

AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS

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WHITLAM'S REAL EDUCATIONAL LEGACY

State Aid leading to Gross Inequities:

In recent days the Media have eulogised the achievements of the recently deceased Gough Whitlam. DOGS note that the achievements of his government were crafted by extraordinary idealists like Lionel Murphy – who was responsible for reforming legislation; Rex O'Connor who wanted to buy back Australia; and Jim Cairns who fought Australia's involvement in Vietnam – to name a few.

But Gough Whitlam compromised himself, the Labor Party and Australia's democracy when he courted the Catholic vote, and their political creature - the DLP. By setting up the Schools Commission he and Kim Beazley also compromised supporters of public schools like Joan Kirner. The Needs policy was compromised from the very beginning when the wealthy schools and Catholic sector re-categorised the Greedy into the 'Needy.' In 1973 the Catholic sector still needed wealthy Protestant school support. Forty years on they dominate both parties with no serious opposition.

Sadly, some public school supporters still adhere to the misguided mythical 'Needs' policy in education funding. They have yet to learn that only a public system is open to all children and therefore the only system that can contemplate equality. Religious hierarchies are not interested and never have been interested in poor children and their educational requirements. The DOGS have proved, time and again, that religious hierarchies and their political representatives are interested in power, money and children – in that order. Even then, children can fall out of the equation.

Those who do not learn from history....

When Whitlam opened the flood gates of State Aid to religious schools under the much abused ‘Needs’ policy in 1973 he turned an egalitarian society, struggling for equality of educational opportunity back two hundred years into the gross inequities in educational opportunity we are experiencing today.

He opened the universities. Why did he not open the schools to all comers?

The only way Whitlam could achieve equality of educational opportunity in 1973 was to take over any schools in financial difficulties which discriminated on the basis of fees or religious or any other tests, and make them public schools. In the 1960s and 1970s, when the religious schools were bankrupt, this was possible. Now, they are rolling in funds – public funds.

In the 1960s Menzies, and later, Whitlam missed this opportunity and led Australia back into a class ridden, tribal society.

Whitlam, like so many others did not understand that when you sup with the Devil you take a long spoon. He appointed John Kerr, a known fellow traveller with the DLP Governor General. In doing so, he dug his own political grave.

As Gordon Childe pointed out in 1923, in *How Labor Governs* the Catholic Church has never and could never adhere to traditional Labor aspirations. The current Prime Minister, Tony Abbott, is much more to their liking.

DOGS were there when Whitlam, Fraser, Hawke, Keating, Howard, Rudd and Gillard were Prime Ministers. But so were a lot of other people interviewed for our book, *Contempt of Court (2011)* Dissenters Press. An earlier version is reproduced on this website.

One good result from the Whitlam years was the establishment of 3CR by people like Bill Hartley, Joan Coxsedg and Kevin Healey. They opposed the compromises imposed on the Labor Party by Gough Whitlam. There is another history and it is our duty to tell it.

We reproduce below views with Joan Coxsedg, Kevin Healey from the Victorian Socialist Left and Ernie Tucker, Stella Bath and Ray Nilsen who were NSW and Victorian Presidents of the DOGS in the 1970s.

1. JOAN COXSEEDGE :

In 2007 Joan Coxsedg, a former Member of the Victorian Legislative Council for Melbourne West, published a book entitled *Cold Tea for Brandy*.¹ Snugly nested in the seventh chapter of this lady’s racy autobiography is the unexpurgated, unofficial history of federal intervention in the Victorian Labor Party. When describing the sea change in Labor policy on State Aid, Joan didn’t mince words. She wrote:

¹ Joan Coxsedg, *Cold Tea for Brandy*, Vulcan Press, Melbourne 2007.

In 1967, Edward Gough Whitlam, a shrewd ambitious politician, seized the parliamentary leadership from the less-polished Arthur Calwell after convincing American power-brokers he was made of the right stuff...In 1970, believing he could not win the coveted top job unless he purged the Victorian ALP—a view pushed by the relentless media campaign against the branch's 'extreme left' executive, focusing on branch secretary Bill Hartley and president George Crawford—Whitlam went for the jugular. The catalyst was state aid to private schools, opposition to which had been an important plank of the federal platform. Whitlam set to reverse the policy to placate the bishops and bring back the Catholic vote. He was strongly supported by a powerful in-house group called the 'Participants', mainly from the legal fraternity, who pushed hard for intervention into the Branch's internal affairs.²

Coxsedge's book was launched on 21 November 2007 in the ballroom-bar at Trades Hall in Carlton, Melbourne. Joan was a feisty septuagenarian. With her children, grandchildren and many friends looking on, she announced that she wanted to let her untold stories about the Vietnam War demonstrations, Labor Party compromises, ASIO and South American travels have an airing.

Chapter Seven of her book establishes that what Joan called the 'garroting' of Victorian Labor on 14 September 1970 was the beginning, not the end, of the matter.

The early 1970's were the days before well-orchestrated, carefully choreographed Labor Party conferences. The 1971 inaugural meeting of what Joan referred to as the gutted Victorian branch was held at the St. Kilda Town Hall. This was the first chance members had to vent their rage at the 'entire seedy episode' of the intervention of the federal executive in Victorian branch affairs. Joan said the members went feral. She lost her voice for a fortnight. At a second robust meeting, at Festival Hall—the scene of Melbourne's boxing and wrestling matches—the internal voting system was changed from first past the post to proportional representation. Joan considered that this formalised the factional divide.

There were two new groupings: the right-wing Centre Unity and the Independents who were mainly members of the 'Participants'. But the Socialist Left attracted a large number of members and their candidate, George Crawford from the Plumbers Union, beat the Centre Unity candidate by one vote for the position of state 'supremo'. So the Socialist Left's man became President.

Joan Coxsedge felt that the early days of the Victorian Socialist Left faction were exciting, with members working at getting important issues into the public arena. Bob Hogg was the Secretary however, and by 1972 the structures were formalised into a hierarchy with competition for political positions. From 1979 to 1992, Joan was elected to the Victorian Legislative Council for Melbourne West. By the mid 1970's, the Socialist Left, as the largest,

² *Ibid*, 91.

most influential faction in the Victorian Labor Party, had attracted what Joan called opportunists and carpetbaggers.

Joan Coxsedg believed that Joan Kirner had joined the Socialist Left faction of the Labor party in the late seventies. Margaret Willshire, the executive officer from the Victorian Council of State School organisations (VICCSO) was a close friend of Joan Coxsedg, and informed her that Kirner had come into the socialist left faction of the Labor Party because she thought that it was the best opportunity to become a candidate in a safe seat.

Margaret Willshire knew Joan Kirner through the state schools parents' organisation. They both possessed exceptional organisational and administrative abilities. Any similarity ended there. Margaret Willshire had a matronly figure, bright carrot red hair, glasses with ornamental frames, and heavy makeup that masked the lupus condition that was leading her to her death. She possessed research skills and dedicated these to her causes and friends. She was loyal to a fault.

Joan Kirner was pleasantly plump, but not matronly. She was vivacious and pretty, with dark curly hair, rosebud lips, and the capacity to attract unquestioning loyalty among her state school parents. She assisted in the organisation of large political demonstrations of state school parents, and became an accomplished public speaker in her cause. She was attracted to the State Aid issue in 1971 and was prepared to become a signatory to the DOGS High Court writ. She later regretted this and attempted to have her name removed.

In 1973 Kirner had been selected by the Federal Minister for Education, Kim Beazley Snr from a list of nominees as a representative of State school parents on the Schools Commission. She did not disappoint Minister Beazley or her fellow Commissioner, Father Martin, the representative from the Victorian Catholic Education Office. She claimed that this fellow Commissioner persuaded her to take her name off the High Court Challenge.³

Kirner also organised a change in the State Aid policy of the National State Schools organisation (ACSSO) to reflect the federal ALP State Aid 'Needs' policy. Members from her parents' clubs attended an annual VICCSO Conference with the same objective. Margaret Willshire, who at that time was the President of VICCSO noted faces she had never seen before and stepped down from the chair to speak in favour of retention of the VICCSO 'No State Aid' policy. The numbers fell in favour of the federal ALP policy.

Joan Coxsedg said that she was astonished at Margaret Willshire's news that Kirner was looking for a safe Labor seat as early as 1978. But perhaps it is best at this stage to let Joan Coxsedg speak for herself:

³ Anne O'Brien, *Blazing a Trail: Catholic Education in Victoria, 1963-1980*, David Lovell publishing, Melbourne, 1999, 143.

Joan Coxsedg'e's Story:

I said: but Margaret (Willshire), you've got to be in the party for years. Well—Kirner proved me wrong didn't she? Bill Hartley had been in the party for years, and had been on the Senate ticket but they moved his name down the list into an unwinnable position. I suppose they didn't want him to be in the Senate with Senator Murphy where he could have a much more powerful voice and raise issues. They hounded both Murphy and Bill. But Bill kept on trying. He had an amazing capacity to ignore barbs and arrows slung in his direction. I spoke on his behalf when he was formally expelled from the Party at the Conference in Tasmania in 1987,⁴ but he didn't fight it. He let them have it all their own way. Perhaps he was knackered.

In 1970 Bill Hartley should have been the Secretary of the Socialist Left, but he was sidelined and Bob Hogg got the job. Hogg later went to work for John Singleton who was in the extreme right faction. He disliked Bill and myself—we were the two stand-outs. Bill knew a lot about Hogg, but was reluctant to write it down.

Bill could be frustrating to deal with. He could be a bit anarchic in his habits. But we all understood him in a funny sort of way, and were very fond of him. The right-wing members in the Party hated Bill. He didn't compromise on Labor Party policy, and was the eternal optimist. Bill's radio program on 3CR, Par Avion, had a large following. He received recognition as a skilled journalist. He believed you had to keep a voice going by all the means at your disposal. I wish he had sat down and taken trouble to write all the things people did and when and where. At least if you have got a book it is there. You always hope there might be copies around. That's why I did this — (patting her book, Cold Tea for Brandy)

My husband Ceds and I were mates with Bill in many ideological battles. I remember great parties at his place in Eltham. During the Vietnam War years we were having a fund raiser at his place for a draft resister. A cream-coloured Commonwealth police car was parked outside Bill's residence, but his house was perched on top of a steep hill, so the resister got away through the undergrowth. We laughed. It was all good fun.

That is what is missing today—laughter. It was part of our lives in those days wasn't it? Now I don't see anyone laughing. Pompous, powerful people can be brought undone with laughter. I can't see Rudd laughing. I worry about people like that.

For a while the Socialist Left in Victoria was an aberration. We concentrated on positive policies and there wasn't much emphasis on getting parliamentary jobs. There was excitement and we believed that we were going to achieve something, but as we got bigger we found that some people on the Socialist Left ticket would get elected, then immediately retract our policies. The rank and file felt the parliamentarians let them down so badly. They had stayed with the left because they had good policies on State Aid, Vietnam, abortion rights, and uranium. Many felt betrayed and left the party altogether.

⁴ Bill Hartley attempted to hold the ALP to its anti-uranium and industrial policies when the Labor party was adopting a more pragmatic approach to such issues.

Then in 1984 Hawke and the centre unity faction forced the four right wing unions back into the Victorian Labor party. With a membership exceeding 100,000, these unions boosted the Centre Unity's factional base. The unions at the centre of the row were the Federated Clerks, Shop Assistants, Ironworkers and Carpenters and Joiners. They were closely associated with B.A. Santamaria's National Civic Council (NCC), an organisation proscribed by the Victorian Branch. This National Civic Council was the brain-child of Archbishop Mannix, and a sister organisation to the Democratic Labor Party. The DLP had split from the Labor Party, giving preferences to the Conservatives for decades. They tried to keep Labor out of office until Whitlam changed the policy on State Aid. Nine 'pragmatic left' unions refrained from voting at the State Conference on Saturday 20 April 1985 and the NCC unions were admitted. Alex Hutchinson from the Musicians Union played the Last Post on his clarinet when they entered the Conference on the Sunday. Some overripe tomatoes were thrown. That was when the expression, 'Tomato Left' entered our lexicon.

The Socialist Left split. A few of us tough nuts remained as the 'hard left,' trying to maintain a semblance of Labor principles. The sell-outs were called the 'marshmallows'. The NSW branch now controls the whole of the Australian Labor party and it is very right wing indeed. I think Lionel Murphy was the last of the left in NSW. You know, he said it was just dreadful. Every time he settled one thing they would attack him on something else—very nasty. He was hounded unmercifully. So was Bill. I've had my share too.

Like Ray Nilsen, I was involved with Marjan Jurjevic and his battle with the Ustasha escapees. A group of members of the Socialist Left set up a Committee for Democracy in Australia, met with Attorney-General Lionel Murphy, and gave him a swag of documents on the issue. I was also involved in the publication of two works dealing with the subject: *One, Two Three, Ustasha Are We* and *Rooted in Secrecy*.

I only ended up getting elected after a very dirty campaign—filthy campaign! They told lies and did everything they possibly could to denigrate everything I stood for. They love to do that, the media—and they can do it so efficiently.

Someone walked up to me the other day and said

You know, you are really quite nice'

Looking back at the issue that started it all, federal intervention in 1970, it was our opposition to State Aid lay behind it all. And now, when you look at what has happened in the last 40 years, it's damn hard not to say 'I told you so'. It might have taken 40 years to achieve the decline in public education, but once governments agreed to fund private Church schools, it was a stab in the back for free, universal education. With consumer 'choice', user-pays, and economic rationalist policies like private/public partnerships any pretence of egalitarian ideals has gone out the window.

If you want you know more about what happened in 1970, have a chat to Kevin Healy. He was there—inside the Travelodge on 14 September 1970.'

Joan agreed that the State Aid issue won't go away just because politicians want to ignore it. It still hovers over and around the Labor Party: the 'elephant in their room'

Kevin Healy's Story:

In the 1960's many of us were in the ALP because it offered alternative and principled policies. We saw it as an avenue for getting radical issues debated in the broader society. The Victorian branch's opposition to the Vietnam war from the outset had been attacked by conservatives both in Victoria and nationally because it would 'cost us votes'. Forget the fact that based on American lies perpetuated by Menzies and his warmongering allies we were slaughtering innocent people fighting for their freedom and independence. Ironically while federal leader Arthur Calwell—to his credit—stood firm on the Vietnam issue, our opposition was vehemently opposed by his deputy Gough Whitlam. Yet arguably this was the biggest single issue that made Whitlam prime minister.

We were youthfully scornful of the pragmatic right wing versions of the party in most other states, and particularly scornful of the NSW right. But in retrospect, the Victorian ALP in that brief period was an historical aberration created by the split when the right wing unions and members broke away to form the anti-communist party which became the Democratic Labor Party (DLP). These elements still controlled the party elsewhere, particularly in NSW, and eventually were re-admitted in Victoria as a consequence of the federal intervention in 1970.

We supported the state education system and strongly opposed state aid. I personally opposed state aid after I attended a Catholic college for many years. In our matriculation year in 1960—just five years after the split—our 'christian doctrine' period on Fridays was conducted by Gerard Mercer. Gerard was a school captain from three or four years earlier who was a fulltime worker with the National Civic Council, the catholic dominated anti-left force behind the DLP. He would walk in every week and whip out his map of Asia with this big red arrow zooming down from China. He told me they'd be here by 1964. The De La Salle brothers also praised NCC unionists. They were great Australians fighting the evil enemy. They denounced strongly any unionist to the left of Hitler.

I believed it outrageous that public monies should be spent on that sort of brainwashing. I always marvelled that B.A.Santamaria, the NCC ideologue, could polemicise that one of the hideous aspects of 'atheistic communism' was that it brainwashed dear little children then, without a blush, demanded state aid for religious schools.

In relation to Federal intervention in September 1970 : As I remember there were four meetings that were relevant to the change in the Australian Labor Party State Aid policy in the 1960's and 1970's. The first one began when the executive were elected in the Collingwood Town Hall. It was the Queen's birthday weekend. At the 1969/70 Conference John Galbally was expelled from the party because of the State Aid policy.

I led the debate against Galbally. Members of what were known as the ‘Participants’ supported him. Until Federal Intervention, we on the Left always had the numbers, so Galbally was expelled.⁵

The executive elected at the Collingwood meeting handled the Victorian State election. In those days the executive had the right to demand that the parliamentary party held to party policy, so the parliamentarians could not go off on frolics of their own. The media barons constantly excoriated the ‘left’ executive for its ‘interference’ in the parliamentary process by maintaining control over the parliamentary wing. For them a party executive insisting those elected to represent it should reflect its state conference policy decisions was ‘undemocratic’.

There were 33 people in the Executive. They included George Crawford, who was the chairman, Jim Cairns who was the Vice Chairman, and perhaps Sally Johnson who was also the Vice Chairman. There were also Judy Bornstein and Beverley Genser from Richmond Council. They were strong on the State Aid issue. Bill Hartley was the Secretary. He was brilliant, had a very retentive memory, and was loyal to a fault. Bill had it all in his head, but he did not have a vote. Moss Cass had been replaced by Peter Redlich—a bad swap, and Ted Innes was also against the rest of us on the State Aid issue. I was on the executive, and like the majority, I was a staunch opponent of State Aid to religious schools.

After the 1969 June state conference the executive told Clyde Holding we wanted to see his state policy speech in ample time to approve it before the state election due in the first half of 1970. Holding was automatically on the executive as state leader. As it turned out Holding did not produce his policy speech draft until a regular fortnightly executive meeting on a Friday night 11 days before it was to be delivered. Contrary to our policy it committed a Labor government to supporting state aid. That was the second meeting.

This executive meeting, which normally ended about 9.30 so we could get to the pub, went on until after midnight with the state aid issue unresolved. I led the attack against any form of state aid, and Holding argued it would be political suicide to withdraw the aid the Liberal government had introduced. Finally, as so often happens, the matter was referred to a committee of party officers together with Holding. They were to report to an extraordinary meeting the following Friday, just four days before it was to be delivered. That extraordinary meeting was the third meeting.

The policy speech came back to this extraordinary meeting the next week with a phrase-out clause of the education policy— clause 23 I think. I stated that we would ‘phase out’ state aid over the life of a government. Again the meeting went into the wee small hours, and as we approved the policy phrase by phrase I moved wherever appropriate that we insert ‘phasing out’, and on each occasion Holding argued it was unnecessary because it was already in clause 23. On each occasion I withdrew my amendment.

⁵ Sydney Morning Herald, 13 August 1970.

Then when we got to clause 23 he moved that 'phasing out' be deleted. I responded angrily that he was being grossly dishonest and couldn't have it both ways, because I had withdrawn my amendments on his assurance that the phrase was already in the policy.

You're probably getting the impression that Holding and I weren't all that close.

He conceded, and so, after many hours of heat over two weeks, the policy was finalised. The phasing out of existing state aid was firmly entrenched. It was iterated on the Sunday at a meeting of state candidates with Holding, shadow ministers and party officers.

Then on the Tuesday night Holding delivered his speech without mentioning 'phasing out'. This was not in itself a major problem, because it was a truncated version of the full policy document. But when the media produced the full document and asked Holding about the 'phasing out' clause he responded with 'give me a look at that' and denied he had ever seen the phrase. The executive must have planted it on him, he claimed.

The media had a field day. The campaign had died at birth. The Labor Party lost the 1970 Victorian State election, and it was all downhill after that.

Why Holding sabotaged his own campaign I don't know. There are two most likely possibilities.

It may have been a long-term strategy to destroy the executive, because the 'phasing out' controversy was one of the major charges laid against us at federal intervention later that year, but that presumes Holding (and co-conspirators) were prepared to sacrifice his/their own chances of election. Perhaps they were.

The other possible explanation is he believed he could not win with a 'phasing out' policy, but misread the damage his denial would cause. It's hard to believe he could be that naïve.

We can only speculate, but the certainty was that state aid became a key excuse for intervention and the restructuring of the Victorian branch. I'll concede, and I admitted at the time that the pre-intervention branch was far from democratic, controlled by a group of left-wing unions who made most of the decisions. A number of us drafted proposals for restructure giving real democratic control to the rank and file, but that was the last thing the interventionists wanted.

They simply replaced one left oriented undemocratic structure with a conservative oriented undemocratic structure aimed at wiping out policies they perceived as electoral liabilities, bums on seats in a policy free zone.

One of the reasons given for intervention by the federal branch was the accusation that the State Executive had failed to inform Holding about the 'phasing out' policy.

There was a push to get Whitlam into office in the years 1970 to 1972. His supporters on the federal executive saw the Victorian State executive as a barrier to winning power. The left unions had numbers at the annual Conference and there were a number of key issues in contention: Vietnam; Abortion, Uranium and State Aid. The Victorian Party had strong policies on these matters and were accused of being the cold hand of socialism holding down the party.

Whitlam, as federal leader, was against our stand on the Vietnam War. Yet it was the Vietnam War factor that helped get him into office in 1972. There was strong electoral evidence that the DLP was also losing influence. Federal Intervention was led by another group, many of them Church school graduates and supporters of State Aid. They were known as the 'Participants'. Some claimed to be Fabians like Gough Whitlam and Race Matthews.

The 'Participants' have enjoyed distinguished careers in the political and legal networks since the 1970's. They were mostly lawyers: Dick McGarvie, Xavier Connor, Frank Costigan, Alastair Nicholson, Frank Vincent. Many later became judges. Race Matthews was an education consultant who became a professional politician. Costigan stood for Chisholm and the DOGS were involved. Ray has a story about that⁶

The 'Fabian' Labor lawyers were a close-knit, and very able group. For example, when Bill Hartley was charged at the Springbocks campaign, the first trial resulted in a hung jury. Finally his friends went and got Dick McGarvie, one of the 'participants' who became Governor of Victoria, to get Bill off. That's enough gossip. On with the State Aid story:

There was a fourth and final meeting on Monday, September 14, 1970. It was at this meeting at the Travelodge in St Kilda Road, South Melbourne that the federal executive intervened in Victorian Labor Party business. The DOGS and other groups and individuals protested outside.

It was a long day. The federal executive met in a separate room and I was sitting outside with other members of the executive. There was much to-ing and fro-ing during the day. Bill Brown and Bill Hartley were the two Victorian delegates from the Victorian Executive who went into the Federal Executive as our representatives. Brown, the Secretary of the Furnishing Trade Union, was a safe Senate-endorsed candidate. There had been trouble between Brown and Clyde Cameron. I believe it was about the 'phasing out of State Aid' policy. There had been a heated meeting at Broken Hill and Brown got the better of Clyde. Clyde was a good 'hater'. I suspect that intervention was in part driven by Clyde's getting his own back on Bill Brown.

Anyway, after the meeting Bill Brown came out. He ignored us, walked over to the phone and talked to his wife. He told her that the senate ticket was intact. Then, without speaking to any of us he walked out. He had made his choice. He was elected to the Senate and never had anything more to do with us.

After this meeting some of us met to form the Socialist Left faction in Victoria. We gingered up the party for a while. But, as you know Bill Hartley was hounded and

⁶ See 'The Chisholm By-Election' earlier in this Chapter.

expelled when he tried to get the political leaders to adhere to Labor Party uranium policy. By that time we had the lib-labs and many of us felt the Labor Party was an empty shell, a plaything for ambitious pragmatists.

. ‘State Aid’ was the catalyst for Federal Intervention in the Victorian Labor Party and if anything, the inequities of education funding were worse than ever. State Aid to private religious schools remains a problem for Labor politicians spouting egalitarian rhetoric—the elephant in their room.

ERNIE TUCKER

As you know I was the President of the DOGS after the 1972 election. I was lucky to have Joyce as the Secretary and Stella Bath helping her on the executive. Others on the executive were good with research and mail-outs. Rose Urquhart, Mr and Mrs Deacon, and Dorothy Dean did the basic jobs. Dorothy Dean did the mail out the day before her death.

I knew Stella very well, because we were both in the New South Wales Teachers’ Federation. I spent a lot of time at Stella’s place in Coogee preparing the DOGS Newsletter, and helped her sister Joyce, with Schools Commission submissions. Joyce was a wonderfully efficient person.

As a group we made both written and oral submissions to the Karmel Committee. We got the extensive written submissions together in a week, and trawled through Peter Karmel’s own South Australian Report for relevant ideas. I remember the Tasmanian evidence on the uneconomic duplication of schools in the public sector by the Church schools. We also addressed the accountability issue.

There was Ray Nilsen from Victoria, Marion Sturges and George Wilson from Tasmania. You were there too Margaret? We all flew to Canberra on March 21, 1973 to put our case.⁷ We were treated very courteously and provided with a room to discuss our oral submission together.

Karmel was an academic-economist remaking his career as an education mandarin. He twinkled at us over his glasses, putting us at ease with a smile on his balloon-cheeked face. Jean Blackburn was his assistant and note taker. She was a well-known educationist and asked interesting questions. But the final Interim Report avoided historical issues and forced contradictions into tandem.

Some members of the Committee were interested in our duplication and accountability arguments. But Karmel and Blackburn were taken aback by my suggestion that Church schools should be accountable for public money on exactly the same terms as public schools. One Committee member pointed out that this would mean that churches would

⁷ DOGS Newsletter, May 1973.

have to reveal sources of revenue other than government grants. So...? The information was shrouded in complex skeins of charitable trusts, or corporations set aside for the eyes of the hierarchy and initiates alone. That issue received a hasty burial. In 1973 Karmel passed the buck. He said that his Committee was not the inquisition and full accountability was a matter for the government and the Auditor-General.

STELLA BATH

Before the Schools Commission you could identify the exact amounts of State Aid received by Church schools. Afterwards, this became much more difficult. Hundreds of millions were paid directly to the Catholic Education bureaucracies and they diverted money according to their own priorities: new schools and secondary education. We could identify some of their schemes. The Victorian DOGS called them Bottom of the Schoolyard schemes and tried to expose them in a number of paid Advertisements in *The Age* and other newspapers.⁸ Accountability was minimal. Joyce burrowed away. She believed in archaeology before architecture.

She had worked in an insurance company and developed finely-honed secretarial skills. We both had children at public schools when we joined the DOGS. I lived in Coogee, and Joyce lived at Caringbah in the south western suburbs. We had a lot of supporters from that area. I was able to help on overall presentation of our submissions, but Joyce was the one for accuracy and detail. She was never faulted on detail.

Joyce also had an eye for inconsistency and hypocrisy, alongside whiplash words to expose it. When she analysed the Schools Commission reports she realised they were written to a formula. The first part of the report was always factual, and these facts tended towards a logical conclusion that favoured the public system. When she came to the actual conclusion however, she was usually confronted by a contradiction. As we all knew, the Commission had a political job to do, and talk about equality of opportunity and need degenerated swiftly into mere rhetoric. Contradictory statements were often laid side by side in the one sentence. They were practicing the art of double-think, and expected readers to hold two contradictory beliefs in their mind simultaneously and accept both of them. Joyce wondered whether the Commissioners thought she was stupid. She did not believe in giving the appearance of solidity to pure wind, but remained determined to find out true facts and store them up for the use of posterity.

⁸ For example, *The Age*: 12 November 1970; 27 November, 1972, 4; 16 May 1973, 10; 12 July 1973, 14; 12 December 1975, 12; 23 June 1977, 16; 2 December 1977; 5 December, 1977, 12; 3 May 1984, 18; 28 November 1984, 20; 1 May 1985; 30 August 1988, 22-23; 2 March 1998, 11; April 26, 2005; 27 March 2006; *The Herald*: 1 December 1972, 11; 11 December 1975, 38; *The Australian*: 10 December 1975, 5; 19 July 1985, 7; *Canberra Times*: 18 December 1980; 4 November 1983, 11; 6 April 1984, 9. Advertisements since this time did not deal with the Schools Commission.

Then, after about 1978 there wasn't even the rhetoric. Finally, in 1982/83 there was a dissenting report from the teachers' and parents' representatives, Van Davy and Joan Brown. By 1988 the federal government decided that the Schools Commission had passed its political used-by date.

RAY NILSEN

Back in 1969 and 1972, there was a feeling of urgency. People believed that we should go above the politicians to the High Court. If we had managed to get into the Court in the next year, there was a strong feeling that State Aid could be stopped before it gathered momentum. We now know that the Church school interest thought the same way and were determined to keep us out of the High Court at all costs. Time was on their side.

The religious freedom clause of the Constitution, Section 116, could not be tested if citizens did not have standing to go to the court in the first place. They had been told, again and again, that they could only get into the court with an Attorney-General's fiat. There had been various attempts to get into the High Court since 1956. They had all foundered on this issue of the standing of taxpayers to bring an action. So we knew we had set ourselves an almost impossible task.

Since 1956 the other groups had been knocked back by the Federal and States Attorneys-General. In 1966 Whitlam, the then Deputy Leader of the Labor Party knew this, and claimed that the various branches of the Labor Party would not permit their Attorneys-General to give fiat.⁹ Attorneys-General were political appointments, and the religious school opposition had the right men in place.¹⁰ Even if the two major parties were dubious about the constitutionality of State Aid, they felt confident. If no-one could get to court to challenge it, why worry?

Even if the case got to court, costs were prohibitive. But we were still prepared to have a go. Some of the conservative, Liberal voters who were members of the DOGS in Melbourne had a naïve belief that the Justices of the High Court, wise men all, would put things to rights. I suppose I felt the same way.

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⁹ Gough Whitlam to C.S. Wyndham, February 11, 1966, released to the press.

¹⁰ See M.J.Ely, *Erosion of the Judicial Process*, 1980, Melbourne, 4-11.

Attorneys-General to give fiat.¹¹ Attorneys-General were political appointments, and the religious school opposition had the right men in place.¹² Even if the two major parties were dubious about the constitutionality of State Aid, they felt confident. If no-one could get to court to challenge it, why worry?

Even if the case got to court, costs were prohibitive. But we were still prepared to have a go. Some of the conservative, Liberal voters who were members of the DOGS in Melbourne had a naïve belief that the Justices of the High Court, wise men all, would put things to rights. I suppose I felt the same way.

Our Secretary, Lance Hutchinson did his own research. That was Lance, gathering books, reading, taking notes in copperplate writing. He discovered a copy of the original Parliamentary debates on Section 116 in the Australian Natives Association library. He obtained copies in their grime-covered building at the Flinders Street end of Elizabeth Street, and spent his own money publishing multiple copies of the original Constitutional Convention debates. He was certain of the legality as well as the justice of his cause. I think that was one of the first publications he produced on his own printing press. We didn't know at that stage that the Constitutional debates would not be admissible in the interpretation of Constitutional provisions in the High Court.¹³

The religious members, like my missionary sister Dorothy, put it all in God's hands. They went ahead in faith. I believe in God, but I had no illusions about religious men. I have never trusted priests and parsons of any religious brand once they see the colour of taxpayer's money. Actually I've since learned that even the smell of money can have a corrupting influence, even on people you took for granted as friends.

I decided to learn from Cromwell. Once I joined battle, I would keep my powder dry. Nellie and Sofie are always game for a fight, Henry, once it was discovered he was my brother, suffered discrimination at work, but he put up with it and kept the home fires burning with finance from his pay. My eldest brother, Karl, sent money from Canada, and Mum—Mum worked over the kitchen stove and kept the food on the dining room table.

The membership were generally very faithful and close friends always ready to support. We were a select group. All the same, we kept a close-knit central group for the legal challenge to avoid NCC¹⁴ interlopers....

Our faith in human nature was tried by the behaviour of others. For example, there were a number of people who were prepared to go on the writ for a relator action. One of them, Joan Kirner, proved a reluctant and disruptive litigant. She was a state school parent representative on the Schools Commission but went on to a meteoric career in the Victorian Labor party as Minister for Education and Premier.

¹¹ Gough Whitlam to C.S. Wyndham, February 11, 1966, released to the press.

¹² See M.J.Ely, *Erosion of the Judicial Process*, 1980, Melbourne, 4-11.

¹³ This changed after the DOGS case with the *Acts Interpretation Act* (Cth) 1981.

¹⁴ National Civic Council interlopers. There had been attempts to disrupt the organizations in other States.

On the other hand, Bill Hartley and Wally Curran from the socialist left of the Victorian Labor party remained on the writ to the bitter end. John Zigouras, our pro bono solicitor, worked on the fiat problem for the relators. John had a practice near Trades Hall Carlton, and made his office available for the paperwork and photocopying during the next decade. He was a committed socialist and loyal friend. John offered his own services pro bono, and never charged us a penny. Nellie spent hours on his photocopier during the night hours.

Zigouras approached all the Attorneys-General, Commonwealth and State. The Federal Attorney-General and those of Western Australia, New South Wales and South Australia, refused fiat; Victoria, Queensland, and Tasmania asked for further information. The Tasmanian DOGS were hopeful that their Attorney-General Everett would give fiat. Their State school networks were small, manageable, and still intact. They were disappointed. Everett was sympathetic but he had enough problems without adding Archbishop Young to them.

Zigouras and I sat in the Carlton office and amused ourselves collating the replies. Western Australia and South Australia were upfront political; the rest passed the buck in a round-robin of State and federal Attorneys-General. It looked as if the Australian High Court was not available to Australian citizens to test a Constitutional matter. Litigation was stopped before it could start.

Just when everyone was persuaded that the religious school networks had succeeded in closing the door to the court, the Hon. V. Wilcox, Attorney-General for the Liberal Government in Victoria, granted fiat on 28 November 1973. There were strings attached. We later discovered that we could not go to court by ourselves, or with junior Counsel. We had to employ a Queens Counsel. But the documents were signed and the writ lodged with the High Court on 14 December 1973.

The Victorian Liberal Government was under constant pressure during the 1970's, from the Roman Catholic Church, the Independent school organisations, and Prime Minister Gough Whitlam to withdraw the fiat. We only found out about the pressure on Premier Hamer and Attorney-General Wilcox from the media. His successor, Haddon Storey could have legitimately withdrawn fiat on a number of occasions. He continued it nevertheless. When Whitlam accused Wilcox of covert attacks on the education policies of his government, Hamer defended his Attorney-General. He said that you can't deprive people of the right to go to court if they wanted to. He considered that elementary justice.

The fiat matter was never finished, even when we finally got to court. The opposition never accepted our right to be standing in the High Court on one of the few human rights clauses in our Constitution, even with an Attorney-General's fiat. Getting fiat was only the first hurdle. Next, we had to find Constitutional lawyers acceptable to the Attorney-General to take the case for us. Here is the list: Mr. J. McIntosh Young QC accepted the brief, but soon after left the bar for the Supreme Court. Another, K. Aickin QC refused. The next lawyer, R.K. Fullagher QC was also appointed a Justice of the Supreme Court. Finally Mr. Neil McPhee QC was retained and, when Mr. A.R. Castan went overseas in 1977, we employed Jack Fajgenbaum as junior counsel.

We found ourselves in the mazes of the legal system, wandering cap in hand, around the corridors of Owen Dixon Chambers. I was amused by men in striped suits dressing up in mediaeval gowns and straw wigs, strutting over William Street at the pedestrian lights, followed by office boys pushing trolleys of papers and books. They took themselves very seriously.

I realised I could read American Supreme Court and Australian Constitutional law cases and get the meaning of them fairly easily. So, I enrolled for Law at Monash University in 1976 and finished a few years later. By 1974 we were working with McPhee, but the case did not actually get to any kind of a Hearing in the High Court until more than four years later, on 20 November 1978. It did not reach the final hearing of the law by the full High Court until 24 March 1980.

I was unhappy at placing this case in the tender care of men who prided themselves on being *hired guns*. Neil McPhee QC, referred to himself in this fashion. For example, he could work on our case one day, take a brief from the opposition the next and fraternise with opposition lawyers at the legal watering holes in the city in the evening. Alcohol loosens lips and sinks ships. Still, that was the closed system in which we found ourselves.

Mind you, I think Mr. McPhee was an independent-minded lawyer, who could hold his liquor. He enjoyed working on the case. It was different from his usual run of commercial work. He certainly had little time for the religious men at the beginning, and even less at the end. I don't think he had met many people like us. I got on all right with him. He was a bit of a lad, enjoying the stimulation of the bar to a sinecure on the bench. We chose him for his expertise in cross-examination. We suspected that the Roman Catholic Church would draw us into the quicksands of a Trial of Facts. McPhee did not specialise in constitutional law, but his junior, Jack Fajgenbaum had lectured in that subject and conducted thorough research into the Section 116 issue....

Zigouras approached all the Attorneys-General, Commonwealth and State. The Federal Attorney-General and those of Western Australia, New South Wales and South Australia, refused fiat; Victoria, Queensland, and Tasmania asked for further information. The Tasmanian DOGS were hopeful that their Attorney-General Everett would give fiat. Their State school networks were small, manageable, and still intact. They were disappointed. Everett was sympathetic but he had enough problems without adding Archbishop Young to them.

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The level to which private religious representatives were prepared to go in order to keep their State Aid is evidenced in Chapter Nine: The Trial of Facts.

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