I am not there,' 'Andrew' said, 'go to the I.W.W. rooms in Sussex Street and see Mahony.'

That night, McAlister turned over the fire-dope he had just received to Detective Fergusson. The detective instructed him to join the I.W.W., which he did in the next day or two.

'Andrew' did not turn up on Thursday (September 7), and McAlister went to the Sussex Street Rooms, where he took part in the drawing of lots. He walked down the street with Moore, observed by the detectives. That night, Detectives Lynch and Leary met McAlister for the first time, at Fergusson's home, and heard from him in person about the fires.

Over the next four days, the city suffered a rash of unsuccessful fires. McAlister had told the detectives that 'Andrew', a fellow wharfie, could be picked up at any time. Asked before Mr Justice Street why 'Andrew' had not been arrested after this outbreak, the detectives replied that they had looked for him assiduously but unsuccessfully—and that they had not really wanted to arrest him until they could bag all the conspirators.

On September 13, McAlister again met 'Andrew', who promised him some more dope but said that the supply was limited. The following day, 'Andrew' told him that he had been unable to get

any. Unfortunately, the detectives were not following McAlister on this occasion.

McPherson was arrested in the raid on the I.W.W. rooms on Saturday, September 23. He was charged with being in possession of stolen goods—two shirts. When he appeared in the courts some days later, McAlister identified him as 'Andrew'. He was rearrested and charged with treason.

At the trial, Detective Fergusson confirmed that he had first discussed incendiarism with McAlister on September 3, and that McAlister had given him the fire-dope on the night of September 4. He had taken the dope to the detective office, and it had later been handed over to the Government Analyst, Dr Cooksey. Other police evidence referred only to the handling of the dope. There was no other evidence to support McAlister's story.

McPherson gave evidence on oath in his own defence. He denied all McAlister's allegations, said that he had never gone under the name of 'Andrew', and pleaded alibis for the occasions on which McAlister alleged the various conversations.

He was supported by independent witnesses for the most important of these dates. A fellow wharfie confirmed that he was working with McPherson, unloading apples from the *Manuka*, on September 4, when he was supposed to be handing over the fire-dope. The paymaster of the Union Steamship Company produced his time-sheet to confirm that McPherson had indeed worked on the *Manuka* on September 4.

There is an inherent improbability in McAlister's story. McAlister, on his own account, did not know McPherson well—indeed, he did not even know his name. Yet McPherson freely boasted of his part in incendiarism, and cheerfully provided McAlister—who said (although untruthfully) that he was not a member of the I.W.W.—with damning evidence of his guilt.

It is curious, too—and perhaps too much of a coincidence—that the two statements which McAlister attributed to McPherson were almost word for word identical with statements alleged against Donald Grant (four months earlier) and Peter Larkin (a fortnight later)*—both of which were available to him at the time when he finally made his statement, on October 2.

But there were more serious discrepancies in the story. McAlister said that he had first seen Detective Fergusson on September 3,

* Larkin, September 10, 1916: 'We have got a little scheme on that will make the master class quake in its shoes.' Grant, April 2, 1916: 'For every day Barker is in gaol it will cost the capitalists £10,000.'

and the detective in evidence supported him. But the entry in the detective's diary (which was only produced before the Street Commission) for September 3 read: 'Office 2 p.m., then to Sydney Domain re Domain orators. Returned to office 5.30 p.m., and submitted reports same matter. Off duty 6.30 p.m.'

Fergusson's diary for September 4 did not mention him receiving any fire-dope, while the entries for the following three days spoke only of his 'submitting reports re incendiarism in Sydney', without any detail. In no case was there any mention of McAlister.*

As to McPherson's alibi for September 4, the time when he was supposed to be handing over the fire-dope, Mr Justice Pring said in his charge to the jury at the trial: '. . . all the incidents related may be perfectly correct—there may be just a mistake about the date.' But if there was a mistake about this date, it was common to both McAlister and Detective Fergusson; this was either a strange coincidence, or suggestive of collusion.

There was also some doubt as to what happened to the fire-dope. The police evidence was that Fergusson passed the parcel over to Superintendent Walker the morning after he got it (September 5). Walker opened the parcel and found it to contain 'a small phial containing liquid . . . some cotton waste, and some strips of an old celluloid collar'. While the Superintendent was examining the bottle, a small part of the cork broke off and fell on his blotting pad, and while the detectives were talking, burst into flame. Detective Moore took the bottle to the Analyst, Dr Cooksey, who said: 'There is phosphorus in it with some solvent, and its action is that, when the solvent evaporates, it bursts into flames.' Moore asked him if it would cause fires, and he said: 'Yes . . . it is a well known agent for that sort of thing.' The dope was not analysed then because McAlister had said that he might have to produce it to his suppliers. Detective Fergusson wrote a formal report of this sequence of events on September 7.

It seemed a complete story. But a report by Detective Fergusson, dated September 21 (a fortnight later) contained the comment: 'Perhaps Inspector Walker might deem it advisable to have the bottle and contents, also waste, forwarded to the Government Analyst, with a view to ascertaining the true nature of the liquid, and whether, by exposing the cotton waste saturated with the liquid . . . it would ignite. As the matter is one of a specially urgent nature perhaps it could be expedited.'

While Dr Cooksey, presented with the fire-dope, testified: 'That

* The first mention of 'Andrew' in Fergusson's diary occurred on September 20.

was handed to me on the 21st September. . . . I am not aware that that was supposed to have been given by McPherson to McAlister as early as 4th September. . . . The police did not tell me how long they had had it.' And the exhibit, as produced before the Commission, contained no strips of celluloid.

Detective Fergusson's report of September 7—which might have provided contemporary evidence of these events—was unfortunately lost;* while he had thrown away the notes from which his report had been made. Detectives Lynch and Leary had unhappily kept no written record of their discussion with McAlister on the night of September 7, which might also have provided a contemporary record. And all three detectives referred in reports to 'taking statements' from McAlister on September 17 and 20—but Lynch said this was 'a mistake', the reference was only to scrappy notes, none of which could now be found.

Every document which could have authenticated McAlister's story of the receipt of fire-dope from 'Andrew' had been lost; the dope first appeared on the written record with its receipt by the Government Analyst on September 21.*

Finally, there was the curious circumstance of the identification of McPherson as 'Andrew'. McPherson, with a number of other Wobblies, came up at the police court on September 25. Detective Fergusson's evidence was that McAlister was at court that day 'for the purpose of identifying and picking these men out'. McAlister's evidence was that, on that day, 'I was standing outside, when I saw McPherson, and I said, "Good day, Mac", or something of that sort.' McPherson's evidence was: 'On the 25th September I was present at the police court. I saw McAlister standing on the steps of the Central Police Station when I was going out. McAlister said, "Hello, Mac, what are you doing here?"'

But both Detective Fergusson and Superintendent Walker gave evidence that McAlister identified McPherson as 'Andrew' on September 28. (Whatever the truth of this, the police could not concede that McAlister had identified McPherson as 'Andrew' on September 25 since there were references in police diaries to 'Andrew' on September 26.) McAlister later denied his original statement that he had said, 'Goodday, Mac' (which would, of

* Mr Justice Street had 'no doubt that its loss is purely accidental'—the report 'was indexed in the ordinary course'. But the entry in the Correspondence Book—made by Detective Moore—merely read: 'Received from Constable 1st. Class Fergusson report re incendiarism in Sydney; Given to Mr Walker [Superintendent of the C.I.B.]. Result to [Walker] 7.9.1916.' Detective Moore confirmed Fergusson's story and said that the missing report 'bore out rumours already heard of some time previously that fires in Sydney had been caused by the I.W.W. These rumours emanated chiefly owing to open boastings of members of the I.W.W.'

course, have established that he knew perfectly well who McPherson was).^{*} And McAlister's signed statement of evidence, produced for the Commission, was typed by Detective Lynch on October 2—either four or seven days *after* the identification. In it, McAlister said of 'Andrew', 'I do not know his other name.' A footnote to this document, added by an unknown person, identified 'Andrew' as McPherson.

Scully, in his statement to Judd, said that McAlister had told him that 'the evidence given by Leary, Lynch and Fergusson [against McPherson, Moore and Teen] was all "faked"', but he did not, in his statement to Connolly and Mutch, exonerate McPherson. Davis Goldstein, on the other hand, swore in his statutory declaration to his belief that McPherson was 'absolutely innocent' of arson.

The conviction of McPherson relied on the unsupported evidence of a paid informer (although this was not known at the trial), which on this ground alone was suspect. But when to this is added the inherent improbability of the story, and the many discrepancies in the evidence, a more sinister explanation suggests itself—that the bottle of fire-dope was faked about September 20 to give weight to McAlister's inventions—and that, a few days later, it was decided to place McPherson as 'Andrew'. This is not a pretty story, but at least it fits the facts.

Why McPherson? He was, of course, at hand. But it is odd that there was in fact an 'Andrew McPherson' who was at one time a member of the I.W.W. He was one of the 'physical force' element who took over the Sydney Local in 1913. It is possible that McAlister's identification of 'Andrew' with Don McPherson was somehow a confusion of these two men.[†] This does not, of course, suggest that Andrew McPherson was an incendiarist, but it is a possible explanation of the mis-identification.

THE CASE AGAINST TEEN

(Fifteen years)

Bill Teen's name first came into the case when Davis Goldstein told the detectives, on September 12 or 13, that Hamilton was the principal distributor of fire-dope and Teen his go-between. But it was McAlister's evidence which told most heavily against Teen.

^{*} According to Scully, McAlister was present during the police raid on the I.W.W. on September 23, pointing out the prisoners to the police, but he did not then identify McPherson. The police denied that McAlister was there.

[†] Fergusson's diary for September 30 noted: 'Arrested Don or Andrew McPherson charged with treason.'

Let us return to McAlister's story of 'Andrew'—that he had, on 'Andrew's' instructions, gone to the I.W.W. rooms on the afternoon of September 7, to see Mahony:

'He said to me, "Did 'Andrew' send you along?" I said, "Yes." He said, "Very well, come in here."'

Mahony, said McAlister, then took him into a small room where there were two other men he did not know. (He later identified them as Teen and Tom Moore.) Mahony introduced him to the others as a 'comrade', and said, 'You three have to draw lots to see who sets a fire.'

'Mahony took from a desk a box about five inches long by two or three inches wide, and took three discs out of it about the size of a shilling—two were black and one red. He put that box on the table and put the three discs into a cigar-box, saying, "Now the one that pulls the red disc out has to start a fire."'

Teen drew first, and drew a black. Then McAlister drew—and got the red. Teen and Moore left. Mahony reminded McAlister that he already had the dope (which 'Andrew' had given him) and told him that he must set fire to Way's store in Pitt Street. McAlister then left. (The police arranged for a false story of a fire at Way's to be inserted in the press.)

This was, on the face of it, an incredible story. In the first place, the evidence suggests that there was no 'Andrew' and no meeting between McAlister and McPherson. But even if this is not accepted, the story still does not stand up.

Just as there was no evidence except McAlister's for the existence of 'Andrew', so there was no supporting evidence for the existence of Mahony, and there was no trace to be found of him. McAlister's explanation was that Mahony had skipped with Fred Morgan, but surviving I.W.W. opinion denies this. Scully's account, in his statement to Judd, was that McAlister had told him that he (McAlister) had 'never met Mahony, but [Detective] Leary knew him, and [Detective] Fergusson also said that Mahony was one of the ringleaders'. But in an earlier statement he had said that Morgan was probably Mahony. (This could not, of course, have been correct. Morgan was in gaol on the forgery charge on September 7.)

The likelihood is that Mahony was an invention;* but even if his existence is admitted, the story remains incredible. McAlister,

* There was in fact a John Mahony, or Marney, who was a member of the I.W.W.; his name was taken in the September 23 raid. But the police said that he was not the man for whom they were looking.

an unknown, without any credential other than the mention of the name of the hypothetical 'Andrew', is immediately admitted to a drawing of lots for recruitment as an incendiarist. He is introduced to his two fellow-contestants as 'comrade', when this was a term never used by the Wobblies, who called one another 'fellow-worker'. And of these three, all hopeful incendiarists, only one was to set a fire, when, on all the other evidence, fire-dope was being handed around readily.

Teen himself described McAlister's story as 'an absolute lie'; and, if the other evidence of Teen's central part in the arson were true, this was no less than the truth. It was scarcely likely that, if Teen were the go-between for the fire-dope, he would be involved in a ceremony of this kind.

There was further evidence against Teen. The chemist, Scully, had identified him as being one of the group in Fagin's room with whom he had thrice discussed the techniques of incendiarism. This evidence is, however, open to the same objection as is that which Scully gave against Hamilton.

There was, also, evidence from the Goldstein brothers that Teen had confessed to a knowledge of the fires.

Davis Goldstein's story was that he had seen Teen on September 27. Teen had said: 'It is pretty hot arresting those men on a charge of treason. . . . Never mind; we shall give them some more fire-dope.' He (Goldstein) had warned: 'You fellows had better be quiet!' and Teen had replied: 'It's all right. We shall use our nuts, all right.'

This story was uncorroborated. Goldstein said of it, in his statutory declaration of July 18, 1918: 'The statement that he [Teen] said that "Never mind, we shall give them some more fire-dope", is not correct. That part of the conversation was dictated to me and written out for me by Detective Pauling.'

Louis Goldstein gave evidence of an earlier incident. He claimed that he had run across Teen casually on September 22, at an anti-conscription meeting outside the Sydney Town Hall, and had asked: 'What about the recent fires?' Teen had answered: 'Do you know Stedman's fire? I did that!—and then rang the police and said: "This is another of Barker's fires! Are you going to release him?"' Goldstein replied: 'It's terrible putting these fires about like this.' And then—despite Goldstein's disapproval—Teen went on to tell him that the I.W.W. had 'a new thing on now'—an explosive with which they proposed to terrify the government.

Detective Leary gave evidence that he had seen Teen and Louis Goldstein together on the night of September 22. Teen agreed that he had been talking to Goldstein that night, but denied that there had been any discussion of fires, and that he had ever telephoned the police in connection with Stedman's fire.

It is curious that Teen, asked about 'the recent fires', should refer to a fire which took place two months earlier, and not to the rash of unsuccessful attempts which it was alleged the I.W.W. had made two weeks previously.

It is also curious that police documents contained no record of an anonymous telephone threat that Stedman's fire was deliberately set to force Barker's release, and that nothing like this was reported to the coroner.

It is even more curious that Teen should have made this admission to a comparative stranger, a man who, Goldstein said, 'was not a friend of mine. I had seen him only about half a dozen times before that, just casually.' (Goldstein may have been covering up, but all the other evidence suggests that his connections with the I.W.W. were indeed tenuous.)

What was most curious of all was the date of Teen's alleged confession.

It emerged for the first time at the Street Commission that Teen's name had first cropped up in discussions between the Goldsteins and the police on September 12 or 13. Then, at the Commission, the Goldsteins' solicitor, Mr Cohen, swore positively and with great certainty that Louis had told him of Teen's confession on September 14—eight days before it was supposed to have happened. (Boyce, the Goldsteins' counsel, remembered Louis Goldstein naming Teen, but could not remember when this had happened. Cohen's diary for September 14 said only: 'Attending L.G. in the morning, when he told me that Davis had given some information to Johnson [i.e. Pauling] re X.Y.Z. [I.W.W.] and stones [fires].')

Detective Turbet said that Louis Goldstein had come to him on Saturday, September 23, and told him of the conversation with Teen the previous night (the conversation Detective Leary observed). As he was going on holidays, he told Goldstein to see Detective Pauling. Pauling said that Goldstein reported the conversation to him on the following Monday. There was, however, no contemporary written record—such as a report by the detectives to Superintendent Walker—to corroborate this account.

Reviewing these conflicting stories, Mr Justice Street said:

'It is not likely that Louis Goldstein invented his story as to his conversation with Teen. He told Mr Cohen about it as well as telling Turbet and Pauling, and, assuming that such a conversation had taken place, the only motive they could have in post-dating it would be that Leary might be able to give corroborative evidence of having seen Louis Goldstein and Teen in company with one another. I do not believe for one moment that any such fraudulent scheme was entered into by the detectives. It is possible, of course, that he told Mr Cohen of it at an earlier date, but I think that it is more probable that Mr Cohen is mistaken in his recollection.'

Given Goldstein's situation, however, it is not hard to believe that he might have invented this story, or accepted the role of perjurer. There is an alternative explanation to that of Mr Justice Street—one which fits the sequence of events noted above.

It is that Teen's name was among those mentioned in the first discussions between the Goldsteins and the police; that the police asked for evidence against Teen; that Louis Goldstein immediately concocted the story of Teen's confession (with or without the knowledge of the police) and took it to the solicitor on September 14; that an accidental meeting between Goldstein and Teen, observed by Detective Leary, who was on the spot to cover the anti-conscription meeting, provided an unexpected chance of confirming Goldstein's story; and that the date of Teen's 'confession' was switched accordingly.

Against Teen, there was finally the fire-dope allegedly found in his possession at the time of his arrest.

Teen was arrested as he was walking with Davis Goldstein from the I.W.W. rooms. It was a cold, wet night, and he was wearing an overcoat he had borrowed from Tom Pope. Detective Matthews was waiting on the corner of Liverpool and Elizabeth Streets. He accosted Teen and told him that he was wanted at the Central Police Station. At the station, Detective Miller found a parcel containing a bottle and some cotton waste in the lining of Teen's borrowed coat. Confronted with Teen, Pope said that the parcel had not been there when he lent the coat to Teen.

It was odd that Teen should have been arrested in the street. Cross-examined at the trial, Detective Matthews had said:

'We knew he was living in Burton Street. I have seen him in and out of the [I.W.W.] rooms. We could find him at any time. The instructions I received were that he was not to be arrested at the rooms

or at his home, but that he was to be arrested in the street, away from there if possible.’*

Asked how he came to be waiting on the corner of Liverpool and Elizabeth Streets, the detective said that the police knew that Teen often walked home that way, but that they had no special reason to expect him that night.

In his statutory declaration of July 18, 1918, Davis Goldstein provided an explanation of these events.

Speaking of the raid on the I.W.W. rooms on September 23, during which the first six of the Twelve were arrested, he said that, on the day before:

‘I was . . . asked if I could place some dope into the pockets of some of the prominent I.W.W. men at the I.W.W. rooms before the raid took place. I replied by inquiring how I was to get the bottles of fire-dope. They answered that I need not worry about that, they could get plenty. Eventually the matter was talked out by me as an impracticable proposition.’

No fire-dope was in fact found on any of those arrested on that day. Then Goldstein turned to the arrest of Teen:

‘On the evening prior to Teen’s arrest, I was asked by Detective Pauling to accompany Teen along Elizabeth Street on the next evening. Pauling said, “Our instructions are to arrest Teen in the street. . . .”

‘[After Teen’s arrest] I went to the Stadium. On coming out Detective Pauling met me and told me what had transpired at the Central Police Station. He stated, “That on searching Teen, it was found that he had a towel which was opened and found to contain cotton waste, and a bottle with some liquid in it, and when Teen was asked about it he stated that it might be some soap.” I then looked straight at Pauling and asked him if it was a fact? He said, “No. That will be our evidence.” Pauling then told me that while Teen was being pushed about Detective Hooper placed the towel with cotton waste and bottle in Teen’s pocket, which was, after a little while, taken out of Teen’s pocket by Detective Miller and Teen confronted with same. . . . Detective Pauling said, “If anyone asks you if I saw you tonight, say no.” He then left me with the remark that he had to assist in the arrest of Fagin and others.’

* Before the Street Commission, Detective Leary said that instructions had been to arrest Teen, Fagin and Beatty (the three men for whom warrants had just been issued) on the street rather than at the I.W.W. rooms or the rooming-house, but that if this were not possible to raid the rooming-house at 1 a.m. Accordingly, detectives had been posted at two corners in Elizabeth Street, either of which the three might pass on their way between their home and the rooms. There was no written evidence to establish that this was in fact the instruction given, rather than an explanation devised later in order to cover the circumstances of Teen’s arrest.

Teen had left his lodgings with Tom Pope to walk to the I.W.W. rooms. At the I.W.W. rooms, Teen met Davis Goldstein, who had been hanging about in the doorway for a quarter of an hour or so. Teen's own account of the subsequent events rang true, and confirmed the impression that Goldstein had sprung a trap. After they had met at the I.W.W. rooms, Goldstein asked him to wait for a few minutes while he went to pick up an umbrella he had left in a cafe in George Street; Goldstein was away for five minutes. They then went to catch the first of the two trams which would take them to the Stadium. At Goldstein's suggestion, despite the rain, they walked to Elizabeth Street, crossing two other tram lines which would have suited their purpose. Once there Goldstein had killed time by suggesting that they go into a cafe. It was after they left the cafe that Teen was arrested.

Teen himself continued to insist that he had been framed—that he knew nothing of the fire-dope. And it certainly seems unlikely that Teen should be so indifferent to the evident risk (the I.W.W. rooms had been raided and men arrested and accused of incendiarism) in carrying fire-dope around so openly. Further, Teen made no attempt to dispose of the dope after his arrest, which perhaps confirms that he did not know it was there.*

But it does not establish the fact that the police planted the fire-dope on Teen. They themselves denied that they had done so, and the evidence as to what happened while Teen was at the police station was conflicting. Goldstein himself later repudiated his confession, while Pauling denied that he had been anywhere near the Stadium that night, in which he was supported by the other detectives.

There is another possibility—which was accepted by Mr Justice Ewing in his inquiry into the affair—that Goldstein himself, knowing that Teen was to be arrested that evening, put the fire-dope in Teen's pocket as they walked up Liverpool Street. If this was in fact what happened, the question remains: did Goldstein do this on his own initiative, or at the instigation of the police? There is at least one other possibility—that Tom Pope, who shared a room with Joe Fagin and who lent Teen his coat—planted the fire-dope on Teen.

In his statement to Mutch and Connolly, Scully maintained that Teen was guilty. Davis Goldstein omitted Teen from the list of those he believed innocent.

* Before the Street Commission, Scully said that he had at first thought that the dope was planted on Teen, but had later come to the conclusion that it was a display of bravado on Teen's part.

THE CASE AGAINST MOORE

(Ten years)

Tom Moore was, next to Bill Beatty, the most unlucky of the Twelve. For the case against Moore, we must again go back to McAlister's evidence.

McAlister identified Moore as the third competitor in the drawing of lots organised by Mahony. His story was that, when he had drawn the fateful red disc, he stayed behind after Teen and Moore left to receive his instructions from Mahony. When he left the building soon afterwards, he met Moore outside and they walked to Mark Foy's store, on the corner of Liverpool and Elizabeth Streets. There they stood and talked. According to McAlister, Moore was talking excitedly of arson, and said that 'twelve of the bastards should be let go at once, to make a good blaze'.

Detectives Fergusson, Lynch and Leary had been concealed in the vacant shop opposite the I.W.W.'s Sussex Street headquarters. Leary's evidence was that McAlister 'came out, in company with another man, and I followed'. Fergusson agreed that McAlister came out of the building with Moore.

The three detectives followed the two men as they moved up Goulburn Street towards Elizabeth Street. Leary was in the lead. When McAlister and Moore stopped to talk, Leary moved up so that he could listen in on their conversation. He could not hear it all, but he did hear Moore say: 'Twelve of the bastards should be let go together' and (nodding towards Foy's) 'this one must go.'

McAlister also told of a similar conversation four days later, on Monday, September 11:

'On that occasion, Moore and I went to the same place; he and I walked from the I.W.W. rooms to Foy's corner. He made some reference to fires that should have taken place on the Friday night [i.e. September 8]. . . . I asked him how many should have gone . . . and he said twelve or thirteen.'

Once again Leary was shadowing them; once again he crept close; but this time he only 'heard one word, but I could not say which one of them used it; the word was fire'.

Moore's defence was that, while he had been in conversation with McAlister that afternoon, they were talking about racing:

'I was looking after a racing pony called "Miss Joey", and I told him about the bad luck I had had only a few Wednesdays before in the third division of the Encourage. . . . In explaining the position and

the race, I told him that from the jump off there were twelve of them running inside of her from the word "go". . . .'

'Miss Joey's' trainer confirmed the story: 'She had a bad marble. . . . There were twelve horses inside of her; she was number thirteen off the rails.'

Detective Leary agreed that he had heard someone say: 'I lost what I had over a pony called "Miss Joey".' That he had done so was confirmed by the fact that he had made inquiries soon afterwards about this race, and found that 'Miss Joey' had indeed been a starter. McAlister, however, denied any such conversation—he had talked with Moore about 'Miss Joey', but that was earlier, and Leary was nowhere about.

The Leary-Moore version of the 'Miss Joey' conversation was undoubtedly true, and McAlister was lying; the question is, was the Leary-McAlister version of the 'twelve must go' conversation also true? The coincidence of numbers suggests that it was not. 'Twelve' was reasonably connected with 'Miss Joey's' inside runners, but why should Moore select this number for his projected fires?

In the statement he gave to Judd, Scully said that McAlister had told him that 'none of the detectives saw him with McPherson or with Moore. . . . The evidence given by [Detectives] Leary, Lynch, and Fergusson was all "faked".' Before the Royal Commission, Scully confirmed that McAlister had said this, and added that the detectives had learned of the conversation about 'Miss Joey' from McAlister.

Detective Leary also claimed that he had seen Moore around the I.W.W. rooms on September 14, with Larkin, Reeve and Glynn.

Moore said that he was never near the I.W.W. rooms that day. He had been attending 'Miss Joey' in the morning, had had lunch with the trainer, and had gone to the wharf-labourers' stop-work meeting at the Sydney Town Hall in the afternoon. The trainer supported this story.

Reeve and Larkin also said they were not at the I.W.W. rooms at the times specified by the detective. Referring to this, Mr Justice Pring thought that 'it may be simply a mistake [on the detectives' part] as to the date'. But it may also have been that Moore was not there.

Detective Leary arrested Tom Moore at his workplace on September 29. Moore admitted that he was a member of the I.W.W., but said he thought the treason charge must be a mistake; he

had only been at the I.W.W. rooms once in the last five months or so.

Moore had a small key in his possession. Equipped with this, Leary and Detectives Lynch and Hooper went to Moore's boarding house. The landlady, Mrs Rootsey, showed them to the room which Moore shared with an engineer, Tom McConnell. On the washstand they found a small piece of cotton-waste, which Mrs Rootsey said belonged to McConnell. (The police showed no interest in McConnell.)

The detectives then opened Moore's box, and from it they took out what Mrs Rootsey called 'a very small piece of waste'. Moore denied that the waste was his. There was nothing to connect the waste with fire-dope—and there was nothing more to connect Tom Moore with arson.

Moore was undoubtedly unlucky. He claimed that 'all the other men in the dock are perfect strangers to me. It would seem that I am the victim of circumstances.' Tom Glynn agreed: 'he was the secretary of the organisation, and he had never seen Moore until they met in Long Bay gaol.'

Surviving I.W.W. opinion is that Moore was arrested in mistake for the son of Mrs Eva Lynch, a stalwart I.W.W. sympathiser, whom Moore somewhat resembled. But this cannot be true. A warrant was issued for Moore on September 22 on the basis of McAlister's information.

What is more likely is that Moore had the bad luck to meet McAlister accidentally on September 7 at the I.W.W. rooms, where their conversation was observed by the police. There was a need for 'conspirators', and Moore was at hand.

THE CASE AGAINST FAGIN

(Fifteen years)

The picture of Joe Fagin which emerges from the evidence of Scully and Davis Goldstein is one of wild irresponsibility. Of all the alleged conspirators, he was, with his threats and boasts, the most reckless.

Scully gave evidence of a series of damning admissions by Fagin. In March 1916, while Tom Barker was in gaol, Fagin talked with him about the efforts of the Wobblies to secure Barker's release. First, they would try to put political pressure on the Commonwealth Government; but 'in the event of that failing, they were to use sabotage in all its forms, mainly to attack Commonwealth Government property, and to create fires, so that it would not pay to keep Barker in gaol'.

The fire at Simpson's Free Stores occurred on the night of June 1. Scully deposed:

'At that time I was living at Glebe Point, and going in and out on the tram you could notice a smell from the fire. Fagin asked me if I had heard about the fire, and I said "Yes", that I had heard that there had been a fire down at the Haymarket, and that I believed it was a lolly factory that had been burnt.* He told me that it was Simpson's Free Stores, and that the smell came from the copra that was burning, that it was Commonwealth Property, that damage had been caused to the extent of about £150,000, and that it was set alight by the I.W.W. He said that was the start of the fires to get Barker out.'

A month later, on July 3, Fagin met Scully outside the chemist's shop. On the way to Fagin's room, they walked through Hyde Park. Fagin pointed to the ruins of Winn's warehouse in Oxford Street, which had been burnt out on June 23. According to Scully, Fagin said it had made 'a lovely blaze'; they had all watched it from the lodging house in Burton Street; it had been 'another effort to get Barker out'. Hamilton, Beatty, Teen and Fritz Georgie were in Fagin's room. There was talk of the proposal to bring in conscription and 'that in the event of conscription being forced upon us we would break shop windows, create rioting, and if necessary burn Sydney down'.

In August and again early in September, Scully said that he was involved in further discussions about arson with Fagin and his friends. On the second of these occasions, the conspirators had ordered two 1-lb tins of phosphorus, and Fagin had picked these up from the shop 'after some of the men had been arrested'—that is, during the last week of September. There had been a number of fires about that time; he had told Fagin that it was a mad thing to do, and that, if the Wobblies were doing it, they would end up getting shot. Fagin didn't seem concerned, and replied 'that at any rate it was good practice for the boys'.

Later, Scully had asked Fagin whether the phosphorus was being used to make fire-dope. Fagin said that it was. He asked Fagin to return the phosphorus, but Fagin refused, saying that he had broken it up into fifty half-ounce bottles which he had bought from a wholesaler, and that Hamilton and Beatty had taken the bottles to the I.W.W. basement, where they and Teen had distributed them.

This evidence of Scully's was uncorroborated, and Fagin denied

* Scully has evidently here mixed up the Simpson's and Stedman's fires.

that he had had anything to do with any chemicals. However, it was a circumstantial story, and not internally inconsistent, except for the account of the supply of phosphorus to Fagin.

Scully could not have given phosphorus to Fagin on the day on which he said he did, for the chemist's shop in which he worked was already under observation at this time. Two 1-lb tins of phosphorus make a bulky parcel; the police evidence at the Royal Commission was that Fagin had indeed visited Scully that day, but that he had left the shop empty-handed.

Besides, the dates would not fit. Scully said that he gave Fagin the phosphorus on the last Wednesday or Thursday in September — on September 27 or 28. But he also said that there had been a number of fires about that time, when the last fires alleged against the I.W.W. occurred between September 8 and 12; and that he had asked Scully for the phosphorus back on September 25 — before he supplied it! (Scully finally settled on September 19 or 20 as the date on which Fagin collected the phosphorus.)

Scully was pressed hard on this before the Royal Commission, but was unable to explain these conflicting statements.

If Scully did in fact supply phosphorus to Fagin, it was in his interest to establish that he did not know for what purpose the phosphorus was to be used, and that it could not have been used for any of the fires alleged against the Twelve. The story about asking for the phosphorus back may have been designed for the former reason, and the imprecision about the dates for the latter.

Davis Goldstein also gave evidence that Fagin had admitted his part in the fires. He said that he had met Fagin near the I.W.W. rooms on September 22, and that Fagin had told him that the I.W.W. were responsible for the fires in Sydney (mentioning specifically Simpson's Bond Store), but that the dope was not very satisfactory and they were going to try something new.

Finally, against Fagin, there was the fire-dope allegedly found in his bag at the time of his arrest. Fagin's immediate reaction was that the detectives had planted it on him.

In his statement to Ernie Judd, Scully had this to say:

'In talking about the arrests [to Detective SurrIDGE] I told him that I could not understand Fagin having a bottle of phosphorus solution in his bag, as I had told him on the 25th that he was to be arrested. SurrIDGE laughed, and said he was in the room when Robson went to Fagin's bag, adding that he supposed the truth would all come out some day. On another occasion we were talking about the midnight raid on the house in Burton Street, and SurrIDGE said Fagin got very

wild with Robson saying there had been nothing in his bag. Surridge said Robson put it there all right.'

In evidence before the Commission, Scully maintained that he had warned Fagin but modified his statement slightly: what Surridge had suggested was merely that everything was 'not right'. Surridge denied that he had said anything of the sort; he had merely told Scully that 'criminals sometimes do silly things'.

It seems certain that Scully did warn Fagin, and attempt to recover the phosphorus. Presumably he had learned from Cole on September 25 that he was under observation, and had seen Fagin the same day. In any case, according to Scully, Fagin was already aware of danger—as soon as he had heard of Hamilton's arrest, and before the police arrived, he had destroyed a bag of waste which was in Hamilton's room. Davis Goldstein, too, confirmed Fagin's state of mind; he reported a conversation on September 25 in which Fagin had said that the police were evidently trying to get something about the fires and that he would have to stay away from the I.W.W. rooms for some time: 'I feel as if someone is following me; we are going to lie quiet for a couple of weeks and then we will give them some more mysterious shocks.' And Tom Pope said that, on the night of the raid, Fagin had told him that he thought he was likely to be arrested, although he had not mentioned any fires.

Whatever the truth of this, the question of the fire-dope in Fagin's bag is still open. If Scully did warn Fagin, it certainly seems, as Scully said, unlikely that Fagin would be carrying fire-dope around in his bag. (No finger-prints were found on the bottle.) Who could have planted it?

Defence counsel at the Royal Commission tried to establish, by rigorous cross-examination of the detectives, the possibility that Detective Robson, by some sleight of hand, put the dope in Fagin's bag. But they did not succeed. (Robson in fact denied before Mr Justice Street that he knew about the fire-dope at the time he arrested Fagin; this seems highly unlikely in view of his part in the September 23 raid on the I.W.W. and the arrest of Besant.)

However, it is significant that Tom Pope shared Fagin's room; that it was Pope whom the police asked which was Fagin's bag; that it was Pope who lent his overcoat to Bill Teen; that Pope, as a room-mate of Fagin's and a fellow-I.W.W., was presumably a close associate; and that Pope was never arrested. One of the big unanswered questions of the whole conspiracy proceedings (which does not seem to have occurred to anyone) was: did the detectives

have anything on Tom Pope? He had arrived in Sydney from the country only that afternoon, and had gone to Fagin's lodgings for a bed. The question was: did he come of his own volition, or was he asked to come?

In his statement to Mutch and Connolly, Scully said that Fagin was among the guilty parties. Davis Goldstein did not include him in the list of those he believed innocent.

THE CASE AGAINST BEATTY

(Fifteen years)

Bill Beatty was even unluckier than Moore, for it was of him that Mr Justice Pring said to the jury: 'I do not say that you must not convict, but that you ought not to convict.' Nevertheless, the jury did convict Beatty—on all three counts—and he was sentenced to fifteen years.

The reason for Mr Justice Pring's warning was that the only evidence against Beatty was that of Scully, who was, on his own admission, an accomplice. Scully's story was that Beatty—who lived in the Franks' boarding house, along with Fagin—was present on three occasions with Teen, Hamilton and Fagin when incendiarism was discussed. At the third of these meetings, some time early in September, some carbon bi-sulphide was ordered; Beatty took delivery of it. According to Scully, Hamilton and Beatty took some fifty bottles of fire-dope, and a supply of cotton waste, to the basement of the I.W.W. rooms. Together with Teen, they distributed the dope 'among the members they could trust'.

Beatty was arrested during the raid on the Franks' boarding house. He made no statement and went quietly. No fire-dope was found in his possession.

This was evidence which should not have been accepted without corroboration; but it was. Davis Goldstein, in his statutory declaration, expressed his belief that Beatty was 'absolutely innocent' of arson; but Scully did not include Beatty among those whom he exonerated. (The stock of the pamphlet *Sabotage* which was found under Beatty's bed was relevant to the charge of sedition rather than that of arson.)

THE CASE AGAINST GLYNN

(Fifteen years, reduced on appeal to ten)

Tom Glynn was secretary of the Sydney Local, and it may have been presumed that, if I.W.W. members were involved in arson, he must have known about it. Apart from this (which was not

evidence of guilt), the only evidence against him came from Davis Goldstein. Goldstein said that he had met Glynn in Goulburn Street at eight or nine o'clock on the night of September 21. Glynn said to him: 'I see you are one of the fire bugs now. One of the boys told me that Hamilton gave you some of the fire-dope last Friday night. Never mind, for every arrest that is made, we shall make the Government squeal!'

Goldstein reported this statement to the detectives. There was no independent corroboration.

Glynn, at the trial, flatly denied this allegation. He had not seen Goldstein at all that night; on the contrary, he had been in the I.W.W. rooms continuously from 6.30 to 9.30 p.m., at a meeting of members and attending to his secretarial duties. Five other Wobblies supported his story, and their evidence was not challenged. In his charge to the jury, however, Mr Justice Pring said: 'It may be that all these people are really telling the truth, only there is some little difference as to the time. . . . Goldstein may be wrong as to the date.'

Other evidence suggests that Goldstein was not wrong as to the date. Glynn said that Goldstein called at the I.W.W. rooms on the afternoon of September 21, seeking information about Fred Morgan, the bail-jumper.

Goldstein's statutory declaration of July 18, 1918, supported this story:

'I met Glynn on [September 21]. Such a conversation as referred to by me . . . never took place. But I was engaging Glynn in conversation to see if I could get any information from him about the fires, and the whereabouts of Morgan. In my report to Detective Pauling, such conversation was not mentioned. . . . [It] was suggested to me, and written down for me in my office . . . by Detective Pauling.'

However, Goldstein omitted Glynn from the list of the 'absolutely innocent' in his statutory declaration.

Before the Royal Commission, Goldstein repudiated this confession. But Scully gave evidence that Goldstein had told him that the alleged conversation with Glynn had not taken place. (According to Scully, Goldstein's explanation was that he had concocted the story in reprisal for Glynn threatening him over his refusal to supply bail for J. B. King in the forgery case.) And Scully included Glynn among those whom he told Mutch and Connolly knew 'absolutely nothing' about the fires.

Goldstein's uncorroborated evidence, if true, was scarcely sufficient to convict Glynn; and in all probability it was false.

THE CASE AGAINST BESANT

(Ten years)

When the detectives raided the I.W.W. headquarters on September 23, they found Bernard Bob Besant, the young man who was helping with the printing. They asked him about various parcels in the room; one turned out to contain cotton waste.

Detective Robson's evidence was that he said to Besant: 'See here, this is cotton waste. Where did you get it?' Besant said: 'Oh, well . . .' and then stopped.

Later, as the arrested men were being taken off, Robson said to Besant: 'Come along, you go along to the police station with these others.' According to Robson, Besant asked him: 'What for? It is about the cotton waste you found, I suppose?' Robson said: 'Well, yes.' And Besant said: 'I hear you have been finding some of this in shops lately, but, by Christ, you will find a bloody lot more before we have done.'

Besant was taken to the police station and charged with vagrancy. Later, he was also indicted for treason.

Detective Pauling supported Robson's evidence as to what Besant said. None of the other policemen who were in the room at the time corroborated this story, at the trial or before Mr Justice Street (although Detective Leary did so before Mr Justice Ewing in the second Royal Commission).

The essence of this case was Besant's alleged statement. There was nothing unusual in a parcel of cotton waste in a printing shop; it was commonly used to clean printing presses, and Ted Giffney, the national secretary, gave evidence that he had bought the waste for this purpose. There was nothing other than his own statement to connect Besant in any way with the waste.

Besant himself denied that he had said anything of the kind, and Giffney, who was present at the time, supported him. It does seem remarkably stupid of Besant, who gave the impression of being a calm and reasonable young man, to have made a statement of that kind in those circumstances, when all he had to say was that he didn't know what was in the parcel.

Both Scully and Goldstein expressed their belief that Besant was innocent.

THE CASE AGAINST LARKIN

(Ten years)

Almost the only evidence connecting Peter Larkin with arson was that of Detectives Matthews and Lynch, who were watching the I.W.W. rooms on the morning of September 14.

According to Matthews, at about ten o'clock in the morning, Larkin came out of the I.W.W. rooms. He beckoned three men out of a group standing and talking near the door. They moved away a little. Larkin then 'put his right hand into his left inside coat pocket, and took out what appeared to be a small brown bottle, which he shook several times over his left hand then replaced in his pocket. He then raised both hands from the level of his waist up above his head quickly, holding palms uppermost—and he and the three men who were in front of him then laughed. . . .' When Larkin put his hands up it suggested to Matthews, 'from what I have heard, that when the stuff was put on it would flare up'.

Detective Lynch supported this evidence.

Larkin pleaded an alibi for this occasion—he and his wife were at home, counting tickets for a lecture he was to give the following night. Mrs Larkin supported this. Mr Justice Pring said of the alibi:

'I have not much doubt that Mrs Larkin is correct that on some occasion they were counting the tickets as she says, but it may not have been the 14th.'

Larkin's counsel also suggested a likely explanation for the bottle—when Larkin was arrested, he was found to be in possession of a bottle of Friar's Balsam, for his sore throat.

The only other evidence to connect Larkin with fire came from Detective Lynch, who said that he had heard Larkin say in the Domain on one occasion:

'We have got a little scheme on that will make the master class quake in their shoes. I am not going to tell you what it is, because the police are listening, but some of you get me.'

Lynch agreed, under cross-examination, that he was relying on his memory for this quotation; Constable Mackay, who was also present on that occasion and took shorthand notes of whatever he considered objectionable, had no record of any such statement.

The case against Larkin was very thin. Even if Larkin's alibi is not accepted, it still seems extremely unlikely that he would make a public demonstration of fire-setting when the privacy of the hall was close behind him.

Both Scully and Goldstein, in their statements to Mutch and Judd, included Larkin among those who knew nothing of the fires.

THE CASE AGAINST REEVE

(Ten years)

Charlie Reeve was in a similar position to Peter Larkin. Detectives Matthews and Lynch said that they saw him about the I.W.W. rooms during the day on September 14; Lynch also said that, on the evening of that day, he saw Reeve go through a public performance, just like that of Larkin, in the presence of Tom Moore—that he saw him ‘walk a few paces away from the door with the accused Moore, point to the buildings on the opposite side of the street, and throw his hands up in a manner similar to what I described in the case of Larkin’.

Reeve too pleaded an alibi, and it was nearly watertight. He had been convicted of offensive language on September 13 and sent to Long Bay gaol. He had given notice of appeal. He was bailed out on the afternoon of September 14. His bailor, fellow-worker George Jago, deposed that they left Long Bay for Darlinghurst by tram shortly before 4 p.m.; the journey in took over half an hour, and they then went to a convenient pub for a few beers, and to a cafe for tea. They did not part until nearly six o’clock, and Reeve was at no time anywhere near the I.W.W. rooms. The bail magistrate agreed that he had bailed Reeve at about three o’clock; that after this there were certain formalities to go through, and that Reeve could not have caught a tram earlier than Jago said he did.

Once again Mr Justice Pring disposed of the alibi:

‘Of course, if that be right, then the two detectives must be wrong when they say they saw him down at the I.W.W. rooms before six o’clock on that day. But there again, of course, it may be simply a mistake as to the date.’

In the case of the alibis offered by Glynn and Larkin, the hypothetical mistakes had been made by the defence witnesses; in this case, the mistake belonged to the detectives. So many mistakes about dates was perhaps stretching probability too far, and it was surely a strange coincidence that both detectives should make the same mistake.

This was also the day for which Tom Moore pleaded an alibi, and that too was not accepted.

Under cross-examination at the trial, Detective Matthews, who had originally said that he had seen Reeve at the rooms on the morning of September 14, tried to retrieve his position:

‘It was well on in the afternoon of September 14 that I saw Reeve. There is no question about that. I did not say in the Police Court that

it was in the morning that I saw Reeve; if I did, it was a mistake. I do not remember saying, "Reeve was there at 4 p.m., and also once in the morning." I will not say that I did not say it. It is not true to suggest that I did say it, and that I have since found out that I made a mistake. I did not know that Reeve was out at Long Bay until you told me just now. . . .'

But there was little doubt that Reeve had made his point, even though it was not accepted.

The more serious evidence against Reeve—although it was not admitted at the trial, being before the date of the alleged conspiracy—were the indiscreet letters he had written to Fred Morgan, talking of sabotage and 'Bryant and Mays'. Otherwise, there was nothing specific against Reeve.

Both Scully and Goldstein expressed their belief, in their confessions, that Reeve knew nothing of the fires.

THE CASE AGAINST GRANT

(Fifteen years)

Of the Twelve, it was Grant's case which aroused the most passion—for the reason that there was no case against Grant at all.

Donald Grant was a popular figure in New South Wales radical circles. As Henry Boote said of him:

'Every working man and woman in New South Wales knows Donald Grant. For years he was the most popular orator of the Sydney Domain. Sunday after Sunday thousands surrounded the stump from which he spoke. His pungent satires upon capitalistic society evoked the laughter and applause of vast audiences. His eloquent appeals for working class solidarity stirred them to the depths of their being.'

Grant was not an organiser, he was a propagandist. He was never around the I.W.W. hall, and it was not suggested that he associated regularly with the other accused, except at public propaganda meetings. All that was alleged against Grant was his speeches, and of these only two were significant.

It was said that he had called on his listeners to 'sabotage the employers' property'. He himself said that he had said 'the employers' profits', which was a rather different thing. But even if he had said property, this was hardly sufficient to link him with arson.

It was said that he had spoken his famous fifteen words—'For every day Barker is in gaol, it will cost the capitalists £10,000.' It was argued that this statement implied a foreknowledge of arson. But it could equally—and perhaps more appropriately—apply to industrial action, to 'go slow' or strikes.

It was said that, while Donald Grant was in Broken Hill (where he was arrested), an attempt at arson was discovered. But not a single piece of evidence was introduced to connect Grant with this, and the Crown witnesses agreed that, while in Broken Hill, in the middle of an explosive industrial situation, Grant had exhorted his listeners *not* to use violence.

There was nothing more against Grant, who got fifteen years. Both Scully and Goldstein declared their belief in Grant's complete innocence of arson.

The Fires

The heart of the charge against the Twelve was that they had conspired together to commit arson, in order to secure the release of Tom Barker from gaol and to prevent the introduction of conscription. So it is important to pay some attention to the specific fires or attempted fires for which the Twelve were alleged to be responsible.

The 'I.W.W. fires' fall into three groups—three successful fires (Simpson's Bond Stores, Winn's, and James Stedman's) and two unsuccessful attempts (Mark Foy's retail shop and bulk store) in June and July, 1916; one successful fire (Public Supply Stores) on August 31, 1916; and twelve unsuccessful attempts at fires between September 8 and 12. The first dividing point is the release of Tom Barker, on August 3, 1916. The second is the date on which the police (in their account) began to work up their case against the Twelve—that is, September 3, 1916, the day on which McAlister was said to have come to Detective Fergusson with his story about the mysterious 'Andrew' who had offered to supply him with fire-dope.

The first group of fires all occurred while Tom Barker was in gaol. Harry Scully gave evidence that Joe Fagin had told him that 'they were to use sabotage in all its forms, mainly to attack Commonwealth Government property, and to create fires, so that it would not pay to keep Barker in gaol'. But what was the precise evidence that this had been done?

First, Simpson's Free Bond Store, which was completely destroyed by fire on the night of June 1, 1916.

The police were required to report all fires to the City Coroner, whose duty it was to inquire into any suspicious circumstances. Of this fire, the Coroner (Mr H. S. Hawkins) said that the police had reported that the owner thought the fire had been caused by spontaneous combustion among the wet copra; there were no suspicious circumstances, and he conducted no inquiry. The only evidence linking the Twelve with Simpson's fire was Fagin's alleged admissions to Scully and Davis Goldstein. Since Scully,

on his own account, had known about this admission for more than three months without telling the police about it, his belated evidence was that of an accomplice.

Next came the allegation that attempts were made to fire Mark Foy's retail store on June 16, 1916, and the firm's bulk store on the following day. There was no evidence to link any of the Twelve with these events, but the police alleged incendiarism, and this allegation deserves consideration.

The principal police witness was Sergeant E. W. O'Reilly. In relation to the fire in Foy's Elizabeth Street store, he said that either Detective Leary or Detective Lynch had told him that 'cotton waste steeped in liquid phosphorus was found amongst the shirts on the counter in the mercery department'. The waste was discovered in the open, where it could not have caused a fire, and he reported that 'the police are of opinion that the fire was caused maliciously by some crank'. The waste was later 'mislaidd' in the police headquarters. He thought that no report had been made to the Coroner on this.

The evidence relating to the Brisbane Street bulk-store fire was not so clear. The attempt occurred on June 17, but nothing was entered in the police 'occurrences' book until June 26, the day that Sergeant O'Reilly reported to the Coroner. There was nothing in his report about the cotton waste, because Detective Leary had said nothing to him about the two or three threads of waste which he later said he found at the bulk store.

Sergeant O'Reilly said that the reason for the delay in entering this attempted fire in the police book and in reporting it to the Coroner was because he did not attach much importance to it at the time. 'We had no idea of the I.W.W. at all' he told Mr Justice Street. The Coroner confirmed that he had received O'Reilly's report on June 26, and said that it had come within a reasonable time. The report said that nothing would be gained by holding an inquiry, so he did not hold one.

Sergeant O'Reilly explained his unconcern about the fires at Foy's:

'At that time there was no suggestion of any I.W.W. fires. This was the first in Sydney and it was looked upon as accidental. A week or a fortnight later, incendiarism was suggested.'

By June 26, O'Reilly was reporting: 'From inquiries made by the police there is every suspicion that the fire (Foy's bulk store) was caused wilfully.'

This was all very unsatisfactory. The Elizabeth Street fire, at which a significant piece of fire-dope was allegedly found, apparently

was not reported to the Coroner, and the fire-dope itself was 'mis-laid'. Leary's 'two or three threads of waste' allegedly found at the bulk store were not mentioned in the belated report to the Coroner.* In any event, neither of these occurrences was linked in any way with any of the Twelve.

Winn's store was burnt out on the night of June 24, 1916. There was nothing to connect the store with the Commonwealth Government—a significant fact, since the supposed purpose of the fire was to force the Commonwealth to release Barker. The Coroner said that the police had reported a suggestion that the fire might have been caused by a fault in the electrical wiring. He also said that there was casual, unofficial talk that the I.W.W. might be responsible (this confirmed the rough date given by Sergeant O'Reilly for the first suspicions), but that 'there was no evidence to connect anyone with the fire'. He had discussed the matter with Inspector-General Mitchell and other senior police officers, and they had agreed that it was 'advisable not to hold an inquest on any of the fires at that time unless we could get some evidence to connect somebody with them'. In this case there was no such chance. The only evidence which later emerged to connect the Twelve with Winn's fire was the admissions of Fagin and 'Andrew'.

The confectionery factory of James Stedman Ltd, was gutted by fire on the night of July 27. Stedman's had suffered seven fires before this. There was no connection between the Commonwealth and the confectioners. The police reported to the Coroner that there were no suspicious circumstances, and no inquiry was held. The only evidence to connect the Twelve with Stedman's fire was the admissions of Teen and 'Andrew'. The difficulty of accepting this evidence has already been discussed.

There is, finally, an insuperable obstacle in accepting the allegation that these fires were caused by the I.W.W. to secure Barker's release. If this intent was to be realised, it was surely essential that it be known to those responsible for keeping Barker in gaol. Yet there was no evidence at all that the authorities had any such knowledge. And indeed the detectives' story (although there is some reason to doubt this) was that the first they knew of I.W.W. responsibility was when McAlister turned up with his story about 'Andrew' on September 3.

Tom Barker was released from gaol on August 3, 1916, nine months before his term was up. The imprisonment of Barker

* The Coroner himself said that he finally received the dope which allegedly came from the Foy's June 16 fire on October 11—four months later.

could no longer be urged as the motive for arson; however, there was another suggested motive—the threatened introduction of conscription.

The Government's decision to hold the conscription referendum was announced in Parliament on August 30. Early in the morning of the next day, the Public Supply Co-operative Company was partly burnt out. This company had no connection with the Commonwealth, however.

The Coroner told Mr Justice Street that he had received a letter from the fire adjusters concerned, referring to rumours which were circulating in the city that the I.W.W. were burning down buildings. He held an inquest, but heard nothing concrete to cause him to think that the Wobblies had caused this or any other fire. He held an inquest and returned an open verdict. There was, in fact, absolutely nothing to connect the Twelve with the Public Supply fire.

The informer McAlister, according to his and the police evidence, first brought his story of wholesale arson to his friend Detective Fergusson on September 3, 1916. The following night, he gave Moore the bottle of fire-dope which he said 'Andrew' had given him.

When Fergusson and Moore reported their story to Superintendent Walker, the Superintendent told Moore to 'go round some of the shops . . . Buckingham's, Mark Foy's, Hordern's, and Grace Brothers and let them know'. Detective Moore's diary confirmed that he visited these four—and no other—business houses, and that he had warned these firms 'in connection with a plot to fire their buildings'. No evidence was given, however, of the existence of any such specific plot.

Among the attempted fires reported between September 8 and 12 were fires at Foy's and Buckingham's. (Neither the firms warned nor those which reported fire attempts had any connection with the Commonwealth.) It was a curious coincidence that, of all the business houses in Sydney, four only should be warned of arson; that, of these four, attempts should actually be made on two;* and that no-one should be caught in the act, even after the police had delivered their warnings.

In all, there were no less than twelve acts of attempted incendiarism. But none of these was reported to the Coroner, and Mr

* By a further odd coincidence, there was a fire at Grace Brothers—but this was on the following October 2; the police did not investigate.

Hawkins apparently felt aggrieved. Asked by Mr Justice Street why he thought this was, the Coroner replied: 'Lack of duty in not reporting them, that is all.' However, Superintendent Walker told the Royal Commission that this inaction was decided by the police, after consultation with the Crown Solicitor, because it was feared that coronial inquiries might hamper the police investigations. Walker commented: 'We felt sure that they were all mixed up with the I.W.W. business and that the I.W.W. arrests would clear the whole matter up.'

There was no evidence to connect the Twelve directly with any of these attempts. There was only the evidence that some of the Twelve (Hamilton and Teen to Davis Goldstein, Moore and 'Andrew' to McAlister, Besant to the detectives) had made general admissions of responsibility. There was an eye-witness to one of the September 8-12 attempts at arson; he said that he would recognise the would-be incendiarists, but was unable to identify any of the prisoners. None of the Twelve was said to have admitted to any particular attempt, and none was detected in the act.

Before Mr Justice Street, the Coroner, Mr H. S. Hawkins, was asked whether there had been more fires in 1916 than in other years. He said that 86 fires had been reported to him in 1914, 120 in 1915, and 96 in 1916, on which he conducted respectively ten, three and nine inquests; while, for the four-month period June to September, 25 fires had been reported in 1914, 38 in 1915, and 32 in 1916, on which two, one and two inquests had been conducted. However he commented: 'There were more big fires, about that period [June-September, 1916] than any other time that I remember.'

We are concerned here, not with whether the Twelve, or any of them, had planned, prepared for, or committed arson, but with their connection with the specific fires and attempted fires which were alleged to be part of the conspiracy. The evidence for this, which has been considered above, was lamentably thin.

First, there was no concrete evidence—nothing apart from the alleged admissions of five of the Twelve—to connect any of them with any of the fires or attempted fires which actually occurred.

Second, with the exception of Fagin's admissions to Scully, all the alleged admissions occurred after the police had begun to work up their case and had enlisted their informers, which at least leaves open the possibility that these admissions were concocted.

Third, there is the extraordinary circumstance—if all the stories about the 'I.W.W. fires' are to be believed—that the Wobblies,

who had done excellently up to August 31, were unable to produce a decent blaze thereafter.

Finally, the police had in fact a longer prior suspicion of I.W.W. incendiarism than they revealed. It started with J. B. King.

Early in the 1916 shearing season, Wobblies among the shearers pulled a wild-cat strike for higher shearing rates. It was said that King was involved—that he had toured western New South Wales and had set fire to shearing sheds. The police investigated this story and found it to be false—there was only one shearing shed fire, and King was nowhere near the place. But the rumours about him may have started the police thinking about arson.

A shadowy figure hovering in the background of the I.W.W. case was a private eye of American origin, one Joe Brown. On July 14, 1916, Detective Moore (who was working with military intelligence, keeping an eye on the I.W.W.) hired the after-hours services of Brown, described as 'cunning, intelligent, and trustworthy' for £2 a month plus 1/- per month I.W.W. dues, to make inquiries about the organisation, thinking that Brown's American links might enable him to find out about the American Wobblies who were active in Australia.

Brown's name was not mentioned at the trial of the Twelve; it only appeared when the police produced their list of those who had participated in the distribution of rewards after the conviction of the Twelve. In the course of the Royal Commission, Mr Windeyer (for the Twelve) asked Scully whether he knew Brown; Scully said no. Mr Justice Street asked who Brown was. Windeyer replied that he didn't know, other than that Brown had shared in the reward. Mr Shand (assisting the Commission) had asked him not to make Brown's name public, but he thought it his duty to do so. The police knew where Brown was, and could produce him.

Mr Windeyer's reason for asking Scully about Brown became clearer as the Commission proceeded, and the 'private eye' was finally produced. Brown's story was that, early in July, he found out that a chemist had been lecturing at the I.W.W. rooms, and was supplying members of the I.W.W. with fire-dope.* Later, about mid-July, he heard that the chemist's name was Scully, and that a Wobbly named Ryder had been trying to blackmail Scully for £20. Ryder had, he heard, been expelled from the I.W.W.

* This fits nicely with the date given by Sergeant O'Reilly as that on which he first heard suggestions of I.W.W. incendiarism.

(It was suggested that Ryder was threatening to expose Scully, not only as a supplier of fire-dope, but also as an abortionist.)

Windeyer put this to Scully, who denied it absolutely. He had, he agreed, known a man named Ryder, who was at the time a member of the I.W.W. This was in 1914. On one occasion, Ryder had sent for him; when he arrived, he found Ryder suffering from the D.Ts. He took Ryder for a walk to the police station, from where the drunk was sent to the reception house to recover. Later, Ryder used to come to the chemist's shop and pester him for money. He asked the I.W.W. to keep Ryder away from the place. He heard from Tom Barker that Ryder was expelled from the organisation because of his drunkenness. (Later, Mr Windeyer told the Commissioner that he had managed to locate Ryder, and that 'he thought it only right that he should say, in fairness to Scully, that there was no truth in suggestions that he had been involved in illegal operations'.)

If Joe Brown's story was true, the police knew of the I.W.W.'s responsibility for arson—and Scully's part in the plot—some six weeks before they said they first acquired this knowledge, that is, when the informer McAlister first took his story about 'Andrew' to Detective Fergusson. But Detective Moore contradicted Brown's account. It was not until early August that Brown told him about the Wobblies and the fires, and it was not until September 26—that is, several days after Davis Goldstein allegedly implicated Scully—that he first heard the chemist's name.

It was an important point for the police case. Mr Justice Street found that:

'It is quite clear that before September 4 [the day McAlister allegedly brought the fire-dope to Fergusson], the police did not seriously suspect the existence of a conspiracy to commit arson, nor did they associate the outbreak of fires in the city with the I.W.W. Acting-Superintendent Walker says that before that date there was nothing to connect them, so far as he knew, and that it was not till after that date that he first began to get anxious about them.'

It was important that that date be established—not only because it was essential to the credibility of the police evidence at the trial that McAlister's evidence should have come as a surprise—but also because the establishment of an earlier date for police knowledge of arson would have enabled the defence to argue either police inefficiency or the manufacture of evidence. Whose story then was true—Joe Brown's or Detective Moore's?

It is a fact that Brown had a grudge against the police, and an interest in establishing his priority. He claimed that he had only

received £17 for his expenses between August 26, 1916, and January 17, 1917, which did not cover him, and he had brought an action against the Commonwealth for services rendered. But it seems more likely that Moore's account, that he had had his 'first intimation' of the I.W.W. conspiracy from Brown early in August, but had not heard of Scully until September 26, was correct.

The evidence on the fires amounts to this: the police had reason to suspect that the I.W.W. were involved in arson long before they admitted that they had this knowledge; but they had no proof. So they set about collecting it. The evidence they produced failed to demonstrate any physical connection between any one of the Twelve and any specific fire. It consisted rather of admissions about specific fires allegedly made to the four informers, all of which (except for Fagin's admissions to Scully) were said to be made after the police had already enrolled the informers; and some general admissions of arson allegedly made to or overheard by the police. The successful fires all occurred before the police commenced their serious investigations; only inept failures were reported after that date.*

* There seem to be three possible explanations of this: (1) that none of the Twelve were involved in the successful fires, but that they were experimenting with fire-dope (*vide* the August-September discussions between Fagin, Hamilton, Teen, Beatty and Scully) which they and others tried out unsuccessfully in the September 8-12 attempts; (2) that two or three of the Twelve were responsible for one or more of the successful fires and then decided to spread the fire-dope among other contacts who were unsuccessful; (3) that, whether the successful fires were or were not the work of some of the Twelve, the unsuccessful fires were a police provocation, designed to bolster their case.

Some Confessions

Harry Lachter, the presser employed by the Goldsteins, told Mr Justice Street that Davis Goldstein had said to him, at the time of the trial, 'You can give evidence, too, and get money.' He talked to Goldstein again, a few weeks before the Royal Commission opened, and asked whether his conscience did not trouble him than innocent men were in gaol. Goldstein replied that, if he had known that the Twelve would receive such long sentences, he would not have given evidence against them.

Mr Shand, assisting the Commission, tried to establish that Lachter might have a political motive for attacking Goldstein, but Lachter said that he had never belonged to the I.W.W., that he was 'just an ordinary Jew—a working man'. In cross-examination, Goldstein put it to Lachter that he had been sacked for practising sabotage. Lachter heatedly denied it.

But Goldstein succeeded in making it clear that there was no love lost between him and Lachter, and Mr Justice Street thought that he should exercise 'great caution' in respect of Lachter's evidence. In any case, even if this were accepted, it did not prove that the evidence Davis Goldstein regretted giving was untrue.

Simon Karpinsky was one of those who claimed to have talked with 'Little Tich' Lazarus and Davis Goldstein about the money Davis had paid out to head off the forgery case and about Davis' prospects. He said that he had talked to Louis, too.

On a Saturday during the Royal Commission hearings, Simon, his sister (Mrs Millie Gold) and Louis Goldstein went to see Abraham, Karpinsky's brother, in the Sydney Hospital. He and Louis talked about the Commission.

Louis said that his brother was a fool to have given a statement to Judd. Karpinsky asked whether the fact that innocent men were in gaol had not preyed on his conscience. Louis replied: 'Yes, but if he went into the box he would get ten years for perjury.'

Karpinsky objected that a sense of justice should lead Davis to tell the truth. Louis said: 'Nonsense, there is no such thing as

justice. . . . Anybody who gives evidence against the police will be sorry.'

Goldstein conceded that he knew some of the men in gaol to be innocent, and said that 'the real guilty one who ought to be in gaol is Scully'.

Again Karpinsky objected: 'But is there no justice at all?'

'I told you justice does not exist,' replied Goldstein.

'But where is principle?' said Karpinsky.

'You have too much principle for my liking,' Goldstein retorted.

Karpinsky was disgusted, and left.

Mrs Gold did not hear all of her brother's conversation with Louis Goldstein; but she heard enough to know they were talking about justice, and gaol, and principles, and the Twelve. And she heard Simon advise Abraham: 'If I were you I would have nothing to do with the Goldsteins.'

Mr Justice Street thought it unlikely that Louis Goldstein would have suggested that Davis' statements to Judd were true. He did not suggest that Simon Karpinsky was deliberately lying, but he thought that there was, in the confusion of a conversation around a hospital bed, 'plenty of room for misunderstanding and misconception'.

Abraham Karpinsky's daughter, Mrs Lottie Druker, said that Davis Goldstein frequently visited her home and talked with her husband (who had at one time worked for the Goldsteins). She recalled an occasion on which Goldstein told her husband that the detectives had planted fire-dope on Bill Teen, and that he and Scully 'were going to clear the men in gaol'.

The Goldsteins denied all this, Davis saying that in fact he had told Druker that he and Scully were conspiring to commit perjury to get the Twelve out of gaol. Mr Justice Street found no reason to disbelieve the Karpinsky family, but he thought that it was all a part of Goldstein's cunning plot.

Having joined with Scully 'to trump up a series of false charges against the police', Davis Goldstein—acting in character—set out 'to impress [his associates] with . . . his cleverness and power. . . . His associates amongst his co-religionists and fellow workers were evidently, for the most part, men of inferior intelligence and inferior education to himself, and I have no doubt that he lorded it over them considerably. . . .'

Of course, this may have been so. But it is important to note that there is no evidence to support this. Mr Justice Street was here interpreting what factual evidence there was, to fit it into his preconceived picture of a police force that could do no (or very

little) wrong. Finally, although it is out of sequence, there was the evidence of a racehorse trainer, Elwin Atkins, to the second of the Royal Commissions, the Ewing Commission of 1920, of a conversation he had had with Louis Goldstein in January 1919.

Atkins knew Goldstein well. One night he met Goldstein in the street near St Vincent's Hospital. He had a clear memory of the occasion.

Goldstein had said things were going badly for him and his brother; they were thinking of going back to South Africa, but it would cost £100 which he would have to borrow.

Atkins had commented that this was strange in view of the money Goldstein had recently possessed.

'Well, it is a fact,' Goldstein replied. Later he said: 'I have been bled white.'

Atkins remarked on the grilling Goldstein had got before Mr Justice Street over the £750 allegedly given to the detectives. 'That went in the right direction, worse luck. Look, detectives—if I had my way I would get a revolver and shoot the bloody lot of them,' Goldstein said.

Atkins then commented that it seemed strange that Davis Goldstein should have given an affidavit to Judd and then repudiated it. Louis replied: 'I did not know the bloody little fool had done that. Two detectives and I had him in a room . . . and forced him to make this second affidavit [i.e. that of October 18, repudiating his confession to Judd].' Louis did not mention the detectives' names, nor did Atkins ask him. According to Louis, Davis was like a madman in the room, pacing about, saying: 'This is persecuting me. Those men are in gaol, and what I have told Judd is right. My mind is being persecuted'—and one of the detectives said, 'Never mind about your mind; you do this, or up you and your brother go.'

Earlier during the Ewing Commission, Louis Goldstein had been asked about Atkins. He agreed that he knew him, but denied having any conversation with him about the I.W.W. case.

Atkins gave evidence that he had seen Goldstein after the court rose. On that occasion Louis had said: 'They asked me about you in there. . . . They asked me about a conversation I had with you. I do not remember that.' Atkins asked: 'Do you not remember the night I met you at the corner of the Triangle?' Louis replied: 'By Christ, I forgot about that. I denied it. If you go in, cut that out.' But Atkins did testify to the conversation.

Two days after he first gave evidence, Atkins was recalled to the box. Counsel for the defence asked him whether he had had

any further conversation with Goldstein. Atkins said that he had—in the witness room:

'I was the only one in the witness room, and was sitting near the fire. He came in, and he said, "By Christ, you are a beauty—you are the last man in the world I thought would do that. What did you mention about that £750 for?" I said, "I only really told what the conversation was between you and I." He said, "It will do you no bloody good. Mark my words." I said, "I do not know whether it will do me any good or any harm; I have just told it, and it is what you told me." He said, "It will do you no good; you will pay for it."'

Counsel for the Crown did their best to destroy Atkins' credit by establishing that he had a doubtful reputation in racing circles. There seemed some grounds for suspicion, but Atkins' story stood up, and it had the ring of truth.

The Real Conspiracy

There is no doubt that some members of the I.W.W. were incendiarists or would-be incendiarists. Tom Barker says as much in his recently published reminiscences:

‘. . . warehouses and big places did go up in fire. It was very easy for anyone who got in with the stuff. After all, there was nothing new about fire-dope. It was just a mixture of phosphorus and calcium [sic] bi-sulphide. It was a well-known method of making fire, wrapping these components together in a wet rag and then, by and by, when it dried out, the phosphorus set up spontaneous combustion. There was no secret about it. It had a long history behind it in Ireland, where they called it “Fenian fire”. It had been used in Australia by shearers over many generations to get rid of faulty accommodation.* If the owner wouldn’t put in decent buildings and sleeping quarters, when the boys left to go onto the next station they took some of this stuff, rolled it up in wet newspaper or cloth, and about two days after they had gone something happened. When they came back next year there were brand new buildings waiting for them. That was a method of cajoling the cocky into doing what the law required him to do.

‘We had many little groups amongst us who were doing various things, and those things were deadly secret and they kept them to themselves, so that you might be God Almighty in the organisation, but you wouldn’t know half a dozen things that were going on. There was a chemist, Scully, who ratted on the I.W.W., who made the mixture. Others, there was no doubt at all about it, had some knowledge of it. . . .’

This was known to the labour movement at the time. The *People*, the paper of the Socialist Labor Party, wrote on December 14, 1916, immediately after the conviction of the Twelve: ‘Once more the tactics of the Chicago faction of the I.W.W. has led the members of the working class to jail.’ Yet the labour movement came to the defence of the Twelve—at first only a

* The ingredients were common enough in the bush: phosphorus was used for poisoning rabbits, and carbon bi-sulphide in tanning hides. As evidence that the tactic of incendiarism was not unknown in the bush, compare this couplet from a bushranger ballad of the 1880s: ‘If poor Dan Morgan is cold in the clay, He has two friends called Bryant and May’; and this description of ‘the present social system of pastoral Australia’, from Joseph Furphy’s *Rigby’s Romance*: ‘a patriarchal despotism, tempered by Bryant and May.’

minority, but gradually the defence campaign came to embrace the whole movement.

It was partly the belief that, as the *People* said, 'Even admitting that these men were guilty of the act of which they were convicted, the penalties imposed were out of all proportion to the deeds alleged to be committed. . . .'

It was partly that the labour movement believed that the Twelve had been prejudged by 'certain sections of the Public, Press, Pulpit, and especially Politicians', and crucified by war hysteria and the propaganda needs of the conscription campaign.

And it was partly the belief that the case against the Twelve was a frame.

Of this last, there can be little doubt. But how was the frame accomplished? And precisely who was framed?

Firstly, who was framed? In one sense every one of the Twelve, for, as Henry Boote wrote: 'the evidence on which these men were convicted was rotten through and through.' But some of them were involved in incendiarism, or at least in preparation for incendiarism.

If we take the confessions of Scully and Davis Goldstein to Judd as bearing some relation to the truth, this is the picture:

| | |
|------------|-------------------------------------|
| Grant: | EXONERATED by Scully and Goldstein. |
| Larkin: | EXONERATED by Scully and Goldstein. |
| King: | EXONERATED by Scully and Goldstein. |
| Moore: | EXONERATED by Scully and Goldstein. |
| Reeve: | EXONERATED by Scully and Goldstein. |
| Besant: | EXONERATED by Scully and Goldstein. |
| McPherson: | EXONERATED by Goldstein. |
| Beatty: | EXONERATED by Goldstein. |
| Glynn: | EXONERATED by Scully. |
| Fagin: | INCRIMINATED by Scully. |
| Teen: | INCRIMINATED by Scully. |
| Hamilton: | INCRIMINATED by Scully. |

(Goldstein's statutory declaration named only those whom he believed to be 'absolutely innocent of the crimes upon which they are convicted'. The presumption was that he believed the others—that is, Fagin, Teen, Hamilton, and Glynn, against all of whom he had given evidence—to be guilty. Scully's statement to Mutch and Connolly exonerated the six listed above and incriminated Fagin, Teen, Hamilton, Besant, and 'Morgan [probably Mahony], and the others'. However, Besant was included in Scully's list of those who 'did it' in error, as Scully later pointed out; it is probable

that the name should be Beatty, against whom he did give evidence. Whether Scully's 'others' was meant to include McPherson is unexplained, but it seems unlikely, in view of his comments about the way in which the evidence against McPherson was rigged.)

That leaves a hard core of Fagin, Teen, and Hamilton, and the possibility of some degree of participation or knowledge on the part of Beatty, Glynn and McPherson. The others are definitely out. And now we are getting closer to the truth.

How was the frame-up organised? I believe what happened was this.

Detective Moore was the police expert on subversive activities. In July, he hired Joe Brown to spy on the I.W.W. for him; early in August, Brown reported talk of arson in I.W.W. circles. About August 21, Detective Fergusson was assigned to assist Moore—Moore said 'in inquiries about the I.W.W.'; Fergusson said 'on military inquiries and German inquiries', and denied that he was investigating 'fires or anything like that'.

Despite Fergusson's disclaimer, it seems likely that Moore told him about the whispers reported by Joe Brown. Fergusson thought of his friend, Mac McAlister, whom he knew to be a wharfie of strong left-wing sympathies (although he denied that he knew McAlister to be an I.W.W. sympathiser). Fergusson asked McAlister for information; McAlister said that there were rumours around the waterfront about I.W.W. incendiarism; Fergusson asked for more—and perhaps at this point offered to put McAlister on the payroll as an informer. McAlister was already on the I.W.W. rolls, although he was unfinancial; but he was not a particularly active member, and was certainly not a trusted member of the inner circle. However, he liked grog and money, and, in Scully's phrase, he was 'tired of hard work'. He fell in with Fergusson's proposal.

McAlister obliged with a story about a mysterious Russian named 'Androvitch' who was allegedly the source of supply for fire-dope. ('Androvitch' was never found, and probably never seen, despite the police stories about hunting for him night and day.)

McAlister may also have said at this time, as he and the police claimed, that a man named 'Andrew' had first promised him, and then supplied him with, some fire-dope. But this cannot be taken as established. So far as I can discover, there is no documentary evidence for the existence of 'Andrew' before September 17; nor is there any document to establish the existence of the bottle of fire-dope which McAlister was said to have received from 'Andrew' on September 4 before the Government Analyst's report of September

21. Unfortunately, as discussed earlier, all the documents which might have provided contemporary support for these vital pieces of evidence had been lost.

Whatever the truth of this, the police certainly wanted more evidence, and McAlister set out to provide it. He produced the story of the drawing of lots, which introduced the fictitious character of Mahony. The police said that he gave them this story on September 7, but once again there was no independent documentary evidence for this—it was missing. However, the police provided confirmatory evidence with Detective Leary's story of shadowing McAlister and Tom Moore away from the I.W.W. rooms on September 7, and overhearing Moore say to McAlister that 'twelve of the bastards must be let go together'. This story was concocted by McAlister and the police.

There is absolutely no evidence to connect any one of the Twelve—or indeed anyone else—with any of the twelve unsuccessful fires which occurred between September 8 and 12. It seems unlikely that the successful fires of June, July and August and these unsuccessful attempts could all have been the work of the same men, for why should the arsonists have lost their skill? What then had happened?

The fact that, of all the business premises in Sydney, the police warned only four of the danger of arson, and that of these two were the scenes of unsuccessful fires, suggests that this whole series may have been a police provocation, designed to bolster a case that was still lacking in substance. However, Mr Shand argued persuasively before Mr Justice Street that this would have involved a grave risk of serious fires, and provocation could therefore not be considered.

The evidence of Harry Scully suggested another explanation. He claimed that Joe Fagin had told him that fifty or more lots of fire-dope had been distributed among trusted members of the I.W.W. on Sunday, September 3. It is possible that this was a defective batch of dope, and that the dope so distributed was planted without effect on various premises the following weekend. (It is also possible that McAlister's concoction about 'Androvitch', and perhaps 'Andrew', was designed to provide an acceptable explanation for a bottle of fire-dope which he had acquired with guilty intent on September 3.)

However this may have been, the forgery case gave the police their first real lever.

Davis Goldstein financed the forgeries and the police had evidence of this. He had been an official of the I.W.W. and was still a

supporter; he was well known to and trusted by the leading members of the organisation. His brother Louis was not a Wobbly, but could be used to put pressure on Davis. The police let it be known that a deal was possible.

Louis cracked easily; he was ready to give evidence, but knew nothing. However, he persuaded his reluctant brother to talk. Davis provided the first solid evidence of incendiarism: he acquired a bottle of fire-dope from Jack Hamilton. (In order to strengthen his evidence on this, the police later concocted a story that Hamilton had handed the dope over in the street.)

By now, the conscription campaign was well under way. The Prime Minister had been informed of what was going on (that is, that arson was suspected, not that a frame-up was being prepared), and was pressing for quick action. So was the New South Wales Government.*

The turning point seems to have been September 20, the day on which McAlister finally agreed that he would give evidence. It was on this day that McAlister's evidence was tidied-up—and perhaps 'Andrew' was created, although the Crown Solicitor still had 'Andrew' and 'Androvitch' confused two days later.†

On the next day, September 21, the police sent the McAlister-'Andrew' dope (which allegedly had been in their hands since September 5) and the Goldstein-Hamilton dope (which they had received on September 15) to the Government Analyst.

* There is some—though not very satisfactory—evidence for this. Demanding an inquiry in Parliament in July 1918, T. D. Mutch said: 'The trials were hurried on; and I ask that the Royal Commission shall . . . ferret out the telegrams which passed between the State Crown Law Department and the Federal Attorney-General's Department with a view to bringing on these trials at an earlier period than would otherwise be the case. . . . We want produced the telegram that Mr Hughes sent, and the telegram which, I understand, the Attorney-General sent.' The Attorney-General denied any such exchange. Mutch retorted: 'I have it on the authority of a man who is in a public office. . . . I am informed that telegrams did pass between Sydney and Melbourne.'

And Davis Goldstein, in his statutory declaration of July 18, 1918, said that, when he had expressed doubts about the wisdom of the projected raid on the I.W.W. headquarters on September 23, 1916, 'Turbet . . . replied that instructions, coupled with requests from Melbourne, were to the effect that the raid was to take place immediately and that "something must be done".'

I did not discover any such exchanges or instructions in the New South Wales files I examined; this, however, does not prove conclusively that no exchanges took place. Goldstein denied that Turbet had told him about any instructions coming from the Commonwealth Government; however, Mr Boyce, Goldstein's counsel, recalled that at one conference—probably on September 25—Goldstein had complained 'that the police had acted too quickly; that if they could have waited a little longer they would have bagged the lot'.

The Prime Minister's interest might perhaps be established by an entry in Detective Leary's diary for October 1: 'Interviewing the Prime Minister who was desirous of communicating with the Inspector-General of Police.' Leary said in evidence that his visit to the Prime Minister had nothing to do with the I.W.W. case—but it was recorded in his notebook in the middle of the pages dealing with the case.

† The fact that the first mention of the name 'Andrew' seems to have appeared in some of the detectives' diaries a couple of days before this does not necessarily invalidate the suggestion—all the detectives agreed that they often wrote up their diaries days after the event. On the other hand, 'Andrew' was first mentioned in Fergusson's diary on this day.

On the following day, the Crown Solicitor drew a warrant for the arrest of Hamilton (the only one against whom there was any strong evidence—but Davis Goldstein had not yet agreed to become a witness), Glynn (accused by Goldstein of confessing I.W.W. responsibility), Moore (framed by McAlister), Larkin, Reeve and Grant (included presumably because they were prominent members of the organisation; the police evidence of demonstrations of fire-setting by Larkin and Reeve was concocted, and there was no other serious evidence against them); Morgan (no-one had ever named him as an arsonist; he was presumably in as a bail-jumper); and—for good measure—the fictitious Androvitch and Mahony (although not 'Andrew'). The I.W.W. rooms were raided the next day, and Glynn, Reeve, Larkin and Hamilton were arrested. Among the papers seized were the membership lists and the incriminating letters which Reeve had written to Morgan in 1915. McPherson was arrested on an entirely different charge, and Besant because there was some cotton waste about in the print-shop where he was working.*

Moore and Grant were picked up some days later. The cotton waste allegedly found in Moore's box is of doubtful validity; it may well have been planted. Grant was arrested in Broken Hill; the indictment suggests that the police hoped to tax him with the burning of some wheat stacks.

On the same day that this warrant was issued, Davis Goldstein provided the police with their second strong piece of evidence: Fagin's admission that he was involved in the fires, and that Scully had been supplying the chemicals.

Davis and Louis both reported admissions by Teen; Davis' evidence may have been in part true, but there is grave doubt about Louis'.

With Scully on the hook, the frame was almost complete. Scully was vulnerable because he was an accomplice in arson. He learned from his employer, Cole, that he was under observation, and he decided to turn King's evidence. At the same time he warned Fagin of the danger they were in and tried to recover the phosphorus he had supplied to Fagin. The police picked him up on the morning of September 30, and he made a statement implicating Hamilton, Fagin, Teen and Beatty. (The police were already getting ready to move against Fagin and Teen: now they had a warrant issued for these two, and added Beatty.) But the case still needed expanding. An unidentified person was instructed to plant some

* Besant was suspected of participation in the forgeries. Perhaps he was picked up because the police had been unable to make this stick.

fire-dope on Teen and Davis Goldstein was instructed to lead Teen to a spot where he could be arrested.* And someone was instructed to plant some dope in Fagin's gladstone bag.† The dope was planted, the arrests were made, and the case was complete.

The conscription campaign was moving towards its climax, and it was important to get the case into court so as to secure the maximum propaganda effect. McAlister and Scully had already agreed to give evidence, but the Goldsteins were holding out. Louis Goldstein had been discharged on the forgery charge at the preliminary hearing, but Davis was still in jeopardy. Louis was demanding that the Crown should withdraw the proceedings against Davis, too, but the Crown wanted their evidence first. Finally Goldstein gave in several days after the preliminary hearing opened. The Crown rewarded him with a *nolle prosequi*.

In gaol, while the trial was on, Jack Hamilton blamed himself for the plight of his fellow-workers. He offered to confess and take the whole responsibility. But solidarity triumphed, and the other men refused.

It was a good frame. The conscriptionists got their propaganda triumph (but they did not win their referendum). The Crown got its conviction. The prisoners got their five to fifteen years.

It was a good frame—too good for the defence to crack—and it would have stuck but for the consciences of Scully and Davis Goldstein. Neither was happy about his part in the affair. Scully had a grievance over the distribution of the reward. Goldstein had a grievance over Morgan's bail and his failure in the Wyong pub.

Ernie Judd had been appointed by the New South Wales Labor Council to investigate the whole affair; when he approached Scully, Scully opened up. The case had been framed, and six at least of the Twelve were innocent. From there, Judd went to Davis Goldstein, who said that eight of the Twelve were innocent and provided more details of the frame.

Scully had also told Judd that his friend Detective Surridge was prepared to talk, and Judd actually interviewed Surridge (though without result). It may have been from Surridge that the police learned what was afoot, or they may have had Judd under observation.

* This could have been done by Davis Goldstein, Tom Pope, or one of the police.

† This could have been done by Tom Pope or one of the police. (I should make it clear that I am not accusing Pope of framing Teen or Fagin; I am merely stating that, on the face of the evidence, it was a possibility which bore investigation. To the contrary, Pope's demeanour before Mr Justice Street was that of a genuine member of the I.W.W., and it was he who took responsibility for supplying the prisoners with their meals while they were awaiting trial.)

They did a deal with Scully, and smuggled him out of the country. But Judd got wind of this, and spilled the story through Brookfield, in the New South Wales Parliament. The Government was caught flat-footed, and agreed to the Opposition demand for an inquiry, but limited its terms to the allegations against the police. They arranged for Scully to be brought back from San Francisco to Sydney.

Meanwhile, the police commissioned Louis Goldstein to find out what his brother was up to. Louis reported that Davis, too, had 'sung' to Judd. So Detective Pauling went to work on Davis and, at the last minute, convinced him that he would have to recant. The impression one gets of Davis Goldstein is that he was afraid of the police, and it is likely that he was threatened with a charge of perjury if he did not repudiate his confession. However this may have been, the police pressure was successful. Before the Street Commission, Davis Goldstein repudiated every part of his confession, and swore that he had concocted it out of malice against the detectives and a desire for revenge. Similarly with Scully—just how and when the detectives prevailed upon him on his return from San Francisco is unknown, but they succeeded. He did not repudiate his confession completely but he qualified it almost out of existence.

Mr Justice Street found himself quite unable to believe that the police would frame a case—or even that they would embroider a good case to make it better. He ruled out completely the confessions of Scully and Davis Goldstein, and side-stepped all the other evidence of police corruption that the defence had so painstakingly amassed. The frame stood. Of the Twelve, three, perhaps four, had been involved in arson or preparations for arson (although the Crown case against the Twelve was largely faked and bore little resemblance to anything that these three or four had done); the other eight or nine had certainly not been involved and probably had no knowledge of what their fellow-workers had been planning and doing. But all twelve remained in gaol.

PART

3

THE RELEASE OF THE TWELVE

Rejoice! you fellow working men
Your comrades are set free,
Who have suffered for these long years
In want and misery. . . .
Success to all who did work hard
To cause these men's release,
May Judge Ewing live for many years
In happiness and peace.

From a contemporary broadsheet by
P. F. Collins

Backdrop 1918-1920

TOM BARKER DEPORTED

Tom Barker wrote from gaol, in June, 1918:

'Personally, I am well, and have completed eight months out of the six allotted me by the Josses and Poobahs. I have great hopes of completing the sentence before the last penny of war loan interest has been paid. Still, many things may now happen. . . .

'Anyway, I hope for the best, and don't worry about the worst. I might have been born a Labor politician, which is about the lowest job going outside of the public hangman, and 4½ per cent. patriots.

'Yours for the One Big Union. . . .'

He was in Albury Gaol. It wasn't a bad gaol, he recalled later; small gaols were usually better than big ones. 'I would swing my arms and exercise and practice my public speaking. . . . I used to recite everything I could remember. . . . I got hold of a dog-eared French primer and studied French from it.' The authorities held him for deportation when his six months expired.

The British authorities didn't want him, so Barker was taken to Newcastle and, with seven others, put on a boat for Valparaiso, Chile. There were no immigration restrictions in Chile.

When the ship berthed in Valparaiso, Barker was met by Julius Muhlberg, an Estonian fellow I.W.W., who had also been deported from Sydney, and who took Barker ashore and introduced him to the Chilean Wobblies, who were in control of the waterfront.

When Chile revised its immigration laws, Barker and Muhlberg were shunted into the Argentine and straight into gaol. Released after a short time, they went to Buenos Aires and from there Barker proceeded to Norway for an international trade union conference, and then on to London. Messages began to flow back to Sydney from trade unions and labour organizations in these places demanding the release of the Twelve.

A WOBBLY PLOT TO BOLSHEVISE THE PACIFIC

The last months of the war saw the United States in the grip of one of its periodic waves of anti-radical hysteria. On November 27, 1918, the *San Francisco Chronicle* reported the uncovering of

an 'I.W.W. Plot to Destroy U.S., Australia and New Zealand'. The scheme, the *Chronicle* reported, had been 'Fathered by Russian Bolsheviki and Officers of Interned German Craft in Mexico Port'. Happily, it had been 'Frustrated by Enemy Alien Inspection Detail'.

It appeared that the U.S. investigators had uncovered a plot to blow up simultaneously all the ports on the Australian, New Zealand and U.S. West coasts, and to beach, sink, or hand over to the Bolsheviks every ship in the Pacific. Thus the plot was frustrated, whereupon 'thousands of I.W.W. men made their way to Seattle, and from there shipped on vessels going to Sydney'.

Sydney, indeed, was 'congested' with Wobblies, who had 'mutinied, destroyed ships' property, and tried to murder their officers at the time when the city was, for the first time, celebrating America's National Day, July 4. But, fortunately, this plot was frustrated, too, thanks to the vigilance of the Sydney police, who had been warned of what to expect by their American colleagues. The situation was now under control'.

Detective Moore was asked to report, which he did on March 3, 1919. There had been no influx of Wobblies into Sydney, no mutinies aboard ship, no warning from the American authorities, and no action by the Sydney police. With notable lack of humour, he summed up:

'I am unable to express any opinion as to the truth of the . . . plot, although the newspaper article quoted gives one the impression that it is a sample of sensational journalism, which probably contains a small element of truth, served up with a great deal of fiction.'

A FEW MORE FIVERS

In December 1918, the Sydney police raided the home of John Foley, a forty-year-old labourer, and his *de facto* wife, May Livingstone. They found Foley tearing up a handful of £5 notes and trying to dispose of them down the cistern. They recovered enough to establish that these were identical with the Wobbly fivers of two years earlier. He and his wife were charged with being in possession of forged notes, and committed for trial.

THE UNLAWFUL ASSOCIATIONS PRISONERS

In June 1918, the New South Wales Labor Party approached Premier Holman in the interests of those members of the I.W.W. who had been imprisoned under the Unlawful Associations Act the previous year. They asked that those of the prisoners who

were Australian-born should not be held beyond their sentence, and that those who were of non-Australian origin should be released at the expiry of their sentence to internment, pending their deportation. Holman passed these representations on to the Commonwealth Government, with his blessing.

By March 1919, the New South Wales Government had sent six reminders to the Commonwealth, without result. Then, in June, the Prime Minister's Department wrote to the Premier's Department, marking their communication URGENT, requesting a copy of the Premier's original letter.

The copy was sent, and a week later the Acting Prime Minister, William Alexander Watt, wrote to Holman:

'I desire to inform you that none of the men convicted under this Act are now in prison.'

It was a most successful piece of procrastination; by the time the Commonwealth replied, those due for deportation had left the country.

JUDD AND BROOKFIELD IN TROUBLE WITH THE LAW

In April 1918, in the wake of the last desperate German offensive on the Somme, the Governor-General of the Commonwealth called political, business and trade union leaders to attend a conference on how to stimulate recruiting. The conference had no executive power, and the political differences between Labor and ex-Labor men ran very deep; it ended by calling upon 'the people of Australia to unite in a whole-hearted effort to secure the necessary reinforcements under the voluntary system'.

William Morby, as president, had attended, on behalf of the New South Wales Labor Council. He reported back in May, and moved that the Council endorse the resolution of the conference. His motion precipitated what Jock Garden, the Council secretary, described as 'one of the greatest controversies the Trade Union Movement has ever been engaged in'. For Ernie Judd moved an amendment to Morby's motion, setting out the basis of socialist opposition to the war and the labour movement's grievances against the conduct of the Australian war effort, and concluding:

'Therefore, whilst fully expecting anti-Labor forces to misrepresent and calumniate our action, we refuse to take part in any recruiting campaign, and call upon the workers of this and all other belligerent

countries to urge their respective governments to immediately secure an armistice on all fronts, and initiate negotiations for peace.'

The debate lasted over several nights' meetings; finally, Judd's amendment was carried by 101 votes to 75.

Judd was prosecuted under the War Precautions Act for making statements prejudicial to recruiting. His case was heard in the Supreme Court, before Mr Justice Ferguson and a jury, on December 3, 1918. He was found guilty, but the jury added a strong recommendation for mercy. The judge remanded Judd for sentence, meanwhile reserving certain questions of law for the High Court. (The point at issue was whether the prosecution required the personal authorisation of the Commonwealth Attorney-General.) The High Court ruled that Judd must come up for sentence, and on June 1, 1919, he was fined £25. The war was over, but even so this was a minimum sentence for the offence.

While Judd was awaiting trial, Jack Brookfield addressed a public meeting on the I.W.W. case at Wollongong. Referring to the prosecution of Judd, he alleged that the Commonwealth was trying to have the venue of the trial changed from Quarter Sessions to the Criminal Court so that they could get a packed jury. He was fined £50 for contempt of court.

Meanwhile, Judd was again in trouble—this time for statements he made in the course of public meetings in the Sydney Domain. Judd was a powerful speaker. A police report noted:

'When Judd mounts the debating table there is an immediate rush from all directions to hear him. Even the audiences around the A.L.P. and other Socialist platforms make a beeline for Judd.'

He was charged with two offences against the War Precautions Act. On one occasion, he declared that the fight of the Australian working class was not in France, but 'right on the job'. On another he said:

'Now suppose Christ were here . . . what would he say about the present war? He said "Thou shalt not kill." He did not say, except when you are wearing khaki. He did not say except he be a Hun, or a Bulgarian, or a Turk.'

His case was remanded because of his work on the I.W.W. inquiry, then being heard by Mr Justice Street, on condition that he did not speak in public about the war. Following the release of the Street Report, the terms of the remand were amended so that he could speak on this. The case was finally heard on January 21, 1919; he was fined £100, in default five months.

A 'CONSPIRACY' AGAINST THE POLICE

One of the most extraordinary of all the ramifications of the I.W.W. case was the charge of conspiracy to injure certain members of the police force, laid against George Miller and Robert Wallace, two Scottish immigrants suspected of being pickpockets. The circumstances were these.

On Empire Day, 1919, Miller and Wallace were arrested on Randwick Racecourse by Detective George G. Fergusson (the friend of the late McAlister) and Detective Comans, on a charge of being 'suspected persons'. The accused men were released on bail, and their case remanded.

They then approached Mr Windeyer, k.c., who had appeared for the I.W.W. Twelve before Mr Justice Street, with the story that they were being blackmailed by the police. They claimed that Fergusson had 'put it on them' for £50 to drop the case, which, after some negotiations, they had finally agreed to pay.

Windeyer suggested that they should continue to negotiate, and it was agreed that the money should be handed over to Detective Hooper—the only man Fergusson would trust to collect it—at Duff's Hotel.

The barrister saw the Inspector-General of Police, Mitchell, who arranged for Miller to be given ten marked notes and for two inspectors to be brought down from the country to keep Miller under observation. At Duff's Hotel, watching through a crack in the door, the two inspectors saw Miller hand a roll of notes to Detective Hooper, who pocketed them and ordered a whisky. Before he could drink it, the inspectors accosted him and demanded the money. He produced the roll; it contained the marked notes. Asked how he got the money, he said it was given to him to put on a racehorse—but he could not name the horse. At police headquarters, Miller and Wallace again affirmed that this £50 was Fergusson's bribe.

It looked like a fair cop. Fergusson was carpeted before the Inspector-General; he denied the allegation of bribery, but refused to make any statement. (Later he explained that he had 'smelt a rat'—a conspiracy to injure him—and preferred to say nothing until he had seen his legal advisers.)

The Inspector-General put the matter in the hands of the Crown Solicitor. Windeyer inquired several times about the outcome, but nothing happened. The next development was something of a

shock. Detective Fergusson issued warrants against Miller and Wallace on a charge of conspiracy to accuse him of a crime.

The detectives' story was that they had arrested Miller and Wallace at Randwick on suspicion of picking pockets. The two 'dips' offered the detectives £50 to let them go, but the detectives refused. Later, the 'dips' approached Detective Hooper and asked him to arrange to put £50 on a horse for them; Hooper agreed, thinking that it would enable him to get on to a ring of criminals who were working the Sydney racecourses. This was the £50 Hooper was caught with. The detectives said that they believed that Miller and Wallace had engineered this frame at the instigation of the defence interests in the I.W.W. case.

The magistrate decided that he could not rely on the detectives' evidence, and refused to commit Miller and Wallace for trial. There was too much at stake for the detectives to let this pass. They persuaded the Attorney-General to take the unusual (although not unprecedented) step of issuing an *ex officio* indictment against Miller and Wallace on the same charge. (This is a procedure by which the Crown may re-open criminal proceedings which it believes have been wrongly disallowed in a magistrate's court.)

This time the case was heard before Mr Justice Sly and a jury. The jury failed to agree. The Crown was sufficiently discouraged to enter a *nolle prosequi*. And it was sufficiently unsure of its own position to pay £35 towards the costs of the defence, and £65 towards those of Detective Fergusson.

In the aftermath of the case, Fergusson was transferred to Newcastle—at his own request, he said—and Hooper to Goulburn. Superintendent Walker, their superior officer, had been awarded the King's Medal for 'exceptional ability in connection with the detection of crime and the apprehension of criminals'. However, he too was now transferred, to Grafton. The official explanation was that the 'severe strain' imposed on the Superintendent during the recent crime wave, 'coupled with the loss of his son at Gallipoli', made it desirable to transfer him to a position 'of equal importance, but carrying less responsibility'.*

That was still not the end of the matter. The original charge against Miller and Wallace, of picking pockets, still stood. When

* Another of the detectives involved in the I.W.W. case was in trouble at this time. It was alleged against Detective Leary that he had taken a bribe from a solicitor on behalf of one of the solicitor's clients. Leary denied this. He admitted, however, that he had borrowed £110 from the solicitor on the security of two blocks of land. The Premier, asked whether it was proper for a detective to borrow money from a solicitor whose clients he was prosecuting, replied 'that Leary was acting within his rights. . . . The question of the propriety of such a course is solely one for his own discretion.' Leary was promoted to Acting-Inspector shortly afterwards.

the accused were called in the magistrate's court, they did not answer—they had skipped bail. Their bail was estreated and warrants were issued for their arrest.

There it rested until November 1921, when Miller walked into the office of the Inspector-General of Police and announced that he was ready to answer the charge. Asked where he had been, he said that he had gone home to Scotland to see his people. (Wallace never reappeared.) Miller was tried soon after; the magistrate decided that he was not satisfied beyond reasonable doubt of Miller's guilt, and gave him the benefit of that doubt.

THE TWELVE IN GAOL

Lags in New South Wales believed that Samuel McCawley, the Comptroller-General of Prisons, was descended from one of the 'heads' of the convict days. The accounts of the prisons he ran certainly suggest that his ideas on penal discipline owed more to John Price than to Alexander Maconochie. And I.W.W. sympathisers believed that he showed a special vindictiveness towards the Twelve.

Back in 1916, when they were awaiting trial, five of the Twelve (Hamilton, Fagin, Teen, McPherson and Beatty) were kept in strict solitary confinement. The other seven were, however, allowed out of their cells and took their daily exercise together. One who knew them in gaol wrote: 'By these methods the authorities were endeavouring to divide the men against one another and force statements from any one of them unknown to the others.'*

After the dismissal of their appeal, the Twelve were split up, and, at various times, moved around from Long Bay to Parramatta, Maitland, Bathurst, and Goulburn. Isolated fragments of their gaol experiences survive.

Vance Marshall was a young Sydney Social Democrat who was convicted under the War Precautions Act; he recorded his prison career in a book, *Jail From Within*. In Long Bay on one occasion he was set to work cleaning the locks of the cells, one of which was that of Donald Grant.

'I glanced at the cell information card, fitted in its socket on the wall. It read: Division B. No. of prisoner, 59. Date of conviction, 1916. Length of sentence, 15 Years' penal servitude.

*This was an interesting division; perhaps it represented the authorities' undisclosed view of which of the Twelve were really guilty.

told the magistrate that Grant was subversive of gaol discipline—he had refused to stand during the National Anthem, and was encouraging the prisoners to strike against eating rabbit. Grant got forty-eight hours' cells on bread and water.

Later, in Bathurst, Grant, Reeve, Glynn and Fagin led a prisoners' demonstration demanding an inquiry into the bashing of a Negro prisoner by the warders, but the authorities succeeded in isolating them and they did not win their demand.

In 1919, the Relief Committee reported on the state of the men in gaol. Glynn, Besant and Grant had all been ill; Fagin was to undergo an operation; Hamilton was suffering from phthisis; McPherson could not eat or sleep; Moore was mentally disturbed.

In 1920, the new Comptroller-General of Prisons (McCawley had died) reported on the prison record of the Twelve. In addition to his forty-eight hours for the 'frivolous complaint', Grant had had seven days' cells for insolence to his warder and abusive language. Glynn, Hamilton, Larkin, McPherson, Reeve, Fagin and Moore had all suffered gaol punishments. King, Teen, Beatty and Besant had clean sheets.

A Sydney labourer who did time in Goulburn and Bathurst with some of the Twelve recorded his impression of their state of mind, in a pamphlet called *Breakers of Men: Or, Torturing the Twelve*:

'It must not be supposed, however, that the men are complaining or really despondent, in other words, are doing their "lagging" hard. Such is not the case. All the men I met are doing it as well as is possible for any one who is placed in their position to do. They look to the future with confidence, having still the same implicit faith in the class to which they belong as they did in the days of their active organising and propaganda. The message given to me for industrial unionists on the outside . . . was that they are grateful for everything that has been done on their behalf, but that the immediate aim must be job organisation and job control, with its logical outcome, job action, to secure their release.'

But this may well have been written more for the movement outside than of the men within.

The Release Campaign: Stage Four

'The question has not been settled, and the sense of justice in the country is not satisfied. . . .

'Suspicion has not been removed, on the contrary, the Judge's report has made it stronger.'

From *The People*

EVERY WORKER'S DOING IT!
DOING WHAT?
MAKING IT COST THE CAPITALIST BIG MONEY TO KEEP THE
12 INNOCENT I.W.W. MEN IN JAIL
USE EVERY MEANS ON THE JOB THAT WILL REDUCE
THE BOSS'S PROFIT

The Workshop Committee operating
for the release of the Twelve

Mr Justice Street's report was a grave blow to the defence campaigners. But they were not prepared to abandon the fight. In a press statement, Messrs Judd, Brookfield, Mutch and Boote expressed both their amazement at the report and their determination to carry on.

The credibility of the main Crown witnesses had been shattered, they claimed. And if this were so what value could their trial evidence have had? Would a jury, knowing what was now known about Scully, the Goldsteins and McAlister, have accepted their stories? The Commissioner himself agreed that their evidence should not be accepted without corroboration, but the only corroboration was that provided by the police, and that was 'intrinsicly dubious'.

They found it 'surprising' that Mr Justice Street had found 'no fresh facts' to cause him to doubt the guilt of the Twelve. The withdrawal of the forgery charge against Davis Goldstein, the payment of £750 to 'Little Tich' Lazarus, the cheap suits acquired by the detectives, Goldstein's confession that he gave false evidence—were these not fresh facts?

And they concluded that 'His Honor has revealed a surprising tendency to airily wave aside anything which goes to the strengthening of our case, and to stress the smallest point which he imagines to tell against us'.

It was impossible for them to let the matter rest.

The New South Wales Labor Council unanimously viewed with disgust Mr Justice Street's finding, 'especially in face of the evidence submitted to the inquiry', and demanded either that the men be granted a new trial or that they be immediately released. A trade union conference in Melbourne in January 1919 called on all sections of the labour movement to help the Sydney Labor Council in its agitation. The Council resolved to start an international agitation.

The defence side had hoped that the Government might extend clemency following the Armistice, but this hope had faded. Katie Teen, wife of William Teen, wrote to the Relief Committee on July 23, 1919:

'I thought the boys might get out of gaol when the peace was signed, but I believe they have no hope now, I suppose until the coming elections, and needless to say I am looking forward to them.'

On the left, the Industrial Labor Party fragmented in a bitter internal argument over Betsy Matthias' administration of her relief fund and the relative merits of political and industrial action in securing the release of the Twelve. A group broke away to form the International Industrial Workers, which began to publish the *Proletariat*.

The old I.L.P. attacked the breakaways and their friends in the columns of *Solidarity*:

'If the politicians and their hangers-on want the Twelve Men out of gaol (which I doubt) why do they not come out straight on the only place where lies the power of releasing the men—namely on the job, in the industries. Let Boote send the clarion cry through the "Worker" columns for a general cessation of industry until such time as the men are released. . . . Immediately it ceases to be a paying proposition to keep the men in gaol, immediately they will be free.'

The I.L.P. repudiated the demand for a Royal Commission, and advocated 'Industrial Release'.

The International Industrial Workers were just as free with their invective—they dismissed Betsy Matthias and her colleagues as 'a gang of Industrial spielers'—but they were perhaps more realistic. They were prepared to co-operate with Henry Boote and the Labor Council campaign, and with J. B. Steel's Dependents'

Relief Fund, which continued through 1919 to pay £2 a week to each of the three wives. They did not, however, escape the attention of the police; their headquarters were raided in April 1919, and the police seized documents which, they said, conclusively connected the International Industrial Workers with the old I.W.W.

In March 1919, the Labor Council published the most trenchant of all Henry Boote's writings on the I.W.W. case, his sixty-three page pamphlet, *Set The Twelve Men Free*.

The first chapter was entitled 'A Blind Judge'. It opened:

'A great deal was expected from Mr Justice Street's report on the evidence brought out before the I.W.W. Commission. Not only the friends of the incarcerated men, but very many people who previously had been hostile to them, or had seriously doubted their innocence, considered that in the light of the fresh facts established by the inquiry his Honor would be bound to make a report favourable to the men and their advocates. . . . When, therefore, the Commissioner comes along and says that all's as right as right can be, people can only look at one another in surprise and wonder if their ears deceive them.'

Boote took his readers through the confessions of Scully and Davis Goldstein, and the relations of these two witnesses with the police. He dealt at length with the curious circumstances surrounding Detective Surridge's interviews with the journalist King and with Judd. He detailed the alleged bribery of the police by the Goldsteins, and the story of the six suits. He devoted a chapter to 'The Truth about the Fires'. And he wound up:

'I hope that when the "fresh facts" brought out by us before the Royal Commission become widely known, such an agitation for justice will arise from end to end of the Commonwealth as will force the Government to the tardy acknowledgement of a great judicial crime, and to the opening of prison gates which should never have closed; and the setting free of those twelve members of the working class, now pining in captivity, saddened by the thought that those whom they so faithfully served have forgotten them and abandoned them to their cruel fate.

'Wake up, workers of Australia, and **AGITATE FOR THEIR RELEASE!**

Boote's attack stung Premier Holman into a reply. Anonymously (his position apparently prevented him using his name in such an all-in controversy), Holman published a series of articles in the *Sydney Sunday Times*, commencing on March 30, 1919, which set out to tear Boote's exposure to shreds.

Holman had a considerable gift for irony. He opened thus:

'Having temporarily abandoned a quest formerly announced as far more sacred than that of the Holy Grail, Mr H. E. Boote, the gifted editor of the *Worker*, has returned this week to his unending propaganda on behalf of the I.W.W. prisoners. Journalistic necessities have apparently prevented him continuing to point out to Labor as a whole the path of deliverance so brilliantly demonstrated by him in his writings of the last twelve months on the One Big Union. But if he cannot deliver many, he can still deliver a few, and he has returned to another purpose, no doubt equally dear to him, that of rescuing "our comrades who are languishing in gaol".'

Holman argued that it was established that there were fires which were started by fire-dope, that Scully had explained to 'the I.W.W. men' how to start fires and had obtained material for the dope, that McAlister had undoubtedly taken information concerning fires to Detective Fergusson, and that the police had subsequently acted in a way which was only consistent with this information being genuine. Likewise, the original stories of the Goldsteins were not police concoctions, but were true; and it was impossible that the police should have picked on Scully to give their case credence—Scully, the one man who had admittedly lectured to the I.W.W. men on fire-making—unless he was actually connected with incendiarism, as the police said. As to the police evidence, Holman declared:

'And now it is time to speak plainly to Mr Boote and those who, like him, in a spirit of besotted partisanship for desperate criminals, think themselves entitled to systematically malign hard-working and trustworthy public officers. All through this three-fold inquiry, the steady veracity of the police has been most signally and clearly demonstrated. Whenever their narrative could be tested—often in the most unexpected and unforeseeable ways—it has always been proved to be true. . . . The police have been amply vindicated by the Royal Commission.'

Holman concluded with an appeal to those who had been drawn into the defence of the Twelve:

'There remains only to be added one final consideration. Since these men, thus proved and re-proved guilty, have been incarcerated, incendiary fires have ceased. This is a final fact which, from the nature of things, could not be demonstrated at the trial. But we know it now.

'There has been no miscarriage of justice over the I.W.W. men, and the workers who have spent money and time in agitation in their interests have been deceived.'

There was one central difficulty with the analyses of both Boote and Holman, although Boote was on rather stronger ground. Holman sought to establish the veracity of the whole of the Crown case, and the guilt of all the Twelve. But, despite the passion with which he argued his case, there was sufficient in the material presented to the Royal Commission to throw grave doubt on this. Boote, on the other hand, argued at his most extreme that all the Twelve were innocent, but this conclusion was not necessary to his argument.

If, as I have already argued, the truth lay somewhere between these extremes—that the I.W.W. case was, as one who had a detailed personal knowledge of the circumstances described it to me, 'a frame-up of guilty men'; that some, but not all, of the Twelve were guilty of some acts of incendiarism or preparations for incendiarism, but that these did not necessarily bear any relation to the specific acts alleged against them—then some of Holman's points could be accepted, and most of Boote's. Much of the inconsistency would then disappear.

But, if this were so, it still left one major question, as Holman dramatically indicated:

'Who is the superman in the police force of our State with the more than Balzacian range of imagination which would equip him to evolve this extraordinary and complex romance? . . .'

This is a fair question; but the mechanics were not as difficult as Mr Holman suggested. To have set up so much false evidence as went into the case would have required the co-operation of the four main Crown witnesses and the connivance of Superintendent Walker, the 'directing head' of the investigation, and half-a-dozen detectives. And this is precisely what Goldstein and Scully, in their confessions, said had occurred. It was a difficult but not an impossible task. The story hung together pretty well—and would have stood up altogether had not Goldstein and Scully confessed. But there were cracks, and these were the points at which the memory or the imagination of the Crown witnesses and the police flagged. For there is no doubt that, even if parts of the evidence given by Scully and Davis Goldstein were true, the core and most of the details of the Crown case were false.

Still Holman felt the gripping of conscience, or the goad of righteous indignation. He had his *Sunday Times* series re-issued as a pamphlet, *The I.W.W. Prisoners: An Analysis of the Evidence at their Trial*, still anonymous and this time carrying the inscription:

'Dedicated with Genuine Regard to the Self-Respecting and Law-Abiding Trade Unionists of Australia whose Funds and Energies have been unscrupulously wasted in the Interests of Desperate Criminals and whose good name has been besmirched by unsought association with crime.'

Using Archdale Parkhill, secretary of the National Association, as an intermediary, Holman had 11,000 of these pamphlets distributed to houses in the Labor electorate of Botany (the member for which was Tom Mutch).

Some weeks later, the Premier instructed the Inspector-General of Police to have 'discreet inquiries made among police officers in this district in order to ascertain if the pamphlet . . . has been read, if it evoked any interest, and if it was successful in creating any measure of public opinion'.

The police report was guarded in its conclusions. The local officers were 'unable to give an authentic instance of any extremist renouncing his former views' after reading the Premier's pamphlet, but they were satisfied that there had been 'a marked falling off recently of street discussions. . . . Public sympathy . . . has not shown the same warmth and interest since the distribution . . . and is unmistakably on the wane.' Since they could suggest no other cause for this, they concluded that the pamphlet must have 'evoked a considerable measure of public interest, and will, to a great extent, influence and mould public opinion . . . in the direction desired by the Author'.

This lukewarm report may well have reflected the common desire of subordinates to tell their superiors the things they want to hear. It was sent in confidence for further comment to the Secretary of the National Association, who set two of his officers to work. Their reports were franker.

One commented that he could find no evidence that the pamphlet had influenced opinion; 'in the great majority of cases [it] has simply been cast aside as of no importance'. The second concluded cautiously that it had 'done some good', but advised that similar publications in future be handed directly to the voters, instead of being thrown over the front fence.

All in all, the Premier can have drawn little comfort from his propagandist endeavours. As in all popular campaigns, public interest ebbed and flowed, and the Premier's pamphlet apparently coincided with an ebb. But its effect could not have been great, for less than six months later the Twelve had again become a major issue, in the course of the 1920 elections, and contemporary

observers believed that this was an issue which counted rather strongly against the Government.

In January 1920, the Labor Council appointed a new committee to lead an agitation for the release of the Twelve. The committee called together six hundred of the strongest supporters of the defence campaign early in February. Labor Council secretary Jock Garden revealed the new tactics. The committee wanted to set up groups throughout the State, to distribute propaganda, arrange meetings, and raise finance. It was to be the largest campaign ever undertaken in New South Wales, and it would cost thousands of pounds. The culminating point would be the request of the Labor Council to all candidates at the forthcoming State elections that they sign a pledge of their support for the unconditional release of the Twelve. Police observers were present at the meeting, and the Inspector-General reported to the Chief Secretary that 'developments are being closely watched'.

The movement kicked off. Harry Scott Bennett, a long-time socialist orator, came back from New Zealand to lend a hand. Large meetings were reported in various suburban town halls. Street meetings were reported all over Sydney. In March, the Labor Council complained to the Inspector-General of Police that his officers were improperly interfering with speakers who were putting the case for the Twelve. The police documents do not show any evidence that the police had been ordered to tighten up on street meetings; perhaps the continued attack on the police part in the I.W.W. case caused the local men to use their own initiative. In any case, the police took no action, and the meetings continued.

Meanwhile, the Labor Council was putting its demand to the election candidates, so making the issue of the Twelve 'the pre-eminent one before the elections'.

In Broken Hill, the local member, Jack Brookfield, had left the Labor Party when the militant industrialists broke away from the party in 1919; he was standing as an Independent Labor candidate, and had signed the pledge. The party wanted the Federal member, Mick Considine, to campaign against Brookfield, but Considine refused. In Sydney, two Labor candidates—P. J. Minahan and Scott Campbell—signed. (The Labor Council said there were others, including the ex-I.W.W., A. W. Buckley, but these denied it.)

Minahan and Campbell made no secret of their pledge. The party withdrew its endorsement, the secretary saying that the

pledges 'constitute one of those blunders that may cost Labor its otherwise assured victory at the impending election, because it gives the unthinking electors the idea that Labor is opposed to law, order, and justice, whereas quite the opposite is the case'. Because of public suspicion, the party was, however, prepared to order 'an exhaustive investigation into the circumstances surrounding the trial and the conviction' of the Twelve.

When the numbers went up, Labor found that it could take office only if it received the support of Brookfield and of Minahan, who had won as an Independent Labor candidate. And their support was conditional on something being done quickly about the Twelve. The new Labor Government promised that it would appoint a Royal Commission.

The Labor Council was not altogether happy; immediately after the election, it had resolved unanimously that:

'having given consideration to the case of the I.W.W. men, we are convinced that they are the victims of a frame-up. We consider that a further inquiry will serve no good purpose and demand that the present Government release the men forthwith.'

But they had to be satisfied with what the Government was prepared to give.

The Ewing Commission

The new Labor Government was committed to the further inquiry, but it was not easy to find a suitable Royal Commissioner. The resources of the New South Wales Bench were almost exhausted—five of the eight Justices of the Supreme Court had already sat on the matter, at the trial and the appeal hearings and in one Royal Commission, and the remaining judges were involved in other, non-criminal jurisdictions. Besides, judicial solidarity was in full swing, and the members of the New South Wales Bench were reluctant to sit in judgement on their fellow judges. When Premier Storey sent out feelers, he soon found that 'no judge was available'.

The Government was reported to have considered appointing a leading barrister to conduct the inquiry, but this would have left them open to the charge of making it possible for someone other than a judge to overrule the judiciary. Clearly it was important that a duly-appointed judge be found from somewhere.

Coincidentally, Norman Kirkwood Ewing, a Puisne Judge of the Supreme Court of Tasmania, was visiting Sydney at the time the Government was seeking a way out. Mr Justice Ewing was a relatively recent appointment to the bench. A Western Australian lawyer, he had been active in State and Federal politics on the Labor side. He had recently conducted a controversial investigation into the administration of the Northern Territory, commissioned by the Commonwealth Government.

Jack Lang (at the time a Labor back-bencher in the N.S.W. Legislative Assembly) notes in his memoirs, *I Remember*, that 'when a Government decides to set up a Royal Commission, its first job is to get the right Royal Commissioner'. According to Lang, Mr Justice Ewing was known to be the right man for this job—he was sympathetic to the prisoners. More cautious witnesses say merely that he was known to be interested in the case.

However this may have been, the New South Wales Government approached Mr Justice Ewing in Sydney late in April 1920 to take the Commission, and he accepted. The Premier announced

the appointment, and declared that 'not a particle of relevant evidence shall be excluded' from the inquiry. He stressed that 'by endeavouring to get the services of an outside judge we would demonstrate to the public that we were positively impartial in the matter'.

Two days later, a telegram came from Mr Justice Ewing, by now back in Hobart. Unfortunately, consultation with his colleagues revealed that the Tasmanian Supreme Court was too busy for his services to be spared. Lang suggests that the anti-Labor Premier of Tasmania, Sir Walter Lee, refused to release the judge for the Commission.

At this point in the story, the accounts diverge. Lang, in characteristic style, says that Sir Walter's objections were overcome by the offer for his State of a boatload of cement, which was in very short supply in Tasmania. It is a splendid story; unhappily, the documents do not support it.

The State Premiers were gathered in Melbourne for a meeting of the Loan Council. From Hobart, on May 25, Mr Justice Ewing telegraphed the New South Wales Attorney-General: 'If you still wish it and your Premier applies for services to our Premier I have every reason to believe my colleagues on bench will withdraw objections.' Whether these objections were a further example of judicial solidarity, and, if so, what arguments Mr Justice Ewing used to convince his colleagues, we do not know.

In any event, the New South Wales Premier wrote to his Tasmanian counterpart of his anxiety 'to secure . . . a judge who was not connected with the trial in any way whatever', and made the first formal request to the Tasmanian Government for the judge's services. (Indeed, it may be that it was the precipitate declaration that Mr Justice Ewing had accepted the Commission, before he had consulted with his Government and his colleagues, which was the source of the Tasmanian objections to his appointment.)

On May 27, Premier Storey, under pressure for a quick solution, asked Sir Walter Lee to expedite his reply. Four days later, the Tasmanian Attorney-General asked the New South Wales Government how long they thought it would take Mr Justice Ewing to discharge his commission. Optimistically, perhaps disingenuously, New South Wales replied by return that a fortnight should be enough. (In fact, Mr Justice Ewing was away from Hobart for a month.) The Tasmanian Premier replied, five days later, that arrangements had been made; later, the New South Wales Government agreed that they would pay all expenses and Mr Justice Ewing's salary while he was away from his home State.

The New South Wales Premier had made considerable play, in announcing the appointment of Mr Justice Ewing, of his desire 'to avoid creating a Court which might be regarded as in any way inferior to that which heard the case originally'. But this too was disingenuous. The Government knew well that the powers of inquiry it could confer on Mr Justice Ewing were less than those enjoyed by Mr Justice Street. The Tasmanian judge could be empowered to call evidence only under the Royal Commissions Evidence Act of 1901, which was limited in two significant ways—a person who had a 'reasonable excuse' could not be compelled to appear; and, even if no reasonable excuse were produced for non-appearance, the maximum penalty was a fine of £20. The Government could not confer on Mr Justice Ewing powers of compelling attendance of witnesses and the production of documents, for these could only be given to a Commissioner who was also a Justice of the New South Wales Supreme Court, and 'Mr Justice Ewing has not the qualifications necessary to enable him to be made an acting Supreme Court judge'. Later, this was excellent ammunition for the critics of the Ewing Report.

On June 15, 1920, Mr Justice Ewing was commissioned to inquire into:

'All facts and circumstances relating to . . . the . . . trial of the prisoners or which shew or tend to shew the guilt or the extent of the guilt or the innocence of the prisoners or any of them;

'Whether the conviction of the prisoners or any of them of the crimes or any of the crimes . . . for which they are now respectively serving sentences was in all the circumstances just and right. . . .

'Whether the sentence or sentences which any of the prisoners was and is required to serve is or are excessive. . . .'

This was, as the Premier had promised, an unlimited inquiry, and Mr Justice Ewing set to with a will.

As soon as the new inquiry was mooted, the Department of Justice instructed the New South Wales police to check on the whereabouts of the witnesses who had given evidence at the I.W.W. trial.

By the middle of May, the Inspector-General was able to report that discreet inquiries had established the present addresses of all but twelve of the witnesses. Of those who could not be located, Detective Robertson and McAlister were dead, and Davis Goldstein was overseas.

While the Street Commission was still in progress, the police had received a report that Davis Goldstein was thinking of leaving

the country; they had wired police headquarters in all capitals asking to be informed if Goldstein applied for a passport. In May 1919, the Melbourne C.I.B. advised the Sydney police of Goldstein's application. Sydney replied that there was no objection to the issue of a passport to Goldstein.

Louis Goldstein had remained in Sydney. But there was a momentary panic in the first days of the Ewing Commission; Louis, it appeared, was reluctant to appear. When found and brought before the Commission, Louis Goldstein complained bitterly:

'I had no intention of attending this Commission unless I was absolutely compelled to. I have been branded here as a perjurer and liar time and time over, and I thought that if I am branded as a perjurer and a liar my evidence would be useless, and that you would be able to do without me.'

The Ewing Commission opened in the Darlinghurst Courthouse on Monday, June 21, 1920. There had been little advance publicity; few spectators attended on the first day, but among those who were present were the Attorney-General, E. A. McTiernan, and the Minister for Justice, W. J. McKell. Later, when the word got around, long queues waited daily as they had done for the Street Commission.

The Twelve had not been allowed to attend the Street Commission; this time, they were present and accommodated in the jury box. *Truth* discounted the suggestion that the men looked no different, that they were 'healthy and happy':

'Men who are serving fifteen of the best years of their lives in gaol usually do look "healthy and happy". 'Nuff sed!'

Their supporters had seen, however, that they had new suits; they looked 'neat and well-groomed', and 'bowed and smiled bravely' to their friends.

Mr Justice Ewing began the proceedings with a characteristic gesture. He announced that he did not propose to conduct the inquiry with too much formality, and took his wig off and threw it on the bench. He went on to tell counsel that he proposed not to hold them too rigidly to the recognised rules of addressing the court; he preferred matters to be fully debated as they arose. And he proposed 'to look at this matter from the standpoint of ordinary rules of criminal law . . . that it is the duty of the Crown to establish the guilt of the persons beyond all reasonable doubt'.

The Inspector-General of Police had asked that the force be represented before the Commission by Messrs Lamb, K.C., and Bathgate (who had prosecuted at the original trial) and Messrs Shand, K.C., and Manning (who had represented the Crown at the Street Commission). However, the Attorney-General had briefed Messrs G. E. Flannery, K.C., and H. E. Manning for the Crown, and he decided that this representation was sufficient.

The Government had agreed to pay the defence costs; the defence wanted to brief Mr Windeyer again, but he was ill. So they approached Dr E. M. Brissenden, K.C., and Mr Collins, who had appeared with Windeyer. Dr Brissenden accepted the brief at a retainer of one hundred guineas and refreshers of twenty guineas a day.

However, the approach to Dr Brissenden was made only two days before the inquiry opened, and his junior sought an adjournment. Mr Justice Ewing was happy to oblige; he too wanted time to read through the voluminous transcripts of the trial and the Street inquiry, and the various judgements and exhibits.

The Ewing Commission lasted fifteen days and heard thirty witnesses. Nearly seven thousand questions and answers occupied 166 pages of the Minutes of Evidence.* But Mr Justice Ewing heard little that was new. Of the witnesses, eleven had not previously appeared in any of the proceedings, but, of these, only Elwin Atkins (who testified to a conversation with Louis Goldstein, in which Goldstein admitted he knew that the case was a frame) and Ted Giffney (who gave his account of the raid on the I.W.W. headquarters on September 23, 1916, and the arrest of Besant) added anything substantial. Otherwise, the Commissioner examined the documents of the trial and the Street inquiry, and re-examined the available Crown witnesses and police. The most substantial new evidence concerned the behaviour of Detectives Fergusson and Hooper in the Miller-Wallace conspiracy case, but this was marginal to the I.W.W. case—it went only to the credit of the detectives concerned.

Nevertheless, Mr Justice Ewing had no trouble in finding very differently to Mr Justice Street. He had laid the basis for this on the first day of the inquiry, when he said:

'Mr Justice Street has emphasised in his report that he was conducting an inquiry of a limited nature. What I am called upon to do now is

* The cost to the Government of the Ewing Commission was £2,412.

something entirely different . . . and much wider in its scope. Therefore, it may follow that . . . my conclusions might or might not be different.'

Mr Justice Ewing agreed, in general terms, with his predecessor's characterisation of the Crown witnesses, Scully and the Goldsteins. He described them as 'persons of such a character that they may justly be described as liars and perjurers, and men who, whenever it served their own ends, and irrespective of the consequences to other persons, would not hesitate to lie, whether upon oath or otherwise'. As to McAlister, he said that 'from the material placed before me, [I believe] that he knew a very great deal more about the matter than originally appeared'.

But he drew a quite different conclusion from that drawn by Mr Justice Street:

'If the view I have formed of Scully and the Goldsteins, and in a lesser degree of McAlister, is correct . . . then these men were capable of almost anything to serve their own ends, and would not hesitate to take any steps in the way of making evidence to incriminate others.'

There was indeed a conspiracy to burn down buildings—and the Crown witnesses were in it up to their necks:

'Scully was the manufacturer of the instrument of destruction. In the highest probability, the Goldsteins were also implicated, and if they were not, I am convinced that they knew all about it; and I believe, whether he was concerned in it or not, that McAlister also had full knowledge of it. I do not believe that the great state of perturbation displayed by McAlister was the outcome of anything more moral than the fear of discovery.'

Coming down to specific cases, Mr Justice Ewing thought it probable that Davis Goldstein had planted the bottle of fire-dope on Teen, and possible that the bottle of fire-dope he gave to the detectives, saying that it had come from Hamilton, had in fact been in his possession all the time. Of Fagin's bottle of dope, he said: 'There is no evidence to show who put it there, but in this connection it will be remembered that Scully was from time to time in Fagin's room.'

The Commissioner, in discussing sabotage, found it could mean three things—the use of criminal methods to destroy society; the destruction of profit by not giving an employer a fair return for his wages, which was 'immortal [a happy misprint] and dishonest, but not criminal'; and organised effort to compel dishonest employers to act honestly by their customers, which was neither

illegal nor dishonest. The precise meaning had to be established from the context, and he had given the I.W.W. men the benefit of an 'innocent construction' where one was possible.

Mr Justice Ewing considered each of the prisoners individually. Of six of them (Hamilton, Besant, Moore, McPherson, Teen and Fagin) he found that it was not just and right that they should have been convicted on any of the three counts. Of four (Glynn, Larkin, Beatty and Grant) he found that there was adequate evidence to support the charge of seditious conspiracy, but that the time they had served was sufficient punishment. Of King, he found that he was justly convicted of seditious conspiracy, but that the sentence of five years, cumulative on the two years he was already serving for forgery, was 'greatly in excess of the offence'.

Only of Charlie Reeve did he find that he was properly convicted of conspiracy to commit arson, and he based this finding on the evidence that was not admitted in the trial because it stood outside the date of the alleged conspiracy—that is, the letter written by Reeve to Fred Morgan, in which Reeve spoke of 'Bryant and Mays' and sabotage. The Commissioner commented: 'If these words, coupled with the events which afterwards occurred, do not bring conviction to the mind of any man as to the existence of a conspiracy to burn, I fail to understand the mental attitude of such a person. It convinces me . . . that Reeve and Morgan were concerned in the conspiracy.'

In the circumstances, he held, Reeve's sentence was not excessive.

Later, when he had been released from gaol, and while Reeve was still inside, Bill Beatty wrote to a friend:

'Poor Charlie does not yet understand the local significance of the expression "Bryant and May are not dead yet" which was written in a spirit of bravado. . . .'

Charlie Reeve was certainly given to bravado—he himself commented that Bryant was a chap he knew in the West and May a bloke in the movement. But he did write the letter, and it is hard to believe that he did not know what it meant.

Nevertheless, if my judgement of the case is correct, Mr Justice Ewing's finding was a strange one. The three men who were in all probability involved were released, while Reeve, who was not involved—Beatty's judgement that he wrote in a spirit of bravado is quite credible—remained in gaol.

The judgement brought joy to the hearts of the defence campaigners, qualified only by the failure of the judge to recommend

the release of Reeve. But it was not a judgement that was consistent with the facts. The evidence of McAlister, Scully and the Goldsteins was inextricably interwoven with that of the police witnesses, and if it was false then some at least of the police must have been party to the falsehood.

Mr Justice Ewing dodged this question. He was not prepared to overrule the finding of his brother judge, that there was nothing wrong about the police conduct of the case, and he rejected the only feasible explanation of the frame-up.

Mr Justice Street, a man of deeply conservative views but of stern logic, had found it impossible—and perhaps even disruptive of the social order—to admit of police corruption, of the police even embroidering a case to make it better, let alone fabricating a case altogether:

'The police are not justified in stretching the evidence against an accused man one hair's breadth, and any police officer who . . . thinks that his own belief in a man's guilt justifies a departure from truth or fair play is unfit to be in the service. . . . All this is, of course, a matter of common knowledge and traditional practice in the Crown Law Office, and I have no reason to suppose that the police force as a body is not animated by the same proper standards and the same sense of fair play.'

If there was a remarkable degree of naivete in this statement, coming from an experienced judge, there was nothing similarly naive about Mr Justice Ewing. His questions to the police witnesses made it quite clear that he had no difficulty in believing that the police might cook a case, but his report made it equally clear that he felt it impolitic to say so.

The Gates Open

Back in Tasmania, Mr Justice Ewing sent his report to the Governor of New South Wales on July 28, 1920. The first rumours of the report's recommendations hit the Sydney newspapers two days later. The *Daily Telegraph* said that Mr Justice Ewing's view was that some of the men should not have been convicted at all, and that others had been sufficiently punished, but that 'two or three' should be kept in gaol. 'The men whom the judge considers have been in gaol long enough include those addicted to public speaking. Those considered deserving of further imprisonment are deemed to be "criminals". In these cases, however, a reduction of the term of imprisonment is probable.' The *Telegraph's* opinion was that the Government would order the men's release as soon as the report came to hand.

Alongside these largely accurate forecasts ran the whisper that those of the prisoners who were not Australian-born were to be deported by the Commonwealth authorities on their release. The Labor Council secretary, Jock Garden, warned of 'serious consequences' if the Federal Government attempted any such action. Either the trade unions, which had fought so long and so determinedly for the release of the Twelve, were over-suspicious, or the Federal Government abandoned its plan once it became known. Prime Minister Hughes stated that there was no truth in the rumour, and in any event no such moves were made.

On July 31, Premier John Storey made public Mr Justice Ewing's recommendation for the release of ten of the Twelve, and his comment that J. B. King's sentence of five years cumulative on the two years he was already serving for forgery was 'greatly in excess of the offence'. The Premier said: 'There is nothing left for the Government but to carry out the recommendations of the Judge. The men whom he recommends be released will be released as early as possible.' It was a triumphant moment for the surviving Wobblies and those in the labour movement who had supported their cause.

The reactions to the announcement were predictable. The *Sunday Times* protested that Mr Justice Ewing had been able only 'to skim hastily through the cold remains of the evidence', and had produced a mere 'pettifogging' criticism of some of the details of the case against the Twelve: 'The entire legal machinery of the State of New South Wales is at stake.' The *Bulletin* declared that Mr Justice Ewing's legal status was 'little higher than that of a Sydney Stipendiary Magistrate'. The Melbourne *Argus* found it 'disquieting' that a Royal Commission should act as a Court of Appeal from the duly constituted courts. The ten men to be released would be 'hailed by the mob as heroes and martyrs—and some of them, doubtless, in the fullness of time, Members of Parliament'. (In fact, only one of the Twelve, Donald Grant, reached this eminence, but even this would probably have surprised the *Argus* more than its comment suggested.)

The enthusiasm (if not the rhetoric) of H. E. Boote, in the *Worker*, was typical of the labour movement's elation:

'The rage of the prostitute press is the measure of the triumph won for justice by the release of the I.W.W. prisoners. The ink is foaming at the lips of Sydney's dailies, morning and evening. Their voices are raised to a pitch of obscene fury.

'They rail at the prisoners. They scream at the Government. They vilify the judge. They raise their dirty hands to heaven and utter blasphemous moans. . . . They rave about the contamination of the fount of justice, but when that fount does not flow the way they desire they are ready at once to befoul it. . . .

'Had I my way [all twelve] would . . . be out. Had I my way some of the police would be feeling mighty uncomfortable at this moment. Yet I do not quarrel with the findings of Mr Justice Ewing. A keener instinct for justice never existed in conjunction with the horse-hair wig. . . . A large measure of justice has been done, and that is as much as can be hoped for while we are subject to a social system of which injustice is the very basis. . . .'

Amid some trade union criticism of 'undue delay', the New South Wales Cabinet met to consider Mr Justice Ewing's recommendations on August 3, 1920. The Minister for Justice, W. J. McKell, an I.W.W. sympathiser, and later to be Premier of his State and Governor-General of the Commonwealth, minuted the decision:

'Cabinet has given careful consideration to the report of Mr Justice Ewing . . . [and] has decided to recommend that all of the prisoners, with the exception of Reeve and King, be released forthwith.'

Anticipating the Government's decision, Jock Garden addressed the masses on the Sydney Domain:

'I hope you will take a holiday, every unionist, and march out to the gaol gates. Be there to meet the ten men. . . . Show them that we welcome them.'

The police were apprehensive of a big stopwork and demonstration. The Inspector-General advised the Minister to arrange for the men's discharge at an hour sufficiently early to prevent any organised mass welcome. The Government accepted this advice; it arranged for the immediate release of the men, and notified as few people as possible. 'Its one aim was to avoid a demonstration, and in this it succeeded.'

But the Labor Council made up for any deficiencies. Mrs Glynn, Mrs Teen and Mrs Larkin, along with leading agitators for the defence, met the ten freed men when the prison gates opened at 6.30 p.m. on August 3—nearly four years from the day they closed. It was 'an affecting spectacle'.

Ernie Judd warned them not to say anything. Most 'did not seem to have the heart to speak, anyhow', but Donald Grant 'was bubbling over with excitement. He seemed as if he could have mounted the nearest knoll and made a speech to the universe'.

Grant said: 'Poor old J.B. It takes the edge off the joy of getting out having to leave him and Charlie Reeve behind. But don't fret, they'll be with us soon.'

Another of the ten commented wryly: 'Stone walls do not a prison make, nor iron bars a cage, but my experience is that they go a bloody long way towards it.'

Three nights later, the ten free men, their defenders and their supporters, celebrated the victory in Sydney's Town Hall. Half-an-hour before the advertised time, the hall was already filled. 'Men in their greasy working clothes, and men in their best suits; women in well-worn blouses, and women in furs; youths and maidens with smiles; here and there children—a motley mass that stretched from the platform to the vestibule. And standing room only in the galleries.'

Before the meeting opened, young women squeezed through the crowd distributing red camellias. Men handed out a leaflet with the words of the "Red Flag" and the slogan 'Shorter hours means more leisure and more play'. Others were selling the radical press.

A few minutes after eight o'clock, the I.W.W. men, sprucely clad, filed on to the platform with Frank Anstey, M.H.R., Jack

Brookfield, M.L.A., Jock Garden, Henry Boote, Ernie Judd, and other prominent defence workers. The crowd rose and cheered itself hoarse.

Jock Garden read a large bundle of congratulatory telegrams. As he came to the last, he paused and smiled:

‘. . . It’s from Perth. . . . “Hope you are in the best of health. Kindly remember me to the Boys. Best wishes for Friday’s demonstration. Hope some day will see capitalism, militarism, and Toryism do their time.” And it’s from . . . the “Peanut King”, Percy Brunton!’*

When the laughter had died down, Jack Howie, chairman of the Labor Council, rose to introduce the I.W.W. men. As he finished, there was a shout from the crowd, ‘Where’s Hamilton?’ It was true; Hamilton was missing. The chairman thought he might have been locked out when the doors were closed against the overflow crowd. Meanwhile he introduced Brookfield to speak. He had hardly begun when Hamilton arrived. ‘Well, it’s better to be locked out than locked in,’ said Brookfield.

Henry Boote was next; he denounced the ‘whinings of the vile capitalistic press’. A voice from the crowd called: ‘Put in the boot!’

Jock Garden appealed for funds to enable the ten men to ‘rest until they got their land legs’. Pound notes came from all over the hall: £310 was soon collected, and another £50 promised.

The chairman introduced a number of the I.W.W. men. ‘If it be a crime to raise one’s voice against the taking of men from this country to be slaughtered in Europe,’ proclaimed Donald Grant, ‘we are proud of being called seditious conspirators.’ The four who spoke all re-affirmed their faith in the cause of industrial unionism, and gave their pledge to continue the fight for the ‘emancipation of the working class’.

The celebration ended with the traditional hymn of the British workers:

Then raise the scarlet standard high,
Beneath its shade we’ll live and die;
Let cowards flinch and traitors sneer,
We’ll keep the Red Flag flying here.

The ‘Loyal Women of Australia’ called a counter-demonstration in protest against the letting of the Town Hall for the welcome to the ex-prisoners.

* Brunton was a well-known Domain character, a vendor of peanuts and disseminator of radical invective.

A 'disturbing or discordant element of some dimensions' arose early in the proceedings, *Truth* reported. This was Mrs Annie Westbrook, the former I.W.W. and Unlawful Associations prisoner, who had come on the instructions of the Labor Council to move an amendment congratulating the men on their release.

The Loyal Women 'screched and screamed in shrill crescendo', and Mrs Westbrook was removed by the police. Her supporters protested, and the Loyal Women struck up "God Save the King". They sang it through three times, while thirty dissident elements kept to their seats.

The Nationalist opposition waited until the Government had announced its decision before loosing their big cannons.

On the night of the men's release, Sir George Fuller, the Nationalist leader, opened fire. His salvos lasted for several days. There was, said Sir George, the question of 'justice for the community as well as justice for persons accused of crime'. It was apparent that the Twelve were guilty of the crimes of which they stood convicted. The findings of Mr Justice Pring and Mr Justice Street must be accepted; and, besides, had not the fires ceased when the men were arrested? How could this have happened if the wrong men had been gaoled? 'Extremist' pressure from outside Parliament—from the trade unions acting through the Labor executive—had forced the Government to act; this was the negation of parliamentary democracy. The Government had created a situation where 'the opinion of one judge overrules that of five others'; this was a travesty of the law.

Making the best of a weak case (for it was true that outside pressure had forced the Government's hand), John Storey set out to explain the absence of fires following the arrests:

'The law has been vindicated, the lesson has been learnt, and the futility of crime to upset the established order of things has been demonstrated. That is why no further acts of arson have been committed.'

The Premier distinguished his Government from the 'extremists' who had 'wanted the unconditional release of the prisoners, guilty or not. . . . This demand was emphatically, and without hesitation on my part, refused. Constitutional methods were adopted, and we have got a constitutional result.' In support of this, he pointed to the two prisoners who remained in gaol. Storey defended the integrity of Mr Justice Ewing, and denounced the inhumanity of Sir George Fuller, who was 'sowing the seeds of bitterness between class and class, and endangering industrial peace'.

The one shadow over the victory celebrations was the absence of J. B. King and Charlie Reeve, and the labour movement continued to demand their release. But it seemed that the Government had converted the continued imprisonment of these two into a symbol of constitutional government and the rule of law.

The case of King was particularly complicated. At first, it was rumoured that the Government intended to release King along with his ten fellow-workers. But a memorandum prepared for Cabinet by the New South Wales Attorney-General early in August set out a different perspective. King was originally convicted of forgery—an offence against Commonwealth law—on October 25, 1916, and sentenced to three years; he appealed. While his appeal was pending, he was convicted of seditious conspiracy—an offence against State law—and sentenced to five years, cumulative on the previous three. Then, on December 20, 1916, King's appeal on the forgery charge was upheld, and a retrial was ordered. Technically, he was at this moment innocent of forgery, and therefore his five-year sentence for conspiracy was operative from the date of this conviction, December 1, 1916. His appeal against this sentence was rejected on March 10, 1917, and at his retrial on the forgery charge he was sentenced to two years, which became cumulative on the five. In the sentence for sedition, he had earned twenty-one months' remission—that is, he would have been due for release on February 29, 1920. So now he had ceased to be a prisoner of the State of New South Wales and had become a prisoner of the Commonwealth. Thus the Premier replied—though without the detail—to those who asked him to release King.

The Commonwealth, however, was not anxious to assume the political liability of keeping King in gaol—or at least was quite happy to have this embarrassment rest with the New South Wales Government. According to Jack Brookfield, the Federal Solicitor-General had advised him that King had completed his Commonwealth sentence, and that applications for the remission of the remainder of his sentence should be made to the New South Wales Attorney-General. The unfortunate King was caught neatly between the mill-stones.

Reeve's case was more straightforward. Mr Justice Ewing had found that he was implicated in arson, and held that ten years was not an excessive punishment for 'such a terrible crime'. To inquiries about Reeve, the Premier replied that the Royal Commissioner had confirmed his sentence, and that he must stay in gaol.

Meanwhile, the labour movement continued to put pressure on the Government, while the defence interests negotiated privately. In October 1920, Premier Storey was asked in the House about rumours that his Government had decided to release Reeve and King. He denied any such intention, but undoubtedly the basis for a settlement had already been laid. It was a neat compromise: the Government would release the two prisoners, and their friends would undertake to get them out of the country.

The defence interests booked passages for King and Reeve to London, and, early in November, made applications to the Commonwealth authorities for passports—a new-fangled impediment to free travel which had been introduced into Australia in the aftermath of the war. The plan came unstuck when the Commonwealth refused to issue the passports. The friends of the prisoners appealed to the Minister for Justice, McKell, who approached the Commonwealth Immigration Minister, A. Poynton, on their behalf. Poynton told McKell that he had already made his decision, but gave no reason. (The press, however, reported the Commonwealth Minister as saying that it was his belief that Australia should not unload her criminals onto England. It was an odd comment. Not only was it inconsistent with the recent eagerness of the Commonwealth to deport Tom Barker and other I.W.W. men, but it was an ironic footnote to the origin of the Australian colonies in 1788.)

But trade union pressure was sufficient to keep the issue alive. Both the Minister for Justice, McKell, and the Solicitor-General, E. A. McTiernan (a rising young barrister who was later to be a Justice of the High Court of Australia) asked that the case of King and Reeve be placed on the Cabinet agenda.

On December 20, 1920, the president of the Queensland Socialist League reported that he had seen a Minister of the New South Wales Government and that he had been 'assured' that the two prisoners would be released soon—probably before Christmas. The item was in fact listed for Cabinet two days later, and those Ministers who favoured release were apparently confident that they had the numbers. But Cabinet did not reach the item that day, and in the first week of January 1921, decided against recommending release. In February McKell conceded defeat—he said that the release of King could be dropped from the Cabinet agenda. For the next six months, the Government continued to tell protestors that King was serving a Commonwealth and not a State sentence, and that they could not interfere with the Royal Commissioner's decision in regard to Reeve.

King's 'industry and good conduct' in gaol had earned him twenty-one months' remission of sentence, and there was another three months for the Armistice and three months more for the peace. Together, these made him due for release on August 30, 1921.

The labour movement had this date in mind, and began to agitate for the simultaneous release of Reeve. The Melbourne Trades Hall Council, which was at the time in the forefront of the trade union agitation for a more radical spirit in the Labor Party and a reconciliation of the unions and the parliamentary Labor parties, urged on the New South Wales Premier their belief that a favourable response would 'stimulate unity'. But still the Government took refuge in Mr Justice Ewing's report.

King was released on the due date. Three months later the constant trade union pressure finally wore down the Government; Charlie Reeve, the last of the Twelve, was quietly released late in November 1921.

Between them, the I.W.W. Twelve, who had dedicated their lives to the pristine anti-political faith and who had nothing but contempt for the 'pure and simple' trade unionists and the 'Labor fakers', owed ninety years of their lives to political action. The comment of the *Worker* was understandable:

'The men would still be in jail, with no prospect whatever of liberation, had the Labor Party been defeated at the polls. . . .

'Labor's victory in New South Wales was the culminating point of the agitation for the release.

'That is something to be made a note of by all sorts of people who never give it a thought, and by a number of others who don't want to give it a thought.'

True, the Labor Government of John Storey would never have acted had it not been for the unremitting pressure of the unions. But the time had long passed for any large-scale industrial action over the case of the Twelve; only a political decision could save them, and only a Labor Government could have made such a decision.

One percipient reader, signing himself 'A Loyal Citizen', wrote to the Sydney *Sun* soon after the release of the Ewing Report, claiming that the Labor Government had won 'many thousands of votes on the promise that [the Twelve] would be released', and forecasting that 'the next thing we shall hear will be compensation'. A Government which would do this would, he felt, 'be capable of repudiating the Peace Loans'. His fears proved unjustified.

True, the matter of compensation was discussed by the Release Committee. The defence interests claimed that Premier Storey had publicly pledged that the men would be compensated if the Ewing Commission found that they had been wrongly imprisoned. Accordingly, the Committee asked the Labor Council to convey to the Government their request for a minimum payment of £2,000 for each of the six men whom Mr Justice Ewing found should not have been convicted. On October 14, 1920, Jock Garden wrote on behalf of the Labor Council to all members of the Parliamentary Labor Party:

'For nearly four years [the prisoners] endured great anguish of mind . . . which no compensation can repay. . . . The Premier gave me an assurance, if it was proved that these men were in jail on the word of perjurers, they would be amply compensated by the Labor Government.'

Four weeks passed and nothing happened. Then the six men wrote 'respectfully beg[ging] to apply for monetary compensation for the period of our incarceration in gaol'. Bill Teen, the former railway worker, sent a further personal statement to support his claim:

' . . . my incarceration has resulted in my being practically ruined as far as future industrial and social prospects are concerned. Today, although I am at liberty—for which I have to thank your Government, and to whom I am deeply grateful, I am unable to get work. I am followed up by police and detectives, hounded from pillar to post, and my every action spied upon. . . . I am branded as a "dangerous" man who must not be spoken to, indeed in some cases threats have been used against my friends for the mere fact of their associating with me. . . . Were I able to take my place in society again, and be able to settle down to work, the position would be different. . . . I do not think that my claim that some compensation should be granted me is an unreasonable one. . . .'

The private secretary to the Premier was a brilliant young history graduate, Vere Gordon Childe, who had to a degree been won over to sympathy with the I.W.W. through his association with the anti-conscription movement. Childe had had difficulty in finding academic employment because of his radical views, and Storey had offered him a secretarial post soon after the Labor Government was formed. Now Childe was to experience at first hand the compromising way of Labor in office which he was later to pillory in his book, *How Labour Governs*.

This future distinguished historian and archaeologist, on

November 17, addressed a memorandum to the Permanent Secretary of the Premier's Department:

'The natural course would be to leave these gentlemen to take the necessary legal proceedings against the Government for compensation and it might be desirable to ask the Crown Law Officer to advise the Government on the legal position, but perhaps as a matter of policy the Government would prefer to authorise the Crown Law Department to enter into negotiations with these men immediately . . . to ascertain what compensation they will accept. Such a step would have a certain popularity with the Labour Movement.

'It will be remembered that the Trades Council are circularising members of Parliament asking that the ex-I.W.W. prisoners should be compensated and the Committee think that £2,000 is the minimum. An authorisation was given that if the men were vindicated they would receive compensation from the Labor Government.

'I would suggest that the Premier bring this matter before Cabinet.'

The minutes on this fascinating, if rather naive, memorandum make illuminating reading:

'App[lication] cannot be entertained.' 'I think it perhaps wisest *not* to acknowledge these letters.' 'Perhaps the Premier will decide to refer this matter to Cabinet.'

Then there was a six week break to:

'The Acting Premier [James Dooley—John Storey had died] does not propose to pursue this matter at present.'

By February 1921, the Release Committee was growing impatient; a trade union deputation asked the Attorney-General for an immediate and favourable decision. Cabinet considered the matter for the first time the following day, and resolved:

'As it would involve so many other claims on behalf of prisoners who have been wrongfully convicted and imprisoned, Cabinet cannot agree to compensation in this case.'

Don McPherson, the first of the six signatories to the ex-prisoners' claim, was told immediately of Cabinet's verdict, but was given no reason. The failure of the appeal was reported in *Truth*, which had been generally sympathetic to the men, and there the matter rested.

The Labor Council wrote *finis* to its campaign at its meeting of December 1, 1921, when it resolved to place on record its gratitude to Henry Boote, Ernie Judd and the other members of the release committee, and to write special letters of thanks to Jack Brookfield and W. J. McKell.

250 *Sydney's Burning*

In his annual report for 1921, Jock Garden wrote:

'The agitation for and the liberation of the twelve I.W.W. men is one of the greatest acts for the liberation of political prisoners that has been accomplished in any country of the world.'

It was a great deal to claim, but the claim was not unjust.

PART

4

TAILPIECE

While there is a lower class, I am in it.
While there is a criminal element, I am of it.
While there is a soul in jail, I am not free.

Eugene V. Debs

There is little more to tell. Davis Goldstein had left Australia before the Ewing Commission; after it, Louis Goldstein dropped quietly (and one imagines gratefully) out of sight. Harry Scully resisted further police pressure to leave the country, and finally succeeded in finding another job as a chemist; he died of meningitis two months before Charlie Reeve was freed.

Henry Boote lived a long and honourable life as poet, labour journalist and radical propagandist; he died some years after the Second World War. The dogmas which had hobbled Ernie Judd as a leader of the Socialist Labor Party, in the days before he was swept up in the great mass campaigns for the One Big Union and the Release of the Twelve, returned in even greater strength; he ended his days as a cantankerous stump orator, preaching the truths of De Leonism to a dwindling handful of the converted. Tom Mutch late in life became interested in history and genealogy; unfortunately, his papers in the Mitchell Library contain few reminders of the days when his world was wide. Jock Garden became a leading propagandist for Jack Lang in the hectic years of the depression and the 'Lang Plan'; later, he was discreditably involved (when acting as secretary to a Federal Labor Minister) in a scandal involving timber leases in New Guinea. Tom Barker worked for some time for various Soviet agencies; eventually he settled in London. After World War II he became a Labor councillor in the borough of St Pancras (and, aged 77, still was at the time of writing). He was the only Lord Mayor to refuse to wear the mayoral robes, and on one occasion scandalised the Labor Party by flying the Red Flag over the St Pancras Town Hall.

On the morning of March 22, 1921—while King and Reeve were still in gaol—Jack Brookfield stepped off the Broken Hill express at Riverton, where the train had stopped for breakfast. A Russian named Tomayev ran amok on the platform and fired off forty-one shots from a revolver, scattering the crowd. Brookfield and a police constable rushed Tomayev; Brookfield got two bullets in the stomach, and died that evening in Adelaide hospital. Tomayev later said—probably falsely—that he had been paid £100 to kill Brookfield. The poet Mary Gilmore wrote:

Tell it abroad, tell it abroad,
Tell it by chapel and steeple,
How, in the height of his manly prime,
Brookfield died for the people.

Of the Twelve, most had had their fill of notoriety, and were happy to abandon public life. They once more became workers, and probably active unionists, but they left no further mark on the history of Australian labour. There were three exceptions.

A Communist Party was formed in Australia in October 1920, three months after the first ten of the I.W.W. men were freed. Jock Garden was a leading member. The Communist International at the time was seeking to draw the syndicalist revolutionaries of the I.W.W. into its ranks. Tom Glynn and J. B. King became Communists, and Glynn the first editor of the party's paper. But the ideological differences were too great; a year later, Glynn and King broke with the Communists, formed the Industrial Union Propaganda League, and began to republish *Direct Action*. A temporary rapprochement followed a 'unity conference' at which the Communists agreed to recognise the I.U.P.L. as the Australian section of the Red International of Labor Unions, a Comintern affiliate. But this did not last either, and Glynn and King finally broke with the Communist Party in March 1922. Their syndicalist venture did not prosper. King worked for a time in Russia, but returned disillusioned with the failure of the Bolsheviks to realise their earlier slogan of 'industry to the toilers who work therein'.

Donald Grant, too, threw himself into revolutionary politics. Three weeks after his release from gaol, he was back on the Sydney Domain, preaching with all his old fire that he

'hoped before long to establish a big organisation of rebels in the country, an organisation that would revolutionise the present social system. He said Mr Justice Pring, Mr Lamb and others were true to their class but the workers were not. . . . A class war would have to be fought the world over, and it would have to be fought to the bitter end, even if the streets of the cities of the world were drenched with the blood of the workers.'

He continued to agitate for the revolution for some years, but finally he made his peace with parliamentary politics, and became a Labor Senator.

The last of the Twelve, Donald Grant, at the time of writing was living in quiet retirement in Sydney. There was still the clear blue gaze into the future, the Scots burr and the fiery turn of phrase, the pride of bearing that made him a hero of his time, but his voice was no longer raised.*

* After this was written, I learned from Messrs W. Sutton and J. Harris of the Queensland branch of the Labor History Society that Bill Beatty was also alive and living in Brisbane. Messrs Sutton and Harris recorded Bill Beatty's reminiscences; these appear in *Labour History*, November 1967, but add little to this record.

What made the men who played their parts in these extraordinary events—the police and the Wobblies—act as they did?

It is almost impossible to dig through a pile of police documents to the minds of the individual men behind them. Policemen are trained to report in formal officialese, and there is little in the police reports of anything else. In the I.W.W. files, those reports which concerned political activities showed little sense of discrimination about the finer distinctions of political ideas and organisations. There were only the broad divisions—the conservatives, who were beyond observation and above suspicion, for it was only change which was suspicious; the Labor Party, whose public propagandist activities sometimes came under police survey and some of whose members might fall into the category of 'doubtfuls'; and the radicals and revolutionaries, who were one big bundle of sinister and dangerous elements who must be watched. The reports lacked human understanding, they were not concerned with situation or motives, but with acts. None had the slightest touch of humour; they were all dead-pan.*

What then does emerge from these files? A conservatism that was quick to suspect radical agitation and anti-'patriotism', and to associate these with moral turpitude and crime. A moralism that was quick to denounce criminality in conventionally loaded phrases. It is no wonder that the police were alarmed and affronted by the I.W.W.

How did this conservatism and moralism get along with the corruption and malpractice which undoubtedly existed in the force? Once again, there are no direct clues. One must assume that many members of the force applied a double standard—that they thought of themselves not only as law-enforcers for the community at large, but as law-makers for themselves. For even when they were clearly in the wrong they showed no sign of recognising it. And, with a strong sense of solidarity, when one was accused his fellows covered up.

Perhaps this came from a sense of embattlement, of the law-enforcers in continuous war with those who break the law. War is a dirty business: the opponent respects no rules; so he must be fought with his own weapons. If he is guilty, then he must pay—even if his guilt cannot be established by untainted evidence. And if a crime has been committed, but no guilt can be established, then someone must pay. There is a potential criminal for every crime. The preservation of society demands no less. The police are forced by their situation to do wrong that right may come.

* Almost the only exception was a side comment in Detective Leary's notebook, dated October 9, 1916: 'Good stuff for a novel.'

Nevertheless, to frame a complicated case demands careful thought and meticulous planning. This is not something that can be done every day—it must be kept for important occasions, as was the trial of the I.W.W. Twelve. Here personal distaste and political environment combined to encourage the police to act. The hope of personal gain was probably not a major motive; rather this was seen as a job that, in the situation, had to be done.

Between the police force and those who supervised and directed their work in the Government and those who judged it from the bench, there was a complex relation. It was the job of the police to do what they had to do and then conceal it; it was the job of their political and judicial superiors to pretend that this was not done. But this was an unacknowledged agreement. Law enforcement is based on violence; it almost necessarily involves malpractice; and many of those who take part in it are touched by corruption. Yet none of this can be admitted by Government or Bench, because to do so would be to undermine an institution on which the power of judges and politicians depends.

Between the police and the Wobblies, there was that strange love-hate relationship of which Dostoyevsky wrote. They were in such close contact, they knew one another so well, each side was pre-occupied with the other's plans and motives and actions: this very intimacy made hate impossible. Yet they started from opposite premises, they served different gods. And so there was a nexus between them which could not be dissolved, for there is nothing more central to thought and emotion than one's closest enemies. Each man destroys those whom he loves—and loves those whom he must destroy.

What of the Wobblies? Like the police, they were their own law-makers, but from more clearly defined premises. For the revolutionary, society is something that is external to him, operating against him in an oppressive and exploitative way. The law has no sanctity in its own right; it is not divinely ordained, and anything that is made by man may be unmade. Yet most revolutionaries live within the law—perhaps because they fear the personal consequences; perhaps because they accept that even an unjust society is better than no society at all, and that change must come by persuasion rather than personal defiance.

But some do not, and among these were the Wobblies. They made contempt for the law a way of life; for them, this kind of direct action was the essence of revolutionary behaviour. Yet

it was still a long step from striking, or speaking from a street corner soapbox or selling newspapers in defiance of the law, to the physical destruction of property or life.

What makes a man a nihilist?—for there was a handful of nihilists in Australia. Anger, impatience, lack of faith—whatever it is, it bites deep into men's souls, and leads them to destroy the symbols of injustice they see around them, believing that by destroying the symbols they are destroying injustice itself.

Yet they were not ordinary criminals. They destroyed not for themselves but for all men, not for greed or spite but for a dream. That is why men came to their defence—even men who knew that they were wrong—for beneath their error and their destruction were human hearts. The tragedy of the Australian nihilists was that what they finally destroyed was themselves and the cause they sought to advance.

The Wobblies harboured this element of nihilism because they were a loosely disciplined organisation with an undeveloped ideology, because they repudiated the law in theory and could not see why it should be respected in practice, because the syndicalist Utopia they preached had much in common with anarchism, and because the 'propaganda of the deed' has always been one part of anarchism.

The Wobblies had been born of violence—the naked, brutal violence of the war of the American classes. They had lived under the torment of injustice and bitter hate. And a few of them had come to live by violence and hate.

But their movement was much more than this, and although it was as abhorrent to respectable trade union leaders and Labor politicians as to employers and conservatives, it was enormously attractive to many. Its members had a courage, a dedication, and a humour that were rare in the labour movement. Its promise of a future in which working men ended their exploitation and alienation by taking to themselves the industries they worked, and deciding among themselves the distribution of their product, gave hope to many minds and hearts. So that when entrenched conservatism and the whole power of the State sought to crush this movement by assimilating it to the actions and plans of its tiny nihilist minority, there were tens of thousands who came to its defence. Conservatism, by over-reaching itself, succeeded in doing what nihilism was unable to do—to convert criminality into the class war; for what radical spirit could resist the cry from the depths of a movement whose members sang as if they meant it:

258 *Sydney's Burning*

When the Union's inspiration through the workers' blood shall run,
There can be no power greater anywhere beneath the sun.
Yet what force on earth is weaker than the feeble strength of one?
 But the Union makes us strong.

Is there aught we hold in common with the greedy parasite
Who would lash us into serfdom and would crush us with his might?
Is there anything left for us but to organise and fight?
 For the Union makes us strong.

They have taken untold millions that have never toiled to earn,
But without our brain and muscle not a single wheel can turn,
We can break their haughty power, gain our freedom when we learn
 That the Union makes us strong.

In our hands is placed a power greater than their hoarded gold,
Greater than the might of armies magnified a thousand fold,
We can bring to birth the new world from the ashes of the old,
 For the Union makes us strong.

Sources

Wanting to make this book as readable as possible, I have not burdened it with bibliographical footnotes. Readers will have to take my word for it that a document exists to support all the facts and quotations that I have used. The most important sources have been these:

For the trial of the Twelve: the transcript, held by the New South Wales State Archives. For the appeal, New South Wales law reports—*State Reports*, 1917, Vol. 17.

For the Street Commission: The Minutes of Evidence, and a typescript of the exhibits in the Mitchell Library, the press reports in *Truth*, the *Worker* and the *Sydney Morning Herald*; and the Report, in New South Wales *Parliamentary Papers*, 1919, Vol. 1.

For the Ewing Commission: the Minutes of Evidence, in the Mitchell Library; and the Report, in New South Wales *Parliamentary Papers*, 1920, Vol. 1.

Otherwise, I have relied largely on government files, newspaper reports, and the Mitchell Library collection.

I was given access to relevant files of the New South Wales Premier's Department and Attorney-General's Department (held by those departments) and of the Police Department (held by State Archives). I am most grateful to the Ministers concerned, officials of their departments (particularly Mr G. M. Gray of the Premier's Department), the New South Wales Commissioner of Police, and the officers of State Archives (particularly Mr R. Doust and Mr M. Saclier).

Among newspapers, I used extensively the three already mentioned and *Direct Action*.

A valuable collection of papers and correspondence relating to the early history of the I.W.W. in Australia is held by the Mitchell Library, as are the Minutes of the Sydney Labor Council. I am most grateful to the Trustees and to the friendly and helpful officers of that splendid library.

The I.W.W. cases produced an extensive pamphlet literature; the most important of these are H. E. Boote's *Guilty or Not Guilty, The Case of Grant*, and *Set the Twelve Men Free*; W. A. Holman's anonymously published *The I.W.W. Prisoners*; M. J. Hade's *Justice Raped*; *Speeches from the Dock of New South Wales and West Australian I.W.W. Members Convicted of Treason*, published by the

Defence and Release Committee; *Solidarity Sentenced*, published by the Amalgamated Miners' Association; and *Breakers of Men, or Torturing the Twelve*, published by the I.W.W. Prisoners' Release Committee. I am most grateful to Mr Stephen Murray-Smith for lending me a number of these pamphlets. Tom Barker's reminiscences, *Tom Barker and the I.W.W.* (edited E. C. Fry, Canberra, 1965), provide fascinating sidelights on the story. I am also grateful to Mr Barker for providing me with two photographs of the Wobblies.

The history and ideology of the I.W.W. may be studied in the following: Paul F. Brissenden: *The I.W.W.* (New York, 1921); Patrick Renshaw: *The Wobblies* (London, 1967); Vincent St John: *The I.W.W., Its History, Structure and Methods* (Cleveland, n.d.); Emile Pouget: *Sabotage* (Chicago, 1913); Walker C. Smith: *Sabotage* (Sydney, n.d.); T. Glynn: *Industrial Efficiency and its Antidote* (Sydney, n.d.); and any one of the *Songs of the I.W.W.*, sometimes known as *Songs to Fan the Flame of Discontent*. Joyce Lorna Kornbluh (ed.): *Rebel Voices* (Ann Arbor, 1964) is an excellent and well illustrated anthology of American I.W.W. writings; the editor contributes a sound historical introduction to each chapter.

The political context of the I.W.W. trials and the release campaign may be followed up in V. G. Childe: *How Labour Governs* (2nd ed., Melbourne, 1964) and in Ian Turner: *Industrial Labour and Politics* (Canberra, 1965). The best introduction to the general history of wartime Australia is to be found in E. Scott: *Australia During the War* (Sydney, 1938).

I have talked with many one-time Wobblies. I do not name any of them so that they may not be unwittingly saddled with any of the interpretations I have made. Mr Rex Mortimer read the manuscript; some corrections are his, and the mistakes are mine.

IAN TURNER

Monash University
Melbourne, January, 1969.

Index

- 'Andrew' 28-9, 31, 53, 161-9, 188, 207-8
'Androvitch' 28-9, 207
Anstey, Frank, M.H.R. 17, 39, 47n, 242
Arson 22-3, 28-40, 41, 44-6, 50, 51-9, 65, 68, 70, 80, 94-5, 139-211 *passim*, 237-8
Astor, Norman 25, 94
Atkins, Elwin 202-3, 236
Australian Labor Party 1, 3, 5, 12, 14, 15-7, 20-1, 39, 48, 61-2, 66, 70, 83, 96, 100, 132, 136, 217, 230-2, 247-8, 255
Australian Workers' Union 62, 64; *see also* *Worker*, the
Auwart, Alex 45
- Barker, Tom 1, 3, 14-9, 22-3, 29, 37-9, 41, 44-6, 47n, 54, 60, 65, 78n, 80, 90, 97, 105, 143, 169n, 174-5, 204, 215, 246, 253
Bathgate, D. G. 25, 35, 51, 93, 153, 236
Beatty, William (Bill) 33-4, 38-9, 54-5, 57, 59, 80, 104n, 111, 161, 168, 178, 182, 184-7, 199n, 206-7, 210-11, 221, 223, 238, 254n
Besant, Bernard Bob 30-1, 38, 53, 55, 57, 59, 81, 104, 111, 153, 187, 206, 209, 223, 238
Bevan, Mr Justice Walter 67n, 92
Boote, Henry Ernest 64-6, 85, 97-8, 104-6, 141, 155n, 188, 205, 222n, 223, 225-6, 241, 249
Bradbury, Henry W. 24-5, 43
Brissenden, Dr E. Mayhew, k.c. 236
Brookfield, Percival John (Jack), M.L.A. 67n, 83, 113-6, 119, 130, 132, 135-6, 201, 217-8, 219, 230-31, 242-3, 249, 253
Brown, F. P. 72
Brown, Joe 72, 197-8
- Buckley, A. W., M.L.A. 135, 230
Burnside, Mr Justice Robert Bruce 72-6
- Cattell, Charles 24-5, 43
Childe, Vere Gordon 248-9
Cohen, Ernest R. 109, 150-1, 175-6
Coledale Shooting Case 92-4
Connolly, Roy 103-4, 164, 168, 178, 184, 186, 206
Conscription 1, 20-1, 23, 33, 38, 47-8, 61-2, 64-5, 83, 167, 182, 194-5, 207-8, 210
Considine, Michael P., M.H.R. 83, 222, 230
Conspiracy (N.S.W.) 48-50; *see also* Arson; Street, Mr Justice P. W.; Ewing, Mr Justice N. K.
Conspiracy (W.A.) 43-7, 72-6
Cooksey, Dr Thomas 40, 170, 208
Coxen, Charles *psued.* (Elmer Robert Emerson) 76-7
Crook, Meyer 148-52
Cullen, Sir William 65
- De Leon, Daniel 7, 12, 253
Direct Action 14-5, 17-9, 24, 29-30, 42, 44, 46, 60-1, 63, 66, 70, 78-9, 81-3, 85-6, 90-1, 254
Dooley, James J., M.L.A. 249
Druker, Mrs Lottie 201
Duncan, Constable George Joseph 26-7, 35, 39, 41-3
- Egan, May 120n, 123
Emerson, Elmer Robert, *see* Coxen, Charles
Evatt, Herbert Vere 65
Ewart, May 88-9
Ewing, Mr Justice Norman Kirkwood 120n, 144n, 177, 185, 201-03, 213, 232-41, 245, 248, 253

262 Index

- Fagin, Morris Joseph (Joe) 13, 32-4, 37-9, 55, 57, 59, 76, 80-1, 160-4, 180-8, 199n, 206-7, 209, 221, 223, 237-8
- Ferguson, Mr Justice David Gilbert 94, 218
- Ferguson, John 24-5, 43
- Fergusson, Detective George G. 28, 105, 163-5, 175-6, 191, 194, 204, 206, 219-20, 227, 236
- Finn, George 41
- Forgery 22-6, 43, 48, 70, 94, 109-10, 146-9, 157n, 210, 216, 245
- Franks, Albert 33, 39, 176-7
- Franz, Frank 26-7, 41-3, 78-9
- Fuller, Sir George Warburton 108, 114-5, 132, 156, 244
- Gannon, James Conley, K.C. 51, 53, 150, 177
- Garden, John Smith (Jock) 96, 217, 239, 242-3, 248, 250, 251, 253-4
- General Strike (N.S.W.) 90-2
- Georgie, Fritz ('German Charlie' Miller) 22, 33, 36, 38-9, 48-9, 54, 182
- Giffney, Edward Albert (Ted) 60-1, 187, 236
- Glynn, Thomas (Tom) 13-4, 29-31, 38, 45, 52, 55-6, 59, 80-1, 89, 104, 152-4, 185-6, 189, 208-10, 223, 238, 254
- Gold, Mrs Millie 200-1
- Goldstein, Davis 32-4, 38, 43, 52-4, 106, 160-78, 183-8, 201-3, 208-10, 224, 236-7, 256; *see also* Goldstein brothers
- Goldstein, Louis 38, 158, 168-70, 235-6; *see also* Goldstein brothers
- Goldstein brothers 24-5, 28-9, 37, 72, 80, 110-12, 118-28, 134, 140-54, 157, 194-201, 216-8, 229-33, 236-7, 256
- Goller, John 45
- Grant, Donald 13, 29, 32, 37-8, 40, 51n, 53, 55, 57, 59, 65-6, 72, 80-1, 97, 104, 111, 164, 190-1, 208-9, 222-32, 254
- 'Greek Cafe' Murder 21, 76-8
- Green, Alfred 93-4
- Grummitt, Leslie 23-5, 43
- Hall, David Robert, M.L.A. 62, 65, 88, 109n, 115-8, 133, 139, 208n
- Hamilton, John (Jack) 18, 29-31, 33, 38-9, 55, 57, 59, 80, 82, 104, 142-7, 165-70, 174, 176-7, 187, 199n, 208, 210n
- Hawkins, H. S. 192-6
- Hill, Joe 10, 12, 14, 17-8, 91
- Holman, William Arthur, M.L.A. 4, 48, 51, 69, 97-9, 114, 117, 137-40, 217, 225, 229
- Hooper, Detective T. 34, 72, 77, 154, 170, 177, 219-20, 236
- Horrocks, Alex 44-5, 74
- Hughes, William Morris, M.H.R. 1, 20-1, 36-7, 47-8, 62, 69-70, 86, 208, 209n, 222, 240
- Industrial Labor Party 96, 99-100, 116, 225
- International Industrial Workers 225-6
- Jago, George 52, 189
- James, A., K.C. 40, 51
- Jones, Detective Edward 124, 129
- Judd, Ernest E. (Ernie) 63, 66, 97, 101, 103, 105-6, 111-4, 119-24, 128-9, 133, 160-80, 187, 201-5, 211, 217, 224, 226, 242, 249, 253
- Karpinsky, Abraham 155-6, 201-2
- Karpinsky, Simon 155-6, 201-2
- Kennedy, Herbert and Roland 26-7, 39, 41-3, 78-9
- King, Clarence 103, 226
- King, John Benjamin 13, 15, 24-5, 35, 37-8, 43, 45, 51, 53-5, 57, 59, 81, 104, 111, 141-3, 192, 199, 223, 238, 241-6, 253-4
- Lachter, Harry 154-5, 200
- Lamb, Ernest, K.C. 36-7, 39, 43, 51, 53-4, 153, 236, 254
- Lang, John T., M.L.A. 36n, 232-3, 253

- Larkin, Peter 29-31, 38, 40, 53, 55-6, 59, 77, 81, 104, 111, 169, 189, 206, 209, 223, 238
- Lazarus, Abraham, 'Little Tich' 120, 124, 143, 156-7, 201, 224
- Leary, Detective Arthur 21, 31-2, 34, 72, 77, 107, 164-5, 171-2, 172, 177n, 180-8, 208n, 220n
- Lewis, Nat 165-6
- Lowden, Fred 93-4
- Lynch, Mrs Eva 88, 181
- Lynch, Senator Patrick (Paddy) 45-6, 76
- Lynch, Detective T. J. 32, 72, 77, 163-4, 169, 182-3, 194
- Mack, Sidney 51, 53
- Mackay, Constable (later Sergeant) W. J. 88, 188
- McAlister, F. J. ('Mac') 28, 31, 34, 37-8, 53-4, 72, 80, 102-3, 105, 111, 145, 163-73, 200-9, 224, 227, 234, 237, 239
- McAlister, Mrs Rose 109n
- McConnell, Tom 181
- McEnaney, James 93-4
- McKell, William John, M.L.A. 235, 241, 246, 249
- McMillan, Tom 44
- McPherson, Andrew 13, 172
- McPherson, Donald (Don) 30-1, 38, 53, 55, 59, 80-1, 105, 111, 156, 168-9, 174, 196-9, 221, 223, 238, 249
- McTiernan, Edward A., M.L.A. 235, 246
- Marshall, Vance 221-2
- Matthews, Detective F. 34, 173-4, 176-7, 189-91
- Matthias, Mrs Betsy Hamilton 99-100, 225
- Matthias, Rudolph Hamilton 88, 99
- Miller, George 219-20, 236
- Miller, 'German Charlie' *see* Georgie, Fritz
- Miller, Detective J. 34, 72, 157, 174-5
- Müller, Montague (Monty) 44-7, 72-5, 87-8
- Minahan, P. J., M.L.A. 230-1
- Mitchell, Inspector-General James 23, 68-9, 71, 85, 98, 107-11, 116-7, 139, 190, 209, 221, 229-30, 234, 236, 242
- Mitchell, Detective S. 147-8, 154
- Moore, Detective-Sergeant N. 39n, 47n, 66, 72, 95, 103-4, 106, 165, 196, 207, 216
- Moore, Thomas (Tom) 28-9, 31-2, 38, 52-3, 55, 57, 59, 81, 104, 111, 180-7, 197, 206-9, 228, 238
- Morby, William 96, 217
- Morgan, Frederick (Fred) 17, 24-5, 29, 37, 43-4, 52, 104, 111, 144-8, 151, 173, 187-8, 191, 206, 209-10, 238
- Muhlberg, Julius 215
- Mutch, Thomas Davies, M.L.A. 103-4, 114, 132, 135, 167, 169, 174, 179, 180, 206, 208n, 229, 253
- Nicholls, Syd 18
- O'Neill, Jack 44-6
- O'Reilly, Sergeant E. W. 194-5, 197n
- Pappageorgi, George 21, 77-78
- Pauling, Detective T. 25, 72, 111-2, 119-27, 145-53, 158-60, 174-5, 210-11
- Pope, Tom 34, 61n, 178, 183, 210n
- Pring, Mr Justice Robert Darlow 37, 49-50, 51-9, 63-4, 68, 70-1, 75, 80, 97, 168, 180, 184-5, 188, 189, 244, 254
- Pura, Lazarus 119, 157-60
- Rancie, Norman 19, 63, 86
- Reeve, Charles (Charlie) 29-31, 37-8, 44-5, 52, 55-6, 59, 80, 82, 104, 111, 144, 179, 189-90, 209, 222-3, 238-39, 244-45, 253
- Roberts, Robert 26
- Robertson, Detective-Sergeant T. 32-3, 72, 93-4, 102, 103n, 234
- Robson, Detective Stuart 34, 72, 184

264 Index

- Rosenthal, Alex 88
Roy, May 93-4
Royal Commissions into I.W.W. Case; *see* Street, Mr Justice P. W.; Ewing, Mr Justice N. K.
Sabotage 1, 9-10, 19, 20-1, 34, 37, 41, 70, 90, 216, 237-8; *see also* Arson; Conspiracy
Sawtell, Michael (Mick) 44-6, 72-6
Scully, Henry Christopher (Harry) 32-3, 37-9, 53-5, 72, 80, 102-9, 111-8, 131-2, 135-7, 143, 149n, 157-9, 162-3, 174-99, 199n, 201, 205-7, 209, 224, 226-8, 237, 239, 253
Sedition 48-50, 55, 65, 142-5; *see also* Conspiracy
Shand, Alexander B., k.c. 133, 197, 200, 236
Siebenhaar, William 47
Sly, Mr Justice Richard Meares 78, 220
Socialist Labor Party 63-4, 204, 253
Steel, J. B. 100, 225-6
Storey, John, M.L.A. 61, 134-5, 232-3, 249
Street, Mr Justice Phillip Whistler 98, 103n, 104n, 108, 108n, 109n, 110-2, 117-9, 120n, 121-2, 121n, 123n, 126-7, 128n, 130-44, 149n, 150-60, 162-80, 168n, 195, 197-211, 218-9, 224-7, 234, 236-37, 239, 244.
Surrige, Detective Arthur 25, 32-3, 72, 93-4, 103, 106, 109, 156-7, 184-9, 208, 211, 226
Teen, William (Bill) 32-4, 38-9, 41, 55, 57, 59, 61n, 80-1, 90, 104-5, 146-7, 155-6, 163-72, 174-8, 191, 194, 199n, 206-8, 210, 210n, 224, 225, 237-8, 249
Thompson, Edward 154
Thorburn, Charles 93-4
Tighe, Emerald Louis 24-5, 157n
'To Arms' poster 15-17
Tottenham Police Station Murder 26-7, 35, 39, 41-3, 58, 61, 78-9
Trades and Labor Council (N.S.W.) 63, 66, 96-7, 99, 103, 105, 115, 210, 217, 225-6, 230-1, 240, 243-4, 248-50
Treason 29-40, 48-9
Turbet, Detective C. 25, 72, 109, 121n, 144-9, 160-4, 169, 177-8, 208n
Unlawful Associations Act 69-70, 85-6, 101, 216-7
Walker, Inspector (later Superintendent) J. 33n, 98, 107, 111-2, 120-1, 128, 133-4, 154, 164, 168-9, 175-6, 196, 199, 220, 228
Wallace, Robert 219-20
'War Profit' cartoon 18-19
Westbrook, Mrs Annie 46, 244
White, P. K. 18, 31, 35
Wilson, James 76-8
Wilson, Jock 88-9
Windeyer, Richard, k.c. 123-9, 133-7, 197, 219, 226
Worker, the 4, 64-6, 97, 227, 241, 247