

Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
***253 INTRODUCTION**
[Warren Christopher \[FN1\]](#)

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Judge **Matt Byrne** had a magnetic personality. With his sparkling blue eyes, good looks and Irish charm, he made friends easily and kept them for a lifetime. At his memorial service, speakers noted that ever so many people thought they were Matt's best friend.

In the fascinating pages that follow, you will hear from some of these best friends. All that they say is true. You will read of Matt's consummate skill as a trial judge who presided over scores of trials and trained several generations of young Assistant U.S. Attorneys, both when he was U.S. Attorney and, later, as a judge when he held them to an especially high standard. You will be told of Matt's traveling the world as an unofficial Ambassador to help other countries learn about our renowned system of justice. And others will tell of Matt's important contributions beyond the law and lawyering, and his sense of honor and integrity.

While his friends will describe his rare combination of talents, the overarching theme remains his gift for friendship. As one of many beneficiaries, I am honored to introduce this symposium and commend it to you.

[\[FN1\]](#). Warren Christopher attended Stanford Law School from 1946-49, where he was President of the Law Review and was elected to the Order of the Coif. He was a law clerk to Justice William O. Douglas of the U.S. Supreme Court from October 1949 to September 1950. He has worked for three Presidents: as Deputy Attorney General for President Johnson; as Deputy Secretary of State for President Carter, and as Secretary of State for President Clinton. President Carter awarded Mr. Christopher the Medal of Freedom, the nation's highest civilian award, on January 16, 1981, for his role in negotiating the release of 52 American hostages in Iran. In 1991, Mr. Christopher was Chairman of the Independent Commission on the Los Angeles Police Department. In the aftermath of the Rodney King incident, the Commission proposed significant reforms of the Los Angeles Police Department that were approved overwhelmingly by a public referendum. Today, Mr. Christopher is a Senior Partner at O'Melveny & Myers.

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A Tribute to Judge Byrne

*255 "MOMENTOUS CHANGES TAKING PLACE" [\[FN1\]](#) **MATT BYRNE'S LEADERSHIP ROLE
IN DIALOGUE WITH THE U.S.S.R.**
[Weyman I. Lundquist \[FN1\]](#)

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A warm and exciting chapter of my life involved the Cold War, cold places, and the Honorable William Matthew Byrne. "The Judge's" warm and understated but powerful Irish presence played an important role in a legal diplomatic success that began during the Cold War.

A number of Americans think of **Matt Byrne** as a close friend. Less well known is that a number of Russians, ranging from the former Procurator General of the Russian Federation, Alexander Sukharev, to the current Chief Justice of the Russian Supreme Court, Vyacheslav Lebedev, to Veniamin Yakovlev, Head of the Russian High Court of Arbitration, also regard **Matt Byrne** as a close friend in America and the exemplar, for Russians, of what an independent judge should be. How did this come about?

Our adventure started in the early 1980's. It ended in a culminating conference bringing together a United States Supreme Court and Russian High Court Justices in Hanover, New Hampshire in 1996. [\[FN2\]](#) From the outset, *256 we had sought peaceful legal dialogue with our Soviet peers. Our travels took us into important parts of Russia, Georgia, and Ukraine and covered the length and breadth of America, from New Hampshire to Alaska. The "Warm Judicial Warrior" accomplishments of Judge Byrne were central to what was achieved.

Soon after Ronald Reagan became President in 1980, he declared the Soviet Union an "Evil Empire." [\[FN3\]](#) My former partner, Caspar Weinberger, Reagan's Secretary of Defense, ordered a massive buildup of American arms. [\[FN4\]](#) American foreign policy put defense and military might before diplomacy, in an era when both the U.S. and U.S.S.R. had the nuclear ability to annihilate each other. The acronym for such a defense approach was appropriately MAD, for Mutual Assured Destruction. [\[FN5\]](#) American lawyers and judges, **Matt Byrne** a leader among them, dissatisfied with a life or death approach to resolve problems with an adversary, sought a different path. For some, even to suggest talking with the Soviets was unpatriotic and un-American. "Better dead than Red." Matt, from the outset, was not intimidated and decided to help me establish dialogue with Soviet lawyers and judges, even in the face of opposition from the United States Government. He had traveled government opposition paths before, not the least of which was his dismissal of the Ellsberg, Russo prosecutions in 1971 for governmental misconduct. [\[FN6\]](#)

It was my good fortune to chair the American Bar Association's Steering Committee responsible for promoting dialogue with Soviet judges and lawyers. Its initial charge was to cooperate with the Association of Soviet Lawyers (ASL) in advancing dialogue between the legal systems of the two countries. I quickly enlisted the assistance of Judge Byrne. The credibility this distinguished lifetime federal district court judge, respected among his peers and well-known to many outstanding conservative Republicans, gave us was immeasurable. Supporting this Committee, however, was not for the faint of heart. Judge Byrne was a known gourmet; his affection for the shared enjoyment of good food and wine is legendary. Matt's Soviet endeavors gave a new savoir-faire to this reputation. For perhaps the only time in his life, Matt and his ABA colleagues were accused of breaking bread with The Devil! [\[FN7\]](#)

(Cite as: 34 Pepp. L. Rev. 255)

*257 With such press, not surprisingly, the American Bar Association was split over the question of involvement with the ASL. For two years, 1986 and 1987, a faction within the ABA House of Delegates tried to terminate this endeavor. Were it not for the support of judges, with **Matt Byrne** joined by the late Robert Peckham, then Chief Judge of the Northern District of California, Judge Frank Kaufman of Baltimore and Judge John Coughenour of Seattle, dialogue with the Russian Judiciary and our Rule of Law, conversations with Soviet lawyers might have been stopped in their tracks.

Shortly after the ABA House of Delegates vote in 1986, the first major dialogue achievements took place in Hanover, New Hampshire. In this signal event, Judge **Matt Byrne** presided over a mock jury trial. The seminar venue was at Dartmouth College, alma mater of Daniel Webster. [\[FN8\]](#) The Soviet lawyers and judges traveling to America to participate had difficulties. The State Department did not clear them through normal channels, but they were allowed to come. They landed in Montreal, Canada. Even as they were arriving, Newsweek reporter Nick Daniloff was arrested in Russia for spying. [\[FN9\]](#)

My partner Bob Rosenfeld and I met the Russians in Montreal and brought them to Hanover, New Hampshire by bus. [\[FN10\]](#) At a Vermont-Canada customs border crossing, the men's restrooms had graffiti on the walls. The English-literate Soviet delegates were amazed and heartened, for the graffiti read "Burlington has a Commie Mayor", referring to Bernie Sanders, now Vermont's Independent Party United States Congressman and currently running for the United States Senate. [\[FN11\]](#)

No one could better put the Soviets at ease than Judge **Matt Byrne**. Even their political officers (probably KGB officials on that first trip) smiled when he would chide them about defecting, as we dined together enjoying vodka, lobster, and wine. Russian Chief Justice Lebedev would comment in *258 the years to come that while Judge Byrne did not understand Russian, he understood Russians. The seeds of that first meeting--our discussions, the hypotheticals used to frame legal points, the give and take between American lawyers and Soviet lawyers in private practice, and particularly the mock jury trial-- started dialogue. At first testy and guarded, it became increasingly open, and friendships that lasted Matt's lifetime began. The National Law Journal's September 29, 1986 report by Alberto J. Cook captured both the tensions of the times and the contributions of **Matt Byrne**:

'Spy' Arrests Give ABA-Soviet Parley an Uneasy Edge - It was an ironic turn of events that a Soviet United Nations employee faced espionage charges in the United States, and an American journalist sat in a Moscow jail, as Soviet and American lawyers gathered at Dartmouth College on September 12-13 to participate in a comparison of both legal systems. The sessions, with 20 lawyers from each country on hand, came just over a month after the American Bar Association's agreement with the Association of Soviet Lawyers (ASL) survived a strong challenge from some members at the ABA's annual meeting.

But while Soviet lawyers were queried privately many times about the possible fate under Soviet law of U.S. News & World Report's Moscow bureau chief, Nicholas S. Daniloff, the issue was not raised publicly at the seminar until the afternoon of the second day. In general, Soviet lawyers demonstrated an unending curiosity about the inner workings of the American legal system. During question-and-answer sessions, several seemed to have a hard time understanding some of its features - particularly the notion of separation of powers among the branches of government.

They initially found it difficult to believe that the U.S. president theoretically could not influence a federal judge's decision.

U.S. District Judge William Matthew Byrne Jr., of Los Angeles emphasized that the separation of powers in the U.S. system allows federal judges to remain independent of political influence from the executive branch.

*259 "In our system", he said "a judge can tell the president of the United States - or the government - to get away, if you will, to 'Go to hell - you are not going to interfere with my decision.'" [\[FN12\]](#)

If there was a lesson that stood out to the Russian/Soviet lawyers it was the respect and power that federal district court judges had. Its exemplar was Judge William Matthew Byrne. He was obviously a decent human being. He was independent, with a lifetime tenure to uphold the Rule of Law. While beyond the reach of the Executive or Legislative

(Cite as: 34 Pepp. L. Rev. 255)

branches, he was in contact with people. The importance of independent judicial power in America is hard to explain. It is exemplified by my Norwegian friend's explanation of how the royalty in Norway walk the streets, ride public transportation, and talk with people. They are friendly with all, and yet command, not demand, respect. Their King is special. Matt showed them how federal district court judges are special.

The 1986 conference at Dartmouth was a strong beginning. By December 1986 The ABA Steering Committee Report to the House of Delegates was able to report the following:

- a. The Soviets have announced regulations dealing with the emigration process.
- b. The Soviets have entered into private agreements with a U.S. group (The Natural Resources Defense Council) concerning on-site verification of nuclear testing.
- c. The Soviets have changed economic laws relating to privatization of small businesses and facilitation of large joint ventures with foreign business.
- d. The Soviets have released several prominent dissenters, including Yuri Orlov and Andrei Sakharov.
- e. The Soviets have agreed to expanded cooperative efforts on environmental issues.
- *260 f. The Soviets have agreed to further conferences on human rights. [\[FN13\]](#)

In 1983, The ABA House of Delegates set a long-range goal for the Association "to advance the Rule of Law in the world." [\[FN14\]](#) An administrative agreement in 1985 and a Declaration of Cooperation in 1986 committed the ABA and ASL to professional exchanges in pursuit of knowledge of each others' legal systems and "to advance the rule of law in the world." [\[FN15\]](#) To those of us active in this endeavor this did not mean "force feeding" American values or imposing the American system on other nations. The first step was to learn about one another as a prerequisite to change. No one was more credible in articulating this than Judge Byrne, and no one was better at explaining America's jurisprudence from the theatre of a contemporary federal courtroom. Judge Byrne gave life to the workings of the common law and its constitutional evolution, which gives vitality to American justice. It was, as he well knew, a process that ebbed and flowed.

Tenacious, continuing personal involvement was another important facet of Judge Byrne's contribution. ABA leaders have many responsibilities. Its presidents have one-year terms of office. [\[FN16\]](#) Getting elected involves politics that, politely put, require time and travel that is inevitably wearing. To keep a project of international legal diplomacy on track, committed lawyers and, when possible, judges are needed. Lawyers' involvement, at times, springs from self-interest. However, in the dialogue adventure with the Soviets, the lawyers principally involved were litigators--moved more by Abraham Lincoln's charge that the highest calling of the lawyer is as peacemaker than the likelihood of being paid to appear in a Russian courtroom. **Matt Byrne** stayed ten years with this project, from 1986 to 1996. To the Soviets (and after December 31, 1989, the Russians), he was "The American Judge."

After a strong floor fight at its New York Annual meeting in 1986, the ABA House of Delegates voted to continue dialogue with the Association of Soviet Lawyers. Further opposition and another floor fight were anticipated for the San Francisco convention in 1987. It was important that progress be shown in the interim.

Gorbachev, the first lawyer to lead the Soviet Union since Lenin, made the restructuring of its legal system a top priority of his regime. Many in *261 America did not take him at his word when he called for changes in the Soviet laws - to have them "designed to protect society from abuses of power and guarantee citizens and their work collectives their rights and freedoms." [\[FN17\]](#)

On May 27, 1987, six ABA representatives--William Falsgraf (President), Eugene Thomas (President-elect), Allan Benneke (Chairman of the House of Delegates), myself, and ABA staff members Tom Gonser and David Hayes--met with the President of the Russian Federation, Andrei Gromyko, and Alexander Y. Sukharev, ASL President and Minister of Justice of the Russian Federation. Our agenda was to discuss the Rule of Law and to plan legal meetings. That meeting was held in Queen Anne's Room in the Moscow Kremlin. In his concluding remarks President Gromyko stated:

Both associations [ABA and ASL] are very large and should serve the goals of peace and the aim of the

(Cite as: 34 Pepp. L. Rev. 255)

elimination of nuclear war. For lawyers to stand for such goals is good. If the lawyers speak on these issues only the mountains won't hear. The issue of peace and of preventing nuclear war as President Reagan himself once said is the issue of all issues. While in practice our policies are different, life is the greatest value. No one wants cemetery quietness for the world. We Soviets favor legal activities without barriers. Great policy issues center on that. Lawyers' words and declarations should come together and guide actions for other areas of life. The dome over the arena of our legal systems is peace. Gorbachev stands for a summit without preconditions. I sense that there is in your group a wide spectrum of thinking and values but all realize the importance of better legal relations for both political systems. [\[FN18\]](#)

Alexander Sukharev, then the ASL President and Minister of Justice of the Russia Soviet Federated Socialist Republic, came to America for a weeklong visit in June of 1987. **Matt Byrne** took him fishing in Wyoming and arranged for his friends, Barry and Audrey Sterling, to host a dinner for him at their Iron Horse Vineyards home. Ambassador Peter Dailey and his *262 wife, Jackie, hosted a reception for Minister Sukharev at their home in Los Angeles. Sukharev attended Matt's court a number of times, had a picture of himself taken sitting on the bench, and met United States Deputy Marshals and many judges. He also agreed on this trip to sign an agreement permitting the free and open observation of trials and other proceedings by American and Soviet Lawyers while in each others' nations. [\[FN19\]](#)

In early August of 1987, at the ABA Annual Meeting in San Francisco, the ABA House of Delegates again refused to abrogate its commitment to promote the Rule of Law exchanges with Soviet Lawyers.

On August 31, 1987 a contingent of American lawyers with Judges **Matt Byrne**, Robert Peckham and John Coughenour as its judicial leaders, arrived in Moscow for a four-day Human Rights Conference. Tired, bedraggled, maybe even belligerent, ABA members began a three-day Human Rights Conference at the Friendship House, the Headquarters of the Association of Soviet Lawyers. Our agenda had been developed in our earlier meetings in San Francisco and Los Angeles with ASL President, Minister of Justice Sukharev.

At this meeting, an aroused Sukharev is adamant that bridges between legal systems will be built. [\[FN20\]](#) Time and again our message to colleagues was that we need to understand the Soviets, even as we try to change them. **Matt Byrne**--settler of a thousand hard cases--is a virtuoso at bringing people together. Sukharev excitedly confides to us that, "Three seminars are going on - one between the Soviets, one between the Americans [The Americans openly differed about admitting problems in the American legal system] and one between Americans and Soviets." In marked contrast to the timidity at the Dartmouth Conference, the Soviets were now expressing personal views and freely disputing one another. Sukharev exhorted his colleagues "to be bold, to speak up - like the Americans."

*263 The ringing endorsement for **Matt Byrne** and the other federal judges, however, came from Professor August Mishin of Moscow State University - a one-armed hero of the Great War. He called for a Soviet judiciary with lifetime tenure, selected--not elected--talented, experienced, and independent. This, he said, is the critical component of a justice system that develops respect.

Following the lively Moscow meeting we traveled to Tbilisi, Kiev, and Leningrad (now St. Petersburg). That trip is a mélange of Judge Byrne travel memories. A cab driver in Moscow found him so charming he refused to be paid. In Kiev, an Academician suggested to Matt - "You Americans should put Robert Bjork on the U.S. Supreme Court. It will bring our systems closer together." Matt and Bob Peckham posed with a wooden old-man totem in Georgia, describing themselves as the Three Judges. And very memorable - a nightclub in Leningrad where an attractive mother and daughter - the mother in her early forties and the daughter in her early twenties - danced the night away with the charming Judge. We all shed tears at the Hali Yar Monument in Kiev, marking the grave of 100,000 Soviets, 30,000 of them Jews killed by Nazis, and at the Victory Monument in Leningrad, with its stark black and white movies of the 900 day siege. We felt the deep scar imposed on the Soviet psyche, marked by the over twenty million Soviets who perished in World War II.

(Cite as: 34 Pepp. L. Rev. 255)

This visit strengthened the bridge between our legal systems. There was more to come. Harold Berliner, longtime District Attorney of Nevada County in California, a rare book printer and fellow Jesuit, in talking about our "We the People" tour with Matt, mentions Saint Paul the Apostle and his "Carpe diem" - "Seize the day" approach as a parallel to our ABA activity. "We," says Harold, "are seizing our day for change in the Soviet legal system."

A third seminar with the Soviets took place at the ABA headquarters in Chicago in October of 1988. This one was led by Venyamin F. Yakovlev, then Director of the Institute of Soviet Legislation and a law professor who later became Chairman of the Russia High Court of Arbitration. Yakovlev talked of the Soviets restructuring state power and revising their constitution. Felix Khefity, vice chairman of the Moscow State Bar, was there, as was our constant friend, Dr. Vlashinin, from the Institute of U.S.A. and Canada. Each of these men considered themselves friends of Matt. Each of them moved up in the Soviet judicial legal hierarchy. Several of them continue in these posts today. [\[FN21\]](#)

***264** While exchanges continued with bar officials on a regular basis, even more important was an arrangement to back the Gorbachev liberalization reforms by an ABA Soviet lawyer intern program. Under its auspices, young Soviet lawyers came to the United States to work for American law firms from New York to Washington, D.C. to Los Angeles, and San Francisco. Matt met with many of the young Soviet lawyers, never sparing of his time, industry, and effort. He enjoyed the fact that the bilingual ability of these young Soviets permitted him directly to understand their words as well as their psyches.

Exchanges of particular significance were the California meetings in the early 1990's that led to Matt's enduring friendships with the Chief Justice of the Russian Federation, Vyacheslav Lebedev, and the former Dean of the Moscow University School of Law, Mikhail Marchenko. Lebedev was especially impressed by **Matt Byrne** - who he often said was "born to be a judge." Chief Justice Lebedev talked with me about Matt's judicial presence on several occasions - the most memorable at halftime of a Spartica-Dynamo soccer match in Moscow. "Judge Byrne," he said to me, "is not what I expect our Russian Judges to be - that is too much to ask. He is however the model - the gold standard for what I should like to be as Chief Justice." Matt was soon to become the Chief Judge of the Central District of California. Lebedev, Chief of the Russian Supreme Court, found the federal district court the most interesting of American courts. It was a court Lebedev identified with for the functions of the Russian Supreme Court, whose appellate processes involve a mixture of de novo trial, application of precedent, and a concern for people.

With his love of the outdoors, it was fitting that Matt was invited by the Alaska Bar Association to play a key role in its memorable 1990 Northern Justice Conference. The Conference brought together an array of talented judges from America, Canada, and Russia.

Fred Friendly, television commentator and former head of P.B.S., moderated a panel on "The Problem of Justice and Law Enforcement in the North." It was conducted in the style of his P.B.S. television series called "The Constitution."

The Honorable Wm. Matthew Byrne Jr. was every bit Friendly's match in conducting his session on "Native Populations and The Law." This panel explored the conflicts that arose when the legal system of a dominant culture was imposed on native populations with far older cultures. Those of us who had been involved with the dialogue with Soviet law could not help but see parallels arising when nations seek to tell and impose Rules of Law when common understanding is thin and common culture distant. [\[FN22\]](#) One of the fascinating lessons imparted was that Soviets, Americans, and Canadians all ***265** faced the same issues and made the same mistakes in their dealings with Native Cultures common to their northern regions.

The decade of the nineties had brought us from Cold War to warm colloquy with our Russian colleagues. Ironically, Americans had come to like the Russian's first lawyer leader since Lenin - Gorbachev - better than the Russians

(Cite as: 34 Pepp. L. Rev. 255)

did. Gorbachev enjoyed America and enjoyed changing Russia. To this end, in 1990, Americans and Russians were invited to participate in an International Conference on Law and Bilateral Economic Relations at the Moscow Kremlin. The President of the Union of Soviet Socialist Republics, Mikhail Gorbachev, and President George Bush, of the U.S., signed the invitation letters! Matt and I would attend as delegates and for a few other festivities. Matt brought along his nephew Mark Foster and Mark's wife Claudia as guests.

Procurator General Sukharev held a special reception for us. By now, I had seen Gorbachev many times. For Matt and me it was in many ways a culminating trip - with another extraordinary life encounter.

Matt and I managed an evening away from our colleagues. Of course we were looking for a special place to dine - the newest and best. I learned of a Russian Mafia restaurant with dazzling décor, housed in a barracks type building. The cuisine was Armenian and the entertainment consisted of belly dancers. We found our way there and gained entry. We checked the restaurant's pricing policy with the maitre d' - no credit cards, only rubles or dollars, and established the exchange rate pricing. The food was good and the wine adequate. We became friendly with a man and his family from Azerbaijan celebrating his son's twelfth birthday - with food, wine and belly dancers. They come of age early in Azerbaijan.

The man was in his middle forties, bald, and sinewy, with a brave mustache and strong gold teeth. He was in Moscow on a holiday. He was interested in Americans. He spoke good English and was delighted to learn we were from California. He told us he had friends from there. Gregarious about every thing else, he seemed shy to talk about them.

When our check came the waiter had developed amnesia. Now he told us the check had to be paid in dollars. One dollar equaled one ruble, even though the exchange rate was forty rubles to the dollar! Only Russians could pay in rubles. We used one of the Russian words we knew well, "Nyett." The waiter was now joined by a soldier, AK-47 rifle at the ready, and the maitre d'. We stood firm on our rights. Suddenly our Azerbaijani friend joined the fray. "My guests" he said - "and I pay for you in rubles." He did. Thanking him profusely as we were about to leave, he said, "My friends from California were Richard and Arthur Carlsberg. I guided them on the trip in the Caucasus Mountains when Arthur shot his trophy Tur mountain goat, and on the way back he fell from the mountain and died. I *266 recovered his body after the fall." Matt embraced him. Tears welled in his eyes, for Arthur and Dick Carlsberg were Matt's dear friends. Thus we spent our last night in Moscow with food, wine, conversation, adventure, a new friend, and an extraordinary encounter with an old and dear one.

In 1996, ten years after we first "Dined with the Devil," we returned to Dartmouth College, in Hanover, New Hampshire. Representatives of the Russian High Courts, Chief Justices from the Supreme Courts of Maine, New Hampshire, and Vermont as well as America's own Supreme Court Justice David Souter assembled for a Conference on "Law, the Courts and Society, Russia and America". Again, Judge Byrne was a key participant. While the conference's official schedule was for two days, Matt came early to greet old Russian friends - Mikhail Marchenko, now Vice Regent of Moscow State University, former Minister of Justice of Russia and now Chief Justice Veniamin Yakovlev of the Russian High Court of Arbitration, Mme Tamara Georgievna Morshchakova, First Deputy Chairman of the Russian Federation Constitution Court, and Vasily Vlashinin, Director of the Institute of U.S.A. and Canada.

No one can gainsay that great progress has not been made over the past ten years. MAD we no longer are. Russia and America are now closer than at any time in their existence. The U.S.S.R. is gone. Did Judge **Matt Byrne** contribute to this? Dozens of us, judges and lawyer professionals in America, judges and lawyer professionals from the Soviet Union, and the emerging Russia attest that he did. He did it by making us reach out beyond being lawyers. He was a judge who found people and made friends. Gregoriously shy, within he bubbled with human goodness. Great wealth did not impress him. Great values were important: companionship, food, wine, and conversation. He loved the grandeur of far places and the outdoors. A cocktail with ice from a glacier could be a loving cup for friends. Matt believed in honesty, decency, and justice, but he held to no single way of achieving these. He was Catholic, but Jews, Muslims, and Atheists were close and valued friends. Small wonder then that he was so effective in our relations with

(Cite as: 34 Pepp. L. Rev. 255)

the Soviets - with what the Wall Street Journal had called in August of 1987 the ABA's "Dining with the Devil." [FN23] But it wasn't so much a Devil we dealt with. It was, rather, for our time, a devilish issue. Could the people and leaders of the Soviet/Russian legal systems and our own be convinced that communication was a better way to deal with the potential for nuclear annihilation than distrust? Matt's way, with all his style, can be summed up like Daniel Webster's oratory in winning his argument with the Devil:

*267 [H]e [Webster] wasn't pleading for any one person . . . He was telling the story and the failures and the endless journey of mankind. They got tricked and trapped and bamboozled, but it was a great journey. And no demon that was ever foaled could know the inwardness of it . . . it took a man to do that. [FN24]

The Honorable William Matthew Byrne, Jr. was such a man.

[FN1]. This phrase is taken from President George Bush's greeting letter to the 700 American and 2,000 Soviet lawyers attending the Moscow Conference of Law and Bilateral Relations held at the Moscow Kremlin in September 1990. Judge Byrne was a delegate to that conference. By that time he had been working on dialogue with Soviet judges and lawyers for five years.

[FN1a]. Weyman I. Lundquist is a Senior Partner, of Counsel, with the Heller Ehrman law firm. He is admitted to practice in Massachusetts, Alaska, California, and Vermont. Mr. Lundquist is also a Senior Fellow at Dartmouth College Dickey Center for International Understanding. He was a Founder and Past Chair of the American Bar Association, Section of Litigation. From 1983 through 1996 Mr. Lundquist was Chairman of the ABA Soviet Dialogue Committee. In this capacity he led the dialogue between lawyers and judges of the U.S.S.R and U.S. In 1990, at the Moscow Kremlin, he was singled out by the ABA President elect, Talbert D'Alembert, as the American lawyer most deserving of credit in promoting exchanges between the lawyers and judges of the U.S. and U.S.S.R. The counterpart U.S.S.R. lawyer Mr. D'Alembert cited was Soviet lawyer Mikhail Gorbachev, then President of the Union of Soviet Socialist Republics.

[FN2]. The United States Supreme Court Justice was David Souter. The Russian Justices were Tamara G. Morshchakova, Deputy Chair of the Constitutional Court of the Russian Federation, and Veniamin F. Yakovlev, Chairman of the Court of Arbitration of the Russian Federation. Other participants were Frederic W. Allen, Harold Berliner Esq., Lee C. Bollinger, David A. Brock, William Matthew Byrne, James O. Freeman, Weyman I. Lundquist, Esq., Gene M. Lyons, Mikhail N. Marchenko, Ekaterina A. Mishina, Roberta Cooper Ramo, Gordon A. Silverstein, Kate Stith-Cabranes, Vasily A. Vlashinin, and Daniel E. Wathen.

[FN3]. See Wikipedia, "Evil Empire," http://en.wikipedia.org/wiki/Evil_empire (last visited Sept. 19, 2006).

[FN4]. See Wikipedia, "Caspar Weinberger," http://en.wikipedia.org/wiki/Caspar_Weinberger (last visited Sept. 19, 2006).

[FN5]. See Wikipedia, "Mutual Assured Destruction," http://en.wikipedia.org/wiki/Mutual_assured_destruction (last visited Sept. 19, 2006).

[FN6]. See [United States v. Ellsberg, 687 F.2d 1316 \(10th. Cir. 1982\)](#).

[FN7]. See ABA is 'Dining with the Devil,' Wall St. J., Aug. 31, 1987, at 16 (the Journal's editor noting strong opposition to Soviet Dialogue). There were at least several other media sources for this opposition. The Boston Herald, in an editorial, compared the endeavor to inviting the American Nazi Committee to join a holocaust memorial committee. See ABA Legitimizes Soviet 'Law', Boston Herald, June 5, 1987, at 26. Not to be outdone, in August 1987, an editorial stated: "The Association of Soviet Lawyers sounds as though it could be the Russian equivalent of the American Bar Association. It can't. The ASL is instead an elite organization of Soviet operatives, a KGB controlled propaganda monster that plays a prominent role in human rights abuses." Editorial "facts" and reality were not one and the same.

[FN8]. See Daniel Webster: Dartmouth's Favorite Son, <http://www.dartmouth.edu/~dwebster/index.html> (last visited Oct. 16, 2006).

[FN9]. Alberta I. Cook, *Spy Arrests Give ABA-Soviet Parley Uneasy Edge*, Nat'l L.J., Sept. 29, 1986, at 6.

[FN10]. Bob Rosenfeld, a young partner of mine, had clerked for Chief Justice Warren Burger. He too shared my views of the importance of having federal judges support this project. Bob and Matt became great friends as Bob joined us on most of our travels.

[FN11]. See Bernie Sanders: Vermont's Independent Congressman, <http://bernie.house.gov/> (last visited Oct. 16, 2006).

[FN12]. See Cook, *supra* note 9, at 6.

[FN13]. Weyman I. Lundquist, A.B.A. Steering Comm. on ABA/ASL Seminars, Report to the House of Delegates (December 1986).

[FN14]. American Bar Association, International Liaison Office, <http://www.abanet.org/liaison/visitors/home.html> (last visited Sept. 20, 2006).

[FN15]. A.B.A., Declaration of Cooperation: the American Bar Association and the Association of Soviet Lawyers (July 1986); see also A.B.A., Administrative Agreement Between the American Bar Association and the Association of Soviet Lawyers (May 1985).

[FN16]. History of the American Bar Association, <http://www.abanet.org/about/history.html> (last visited Sept. 20, 2006).

[FN17]. Mikhail Sergeevich Gorbachev, *Perestroika: New Thinking for Our Country and the World* 105 (1987).

[FN18]. At that time we thought that Gromyko, as President of the Russian Federation, held but a nominal post, with little say in the Gorbachev government. It has later come to light that Gromyko was the leading supporter in Gorbachev's selection as President of the Union of Soviet Socialist Republics. In hindsight it also appears that ASL President, Alexander Sukharev, who went on to become Procurator General of the U.S.S.R. and then Russia, had a stronger position in the government than we realized.

[FN19]. There was an ironic twist to Sukharev's visit. With him as advisor and interpreter was Dr. Vasily Vlashinin of the Institute of U.S.A. and Canada. Vasily, debonair and Harvard Law School educated, had been, on more than one occasion, said to be a KGB agent - a fact I can personally refute. One evening, Sukharev, Vlashinin, Judges Byrne and Peckham met at my home for a quiet dinner. Matt looking out the window saw an unmarked car with two men in it. He was sure they were F.B.I. agents. The very next day the late Tom Hennigan, then San Francisco's F.B.I. agent in charge of international matters, came by my office to make inquiries of the prior night's events. We knew each other from playing squash at the Olympic Club. I told Tom I would love to give him a report, but with two federal district court judges present, I would feel presumptuous to take the lead in telling him what we talked about. I suggested he go directly to Judges Byrne and Peckham for the facts. End of inquiry.

[FN20]. Auspiciously, the newspaper Pravda, which spoke for the leadership of the U.S.S.R., had earlier published the remarks of M. Bogolyubov, twice Hero of Socialist Labor and a Deputy of the Supreme Soviet of the U.S.S.R., stating, "The prestige of the bar is the prestige of justice as a whole. The institution of legal defense should be an effective

(Cite as: 34 Pepp. L. Rev. 255)

mechanism for preventing legal violation and judicial errors. Our whole society has a stake in such an approach." Pravda, Moscow, U.S.S.R., April, 1987.

The Soviet participants were more surprised than we Americans to see the Soviet press give such positive coverage to lawyer activities. More and more, Judge Byrne and I believed that Alexander Sukharev was sincere in his beliefs and efforts to reform the Soviet legal system.

[FN21]. Most notable are Chief Justice of the Russian High Court Vyacheslav M. Lebedev and Veniamin Yakovlev, Chairman of the Russian High Court of Arbitration.

[FN22]. The author cannot resist observing that the complexities inherent in imposing American cultural values on other cultures does not come easily to the American mind.

[FN23]. See ABA is 'Dining with the Devil,' Wall St. J., Aug. 31, 1987, at 16.

[FN24]. Stephen Vincent Benet, The Devil and Daniel Webster 50, available at <http://tarlton.law.utexas.edu/lpop/etext/devil/devil.htm>.

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
***269 MATT BYRNE**
[Michael Lightfoot \[FN1\]](#)

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I had the great fortune to meet **Matt Byrne** in 1968 when he hired me as an Assistant United States Attorney. He had recently been named United States Attorney at the age of 36, making him the youngest United States Attorney in the country. The office was much smaller than it is now. I believe there were only twenty or so lawyers in the Criminal Division, as compared to close to two hundred today.

Matt had already become an accomplished trial lawyer but, more importantly to us, he was a consummate leader. What stood out was his deep sense of integrity and his insistence on doing the right thing, even if it meant losing. I remember one case that had resulted in a conviction, where he later confessed error on appeal after learning that the agents had cheated at trial.

If you made a mistake, Matt let you know it in no uncertain terms, but if you were called on the carpet in court, he would stand at your shoulder defending you. His lawyering skills were unique. On one occasion, a young Assistant had gone down to court one morning to try a perfunctory non-jury case in front of Judge Andy Hauk. Toward the end of the morning, the evidence closed, Judge Hauk found the defendant guilty, and then asked the defense attorney what he wanted to do next. The lawyer replied: "I'd like to do it again with a jury." The judge bristled - "You waived jury!" The lawyer answered that if the court examined the jury waiver, he'd see that the defendant never signed it. Judge Hauk then turned on the young Assistant: *270 "You're responsible for this. I'm going to hold you in contempt. Get your boss down here." Minutes later, Matt appeared with the Assistant. "Do you know what just happened here?" the judge asked Matt. "Yes, I do, Your Honor." "What do you think we should do, Mr. Byrne?" Matt answered, "I think we should all go to lunch, Your Honor." That's what happened. When everyone came back after lunch, the judge had simmered down, as Matt knew he would, and the matter was amicably resolved.

Matt constantly taught us how to get to the "goal line" while always maintaining our dignity and integrity. He was truly beloved by all of those young Assistants. Three of my colleagues even named their sons after him. When he passed away on January 12, many of us still believed, after more than thirty-five years, that he had been the most influential lawyer in our lives.

Upon his resignation from the U.S. Attorney's Office in 1970, Matt was appointed to be the Executive Director of the President's Commission on Campus Unrest following the violent upheaval on university campuses. Governor William Scranton of Pennsylvania was the Chairman of the Commission. Matt worked tirelessly with a staff of scores of lawyers, academics, and journalists to bridge the divide that had arisen because of the Viet Nam war. The Commission's report, [\[FN1\]](#) which was widely praised, demonstrated Matt's judgment and great courage. The report called upon the President to exercise moral leadership as the first step in the healing process. [\[FN2\]](#) Shortly after finishing his role on the Commission, Matt was appointed as a United States District Court judge at the age of forty, making him, at that time, the youngest person in the country's history to rise to that position. [\[FN3\]](#)

(Cite as: 34 Pepp. L. Rev. 269)

Matt took enormous pride in his family. His father was himself the Chief Judge of the District back in the sixties. In 1999, at a ceremony where Matt was awarded Loyola Law School's first Distinguished Jurist Award, he told the story of how his father had become the first lawyer in what was to become a Byrne legacy of lawyers and judges in California--now eighteen lawyers and six judges. Matt's father, Bill Byrne, had also been a boxer, a railroad man, and then a politician; he had risen to become the California Assembly's Speaker Pro Tem. Finally, in the mid-twenties, he developed a deep interest in going to law school. Loyola had an evening program, so he met with Father Joseph Donovan, the patriarch of the school. Father Donovan had one ironclad rule: all applicants must have graduated from high school. Bill Byrne told Father Donovan that he had graduated from McLatchie High School in Oakland, which had conveniently burned down *271 several years before and all its records had been destroyed. As Matt said, "who knows where or even if my father went to high school, but that's how the Byrne legend started."

Matt was instrumental in starting the Byrne Trial Advocacy Program at Loyola after his father's death in 1974. He was actively involved in the program right up until his death. He traditionally sat each year with two other Byrnes to judge the program's championship competition. The Byrne Team--representing Loyola against the best law schools in the country--has been quite successful, winning the National Trial Competition in 2005 and 2006. [FN4] Matt himself taught courses in Administration of Justice and Trial Advocacy at Loyola for seventeen years. He was an extremely effective and popular teacher who took great pride in the careers of the many successful lawyers he had taught, some of whom regularly appeared before him.

As those who have appeared before him know, Matt was very demanding of lawyers in court. He told the following story about himself. He was critical of one young lawyer's trial performance and asked him where he had gone to law school. "Loyola," came the answer. "Who taught you Evidence?" "A guy by the name of Lightfoot," the lawyer replied. "I figured as much," Matt said. "Did you take a course in Trial Advocacy?" "Yes, I did, Your Honor." "Lightfoot taught you that as well, did he?" "No," the lawyer answered, "You did."

Like many great human beings, Matt was a paradox. In court, he could be extremely decisive about the most serious matters, yet it could take him forever to choose a bottle of wine at dinner. Esther Krisman, his assistant for the last thirty years, rued the nights when he had dinner engagements because it took him an hour to settle on a tie and shirt. As humble as he was at his core, Matt did develop a taste for tributes - during his last few years he would wonder out loud with a grin how another month could go by without someone suggesting another tribute dinner.

He would not talk about his accomplishments. Among other things, he had become a world figure in the field of judicial reform. He lectured and taught at major universities and before judges and lawyers around the world. In the last twenty years, he visited over fifteen developing countries in the Far East, Latin America, and the Middle East, meeting with and lecturing leaders of those judicial systems about fundamental reforms. [FN5] Steve Mayo *272 of the Institute for the Study and Development of Legal Systems, the lawyer who has led these efforts, would tell you that **Matt Byrne** is the principal reason why significant legal reform took place in several of those countries.

You cannot write about Matt without mentioning his Irish roots and his love of Ireland. No one could match his Irish charm. He loved meeting people and when you met him, you never forgot him. Esther Krisman has recounted how many of the workers in the courthouse approached her in the months following Matt's death and told her what an impact he had on each of them. Gerry McLaughlin, the former Dean of Loyola Law School, once said that when he walked into a room and saw Matt's beaming Irish face, Matt looked like he had just swallowed the sun. But like all true Irishmen, he had another side. His favorite verse from the Irish poet W.B. Yeats was one in which Matt thought the poet was talking about him: "Being Irish, he had an abiding sense of tragedy, which sustained him throughout temporary periods of joy." [FN6]

Matt spent a fair amount of time in Ireland over the last twenty years. At the memorial service held for Matt on June 26, a series of photos from Matt's life was shown to the hundreds who attended. One in particular was a panorama of a village on the West Coast of Ireland overlooking Galway Bay. It's where Matt spent several of his last days in Ireland the summer of 2005 before he came home and went to the hospital.

(Cite as: 34 Pepp. L. Rev. 269)

Like so many, I loved Matt like a brother. He is irreplaceable for so many reasons. He was extremely loyal and had a profound understanding of human nature. He was a master at bringing people together, in court, in mediations, even in distant places. I remember the Irish Attorney General saying at a Friendly Sons of St. Patrick dinner that Matt was better known in Ireland than most Irish judges.

Matt was a role model for two generations of lawyers and judges in this community. So many went to him with their problems. You always left knowing that his advice was right on the mark whether you liked it or not. He did not just tell you what you wanted to hear. And if the concern was a legal one and touched the court, his court, then the ultimate consideration was what was best for the court, an institution he truly loved.

Over the years Matt befriended so many people in so many places around the world. He would always be energized when he came back. But wherever he went, his heart and soul were in the courthouse that was his home for almost forty years. He was so proud to be a judge. Like his father, he always believed that his lifetime appointment as a judge was just that, for life. That is why he never left the bench, despite the many opportunities.

*273 Matt and I had a mutual friend, a Jesuit priest named Tim Healy. They both took great pride in the fact that Father Healy helped Matt write the Campus Unrest Commission Report in 1970. Father Healy was a poetry teacher. One of his favorite poets was T.S. Eliot. This is a stanza from the last of Eliot's Four Quartets:

We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time. [\[FN7\]](#)

There will never be another **Matt Byrne**.

[\[FN1\]](#). Michael J. Lightfoot is one of the founding partners of the firm Lightfoot, Vanderveelde, Sadowsky, Crouchley, Rutherford & Levine LLP where he specializes in white-collar criminal defense, civil rights cases, and trial and appellate litigation. Mr. Lightfoot served three terms as a lawyer representative to the Ninth Circuit Judicial Conference, several years as the Chairperson of the Central District of California's Magistrate Judge Selection Committee, as a member of the California Judicial Nominees Selection Committee, and as a member of the Ninth Circuit Advisory Rules Committee. He was recently appointed to the Board of Directors of the California Appellate Project. Mr. Lightfoot received his undergraduate degree from Fordham University and his law degree from the University of Virginia Law School in 1964. After law school, he worked as a trial attorney in the Civil Rights Division of the United States Department of Justice in Washington, D.C. Then, in 1968, he joined the United States Attorney's Office in Los Angeles. Three years later, Mr. Lightfoot left the United States Attorney's Office to join the newly formed Federal Public Defender's Office in Los Angeles, where he was later named Chief Trial Deputy. From 1973 to 1985, Mr. Lightfoot taught on the full-time faculty at Loyola Law School.

[\[FN1\]](#). President's Comm'n on Campus Unrest, The Report of the President's Commission on Campus Unrest (Arno Press 1970).

[\[FN2\]](#). Id. at 215-17.

[\[FN3\]](#). JSEI About, http://www.jsei.org/about/about_jules_wbyrne.htm (last visited Nov. 14, 2006).

[\[FN4\]](#). Press Release, Loyola Law School Los Angeles, Loyola Law School's Byrne Trial Advocacy Team, Winner of the National Trial Competition, to Receive Award From American College of Trial Lawyers (May 13, 2005), available at <http://www.lls.edu/media/news/documents/ByrneAwardCeremony5.18.05.pdf>.

(Cite as: 34 Pepp. L. Rev. 269)

[FN5]. See In Memoriam William Matthew Byrne, Jr., Jules Stein Eye Institute Eye 7 Summer 2006, available at <http://www.jsei.org/About/PDF/EYESummer2006.pdf>.

[FN6]. This quote is attributed to William Butler Yeats. See Find the famous quotes you need, ThinkExist.com - Quotations, <http://en.thinkexist.com/> (last visited Oct. 13, 2006) (search "Being Irish, he had an abiding sense").

[FN7]. T.S. Eliot, Little Gidding, in Four Quartets 31, 39 (1943).

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
*275 THE JUDICIAL APPOINTMENT PROCESS
Senator John Tunney [\[FNal\]](#)

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The federal judicial appointment process is highly political and rarely does a judge get confirmed by the United States Senate without experiencing an intense exposure to the reality of party politics in both the Congress and the White House. It would be nice to believe that the federal judiciary is made up of men and women who are chosen principally on the basis of their legal skills, judicial temperament and experience. Although many very talented people end up on the federal bench, the process by which they are nominated, investigated and confirmed is driven by politics.

Matt Byrne was a perfect exemplar of how a person can combine the native intelligence of a first class lawyer with the savvy of a superb, instinctive politician and still be denied confirmation to the court because he was caught in the random back wash of politics. Later his political luck changed and he won confirmation without objection.

When I first met Matt I was in the House of Representatives and Matt was a young lawyer seeking to become the U.S. Attorney from the then Southern District of California. The year was 1965. I had received a telephone call earlier in the week from the former heavy weight boxing champion, Jack Dempsey, who was a good family friend and who had joined his erstwhile opponent, Gene Tunney (my father), to campaign for me in my successful election to the Congress eight months earlier. I heard Jack's voice as I picked up the receiver:

John, a young man named **Matt Byrne** wants to see you about a political appointment. His father is Judge Byrne from Los Angeles and he is a friend of mine. Judge Byrne was a boxer back when your Dad and I were in the ring. He left the ring early and became a lawyer and a judge. He is a great guy and from what I hear his son is terrific. Would you see him? *276 There was no way that I could say "no" to Jack. When Matt called the office for an appointment my scheduling secretary made sure he got in right away.

As Matt came in I was struck by how young he looked. Matt was thirty-three years old at the time. I had not yet seen my thirty-first birthday. Matt said that he was interested in being appointed U.S. Attorney by President Lyndon Johnson and he was making the rounds of the California Democratic House of Representatives Delegation to win political support. There were two Republican U.S. Senators at the time so the House Delegation was the important political clearing house for the appointment.

After a few minutes of conversation with Matt, I realized he was filled with self-assurance and that he had already become a world traveler with many hunting and fishing trips to South America, Africa and Canada under his belt. Having traveled some myself, I was immediately drawn to him as a marvelous raconteur, witty in his observations and magnetic in personality. Somewhat pompously, trying to show that I was a person who was conducting the interview for the job that he wanted, I said, "Aren't you a little young to be the U.S. Attorney in Los Angeles?" He snapped back without a second of hesitation, "Aren't you a little young to be a Congressman and asking such a silly question?" It was not only an appropriate putdown of pomposity; it was the beginning of forty years of close friendship.

I mentioned that politics plays an important role in judicial selection. To understand why Matt was slighted it is

(Cite as: 34 Pepp. L. Rev. 275)

necessary to explain the factors that make up this process. First, there has been an enormous expansion of the body of federal law in the last hundred years and much of the Congressional legislation dealing with politically sensitive issues is drafted with purposefully vague language to assure its passage in the House and Senate and its approval by the President. This means that it is up to the courts to interpret Congressional meaning on many highly charged, fractious political issues. Therefore, the political philosophy of judges can play an enormous role in interpreting Congress's intent. It follows that the selection of judges has become subject to various political litmus tests, the fairness of which depends on the philosophy of who is doing the proposing and who is responsible for the disposing of the nominations.

Second, the process itself is embedded in politics. The President sends his nominations of federal judges to the Senate under the "advice and consent" clause of the Constitution. [\[FN1\]](#) The nominations are referred to the Senate Judiciary Committee for investigation of qualifications, including public hearings, and finally a Committee vote to determine if a majority of members are in favor of sending the candidate's name to the Senate floor for a confirmation vote. If a majority of Judiciary Committee members are opposed to moving the candidate's nomination to the floor, it represents a *277 rejection of the candidacy. If the vote is positive in Committee, there is still an unlikely but possible chance that a majority of Senators will reject the nominee on the floor vote. Generally, the President will only send the names of candidates for judgeships that have been thoroughly vetted by the Justice Department and the White House political staff. This means that almost all judges nominated are of the same political party as the President and share, in a general sense, the political philosophy of the President.

Third, in the Senate a policy has developed over the years that if one of the two Senators from the state where the District Court is located is opposed to the candidate on the basis of personal privilege, the Senator can "blue slip" the candidate with the Chairman of the Judiciary Committee and effectively kill the nomination. [\[FN2\]](#) The Chairman extends courtesy to the Senator in a "blue slip" situation by not holding hearings on the nominee's qualifications. This is an undemocratic, but effective, way of preventing a person from becoming a judge.

Matt Byrne was nominated to the bench by President Lyndon Johnson in 1968 after serving a couple of years as U.S. Attorney in Los Angeles. In that year, there were two sitting Republican Senators, Thomas Kuchel and George Murphy. During the spring of 1968 after almost being defeated in a February New Hampshire primary by Senator Eugene McCarthy, President Johnson announced that he would not be a candidate for reelection. George Murphy responded by putting a "blue slip" on all California nominees to the District Court in California. Apparently, his thought was that if the Republicans won the Presidential election in November, 1968, it would give the new Republican President more Republican judges to appoint. The strategy turned out to be successful when Richard Nixon was elected President. President Nixon withdrew **Matt Byrne's** name from consideration along with other pending Democratic nominees the following January, 1969.

In November of 1970 I was elected to the United States Senate and was put on the Judiciary Committee in January, 1971. Long before I formally took my seat in the Senate, I had been advised of George Murphy's action in "blue slipping" Matt and how Matt had thereby lost his opportunity to be confirmed by the Senate to the federal bench. I knew that Matt desperately wanted to join his father on the bench and was perfectly willing to give up a potentially lucrative law practice to follow his dad's inspired career. I was also aware that his failure to be confirmed was purely the result of partisan *278 politics. Matt's stature in the legal community of Los Angeles was extremely high and his reputation as U.S. Attorney was excellent.

In early 1971, after thinking about how I could rectify the injustice that had been done to Matt and how to politically redress the actions of Senator Murphy, I called the Deputy Attorney General of the United States, Richard Kleindienst, and asked for a meeting in his office in Washington, D.C., to which Mr. Kleindienst readily agreed. When we met, I reminded him that the Nixon Administration had withdrawn all the California federal judicial nominations after the President took office two years earlier. I pointed out that **Matt Byrne** had not had a chance to have a Senate hearing because of the action of Senator George Murphy. I said that now California had two Democratic Senators, myself and Alan Cranston. I noted that I had just recently been appointed to the Judiciary Committee and I suggested that I could cause no end of grief to the Nixon Administration if I started holding up judicial nominations on a whim.

(Cite as: 34 Pepp. L. Rev. 275)

I concluded by saying that I wanted one third of all the District Court nominations from California for as long as President Nixon and I were in our respective offices. I said that obviously my nominees had to be found qualified by the American Bar Association, but that I did not want them to be disqualified by the Justice Department or the White House because of their political affiliation. Mr. Kleindienst said that he had to talk this proposal over with the Attorney General, John Mitchell. He said he would be in touch with me in a few days.

A week later, Kleindienst called and said he wanted to visit me in my office. I agreed and when he came in he wore a big smile. He said that the Attorney General and the President had agreed to my request. He also said he had two questions. First, he wanted to be assured that I would not object to any of the President's nominations on purely partisan political grounds. I readily agreed to this condition. Second, he wanted to know who my first judicial nominee would be. I said, "**Matt Byrne** . . . the man that you withdrew from consideration when you took office two years ago." Kleindienst's face lit up and he said, "**Matt Byrne** will be a great judge. I am all for him." I could not have been more surprised. I asked him why he had withdrawn Matt's name two years earlier if he felt that way. He laughed and said:

You know politics, Senator. Matt is a Democrat. We are a Republican Administration. We want to appoint loyal Republicans and we certainly did not want one of Johnson's appointees to be confirmed. The only reason that we are agreeing to it now is because you have the power to make life complicated for us. Matt is a great person and smart as hell. I know what he accomplished as Counsel on the Kerner Commission investigating civil unrest in America and I know he was a tough but fair prosecutor when he was U.S. Attorney. He is the best choice that you could have made.

*279 Thus, **Matt Byrne** was nominated to the court by the same Nixon Administration that had unceremoniously dumped him two years earlier. Matt sailed through the confirmation process in the Senate in a few weeks. He remained on the federal bench for over thirty years and his career was marked by many significant accomplishments. Like his father, he became Senior Judge and for his entire career he was one of the most respected federal trial judges in the country. He represented the United States Department of State on many occasions, traveling worldwide to describe to judges, legal associations and foreign government officials the system of justice in the United States. He lectured in dozens of countries, including totalitarian nations like China and the Soviet Union. The candid and intellectual approach he demonstrated in his lectures won him praise and honors from both the State Department and some foreign governments who abhorred the justice system he was describing. It was a case of disliking the system being presented but respecting the presenter. The insouciance displayed in his manner of delivery as well as the substance of his lectures on the American judicial system created good will for our country wherever he visited.

It can be said that sometimes, but not always, the syncretism between politics and the judicial appointment process works and when it does, the results can be powerful. Matt's career on the bench demonstrates that he understood the meaning of the conundrum suggested by Heraclitus, "The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license." [FN3] Matt found the proper formula to mix principles of law with liberty and thereby enhanced the ethical values and the quality of judicial judgment within the legal system he loyally served for so many years.

[FN1]. Former Senator John Tunney was elected in 1970 to the United States Senate representing California for a six-year term. He served six years on the Senate Judiciary Committee.

[FN1]. [U.S. Const. art. II, § 2, cl. 2.](#)

[FN2]. Mary L. Clark, [Carter's Groundbreaking Appointment of Women to the Federal Bench: His Other "Human Rights" Record](#), 11 *Am. U. J. Gender Soc. Pol'y & L.* 1131, 1135-36 (2003) (discussing the history of the blue slip).

[FN3]. Ana D. Bostan, The [Right to a Fair Trial: Balancing Safety and Civil Liberties](#), 12 *Cardozo J. Int'l & Comp. L.* 1, 1 (2004).

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
***281 LESSONS LEARNED FROM MATT**
Judge A. Howard Matz [\[FN1\]](#)

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I tried several cases before Judge Byrne in the mid-1970s, but not until I became a judge in 1998 did I begin to interact with him when he was "sans black robe." I wish I had more time to grow closer with him, for he became a powerful influence. On every occasion I turned to **Matt Byrne** for advice about judging, he told me what he honestly thought I needed to know, not what I wanted to hear, and he responded fairly . . . after first listening carefully. On everything having to do with the court, he approached each issue with one overriding perspective: What's in the best interest of the court and of those who serve it or must rely on it? He accomplished a distinguished record as a trial judge, and as Chief Judge he was largely responsible for renewing the court's sense of mission. And although **Matt Byrne** was a fiercely proud man, he never let his ego blur his vision.

For me, these were valuable lessons. Lasting lessons. I am grateful to him for imparting them.

[\[FN1\]](#). Judge A. Howard Matz is a judge in the Central District of California. Before entering the judiciary, Judge Matz was a partner in Bird, Marella, Boxer, Wolpert & Matz and served as an Assistant U.S. Attorney for the Central District of California.

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
*283 REMARKS MATT BYRNE MEMORIAL
June 23, 2006
[Ron L. Olson \[FN1\]](#)

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Chief Judy Schroeder, Chief Judge Stotler, members of the Judiciary, Law Enforcement Officers, Honored Guests and of course Lyn, Esther and Family:

First, for a moment, let me take you back to September 11, 1858 at Edwardsville, Illinois. There, like here today, a large group of citizens had gathered. Instead of inside the courthouse as we are today, the citizens were gathered just outside the courthouse on the town square. On a raised wooden platform sat the then powerful Illinois Senator Stephen Douglas. In front of him, standing at the podium, was his challenger. With a large voice and heavy eyes, and an even heavier message, Abraham Lincoln posed a most fundamental question for Senator Douglas and the townspeople gathered for their debate.

He asked, "[w]hat constitutes the bulwark of our own liberty and independence?" [\[FN1\]](#) In answering his own question, he said, "[i]t is not our . . . battlements, . . . [nor] guns, . . . [nor] gallant . . . army . . . [Rather], [o]ur reliance is in the love of liberty . . . Our defense is in the preservation of the spirit which prizes liberty as the heritage of all men [and women], in all lands, everywhere." [\[FN2\]](#)

I ask: who are the soldiers who have carried the burden of defending our liberty and independence? And I would argue it is first and foremost our judiciary. The best of our judges create a moral tide that protects liberty and builds the bulwark of our independence. *284 The Honorable William Matthew Byrne was at the forefront of that war for over thirty-five years. He taught us that it is not enough that we have law. There must also be profound respect for it. Why? Because courts, like this one and like most religions, rest their authority not so much on fear as on deference.

Judge Byrne's personal and professional integrity, like this court generally, always, without exception, rooted out any bias or personal gain. His integrity would not allow it, and his integrity and respect for the law is part of that moral tide that has defended the liberty of each of us. That is point one.

Point two. I know of few individuals in our profession--lawyers or judges--who extended themselves as generously and gregariously as Judge Byrne. He didn't just decide cases, he taught how to investigate them, how to try them and how to settle them. He taught those skills to lawyers in his courtroom, to his many clerks, to students at Loyola Law School, to lawyers from California to Florida, and even to a few of his fellow judges.

He didn't just read the law, he shared its highest purpose with judges from Russia to Jordan to China. The rule of law and independence of the judiciary is now better understood because Judge Byrne has embodied it. Here is how he explained it to Soviet lawyers and judges in September 1986. The National Law Journal reported his explanation of judicial independence as follows, "In our system, a judge can tell the President of the United States--or Government--to get away; if you will to 'Go to hell' - you are not going to interfere with my decision." [\[FN3\]](#) In looking back, I wonder if this is what was going through his mind as he made his rulings in the Daniel Ellsberg case.

(Cite as: 34 Pepp. L. Rev. 283)

Third is an observation closer to home. By example, Judge Byrne taught us the joy and importance of lawyers reaching out beyond just being lawyers. Judge Byrne loved his hometown--Los Angeles--and he loved California, all of it. More importantly, he shared that love with countless others. From Loyola High School to Pomona College to USC, from the Norton Simon Museum to the Jules Stein Eye Institute, from the High Sierra flowers to Baja quail, he reached out to touch, to preserve, and to enhance the community he loved.

Finally, I make one last observation--friendship. As Nelson noted, have any of you known anyone who had more close friends? Steven Sondheim observed: "[Multiple] new friends pour through [life's] revolving door; maybe, there's one that's more?" [\[FN4\]](#)

For so many of us, Matt was that one and if you became one of Matt's close friends, he would share his greatest treasure, his most valued *285 possession with you--and that, of course, was his treasure trove of other close friends.

One place, his favorite place, for sharing friends was Flat Creek Ranch, high above Jackson, Wyoming. As I look about the audience, I see a number of you who shared that experience with him. You will remember the harrowing ten mile drive with a four-wheel drive jeep to get there, the meandering stream full with trout--and often a moose cow and her calf--the highest bald eagle nest in North America, and the old log cabins lit by kerosene lanterns, and the lake--the lake surrounded by gnarled granite canyon walls. One twilight, as we stood on the old wooden porch, glass in hand, watching the lake reflect the canyon walls like a great grand cathedral, Matt considered his death. "You know," he said, "I'd surely like to make it to heaven; but if you get a chance, Ron, let God know I would be happy to settle for Flat Creek." [\[FN5\]](#)

One day I hope to learn how Matt and God resolved it. Thank you for this rare, and I hope not the last, opportunity to honor our friend William Matthew Byrne.

[\[FN1\]](#). Ronald L. Olson received his B.S. degree from Drake University in 1963, his J.D. degree from the University of Michigan in 1966, and a Diploma in Law from Oxford University, England, in 1967. In 1967, Mr. Olson worked as an attorney for the Civil Rights Division of the Department of Justice and in 1968 clerked for Chief Judge David L. Bazelon, United States Court of Appeals for the D.C. Circuit. From 1968 to the present, he has practiced law with the Los Angeles law firm now known as Munger, Tolles & Olson.

[\[FN1\]](#). Abraham Lincoln, Speech at Edwardsville (Sept. 11, 1854), available at <http://showcase.netins.net/web/creative/lincoln/speeches/liberty.htm>.

[\[FN2\]](#). Id.

[\[FN3\]](#). Source on file with author.

[\[FN4\]](#). Steven Sondheim, Merrily We Roll Along, lyrics available at <http://libretto.musicals.ru/text.php?textid=224&language=1>.

[\[FN5\]](#). The quoted material references the author's own recollection of his conversation with Judge Byrne.

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne

*287 JUDGE WILLIAM MATTHEW BYRNE: AN IRISH REFLECTION

[Mark H. Tuohey III \[FN1\]](#)

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And here's John Synge himself, that rooted man
'Forgetting human words,' a grave deep face.
You that would judge me do not judge alone
This book or that, come to this hallowed place
Where my friends' portraits hang and look thereon;
Ireland's history in their lineaments trace;
Think where man's glory most begins and ends,
And say my glory was I had such friends. [\[FN1\]](#)

Judge William Matthew Byrne was a friend to many people and many institutions throughout the country and the world. Some were legion, others ordinary, and a few unique, but all were important in their own way to Judge Byrne. Yet none became more important to the judge than his native Ireland--her people, her legal system, and her struggles. His love of Ireland was matched by a commitment of his expertise and experience in our legal system and the administration of justice to affect meaningful change to those institutions in Ireland and Northern Ireland.

My own association with Judge Byrne began in the early 1980s where we served together on several American Bar Association committees involved with various law reforms in the administration of justice. Former ABA President John Curtin appointed a Working Group to develop an initiative, which included Irish barristers and solicitors and American litigators, to explore issues affecting the trial bar, but most importantly to initiate a dialog. The dialog began in Dublin, Ireland in the summer of 1985. Together with leaders of the bench and bar in Ireland, and in particular David Byrne S.C., a leader of the Bar Council of Ireland who went on to serve as Attorney General of Ireland and Ireland's Commissioner in the European Union, a remarkable relationship between leaders of two *288 similar, but distinct legal systems began, and endures, due in no small way to the personality and talents of Judge **Matt Byrne**.

The issues over the twenty-five years of Judge Byrne's interaction with Ireland were varied, and not without controversy, but always geared to address or improve a process or resolve a thorny problem. The initial Dublin Conference in 1985 dealt with improving the ability of the trial lawyer to communicate. Judge Byrne masterfully chaired a series of presentations to a large audience of American and Irish judges and lawyers which presented innovative ways to conduct oral argument (Irish barrister style) and present computer generated evidence (American litigator style) to a fact finder. Both Ireland Chief Justice Tom Finley and U.S. Chief Justice Warren Burger commented that Judge Byrne's contributions set the tone for meaningful improvements in advocacy for the profession.

Following the Dublin conference, Judge Byrne was a key member of a delegation of lawyers and judges sent to Northern Ireland--the first such delegation in memory--to meet with our colleagues from bench and bar in Belfast and discuss the legal implication of "the Troubles," a benighted term which describes the years of sectarian violence between Catholics and Protestants in Northern Ireland. [\[FN2\]](#) Judge Byrne was immediately drawn into discussions

(Cite as: 34 Pepp. L. Rev. 287)

with his Northern Ireland judicial colleagues on the practical and theoretical aspects of the special criminal court established to try persons charged with terrorist offenses. The "supergrass" [\[FN3\]](#) court proceedings generated considerable controversy because of the summary nature of the trial proceedings, the restrictions on the right of confrontation, and admissibility of evidence, and the severe security measures which obviated the notion of a public trial. [\[FN4\]](#) During the late 1980s, Judge Byrne had the opportunity in Northern Ireland and the United States to engage in several discussions with lawyers, judges, and public officials over these procedural due process issues in ways that contributed to reform of the process. The judge believed with fervor and reverence that the system of public trial by jury, with all of its magnificent blend of openness and procedural protections for the rights of the parties to a fair trial, was essential to democratic society--even in times of strife.

In the aftermath of the important reconciliation initiatives, including the Anglo-Irish Accords in 1985 [\[FN5\]](#) and the Good Friday Agreement in 1998, [\[FN6\]](#) *289 attention turned to the policing function and its critical role in reconciliation in the divided society of Northern Ireland. The governments of Northern Ireland, Ireland, and the United Kingdom, as part of the 1998 Agreement, established The Independent Commission on Policing in Northern Ireland ("the Patten Commission") [\[FN7\]](#) to create a police service acceptable and accountable to the people of Northern Ireland, reflective of their diversity, and efficient in a policing, rather than military, operation. I was privileged to serve as a consultant to the Patten Commission and again called on the judgment and experience of Judge Byrne. His service as a federal prosecutor, a federal judge, and member of numerous appointive investigative bodies enabled the judge to offer a balanced perspective on difficult problems confronting police services in a divided society as well as in democratic societies. His thoughts on crime prevention, partnership with the community, protecting the rights of all citizens, and integrity issues were relevant, timely and practical. Furthermore, in my opinion, they helped to shape my own thinking, and in turn, the thoughtful and workable recommendations in the Patten Commission's reports.

Whatever the issue--from the procedural nuances of administering judicial tribunals appointed by the Irish government to investigate official misconduct, to law enforcement approaches to drug trafficking, to administration of justice issues in a combined European Union--Judge **Matt Byrne** offered his help selflessly to Ireland. He advised Ireland's Taoiseach (Prime Minister), Chief Justice, Attorney General, and other Irish officials who sought his wise counsel. But it was not all business. **Matt Byrne** loved to tell a good story with a touch of brogue, to sing the lilt of an Irish lullaby, and with the twinkle in his eye, to warm your heart with friendship. His address to the Los Angeles Society of the Friendly Sons of St. Patrick's Annual Dinner several years ago captured the Irishness of Judge **Matt Byrne** as he saluted his Irish roots and the Irish character. We spent many days together in Ireland during our twenty-five year friendship. Our last trip together in 2004 began with a wonderful week of fly fishing in Ballinahinch in Connemara, and ended in Dublin where the judge, surrounded by friends from bench and bar, politics, and prose, beamed with pride as he reflected on his life as an Irish American.

*290 This tribute began with the words of Ireland's First Nobel Prize bard, W.B. Yeats and it concludes with a verse of her most recent Nobel Prize bard, Seamus Heaney, whose words match actions of Judge William Matthew Byrne:

The old man rose and gazed into my face
and said that was official recognition
that I was now a dual citizen.
He therefore desired me when I got home
to consider myself a representative
and to speak on their behalf in my own tongue.
Their embassies, he said, were everywhere
but operated independently
and no ambassador would ever be relieved. [\[FN8\]](#)

[\[FN9\]](#). Mark H. Tuohey III is a partner in the Washington, D.C. office of Vinson & Elkins L.L.P. and a longtime friend of Judge Byrne.

(Cite as: 34 Pepp. L. Rev. 287)

[FN1]. W.B. Yeats, *The Municipal Gallery ReVisited*, in *The Variorum Edition of the Poems of W.B. Yeats*, 601, 603-04 (Peter Allt & Russell K. Alspach, eds., 1968).

[FN2]. See, e.g., Jennifer Schense, [Creating Space for Change: Can the Voluntary Sector Help End Northern Ireland's Troubles?](#), 11 *Harv. Hum. Rts. J.* 149, 160 n.46 (1998).

[FN3]. "'Supergrass' refers to the blanket grant of immunity to a person probably involved in an act of terrorism in exchange for his or her proffering evidence against the other principals." See Carol Daugherty Rasnic, [Northern Ireland's Criminal Trials Without a Jury: The Diplock Experiment](#), 5 *Ann. Surv. Int'l & Comp. L.* 239, 249 (1999).

[FN4]. See generally, John D. Jackson, *The Restoration of Jury Trial in Northern Ireland: Can We Learn From the Professional Alternative?*, 2001-2002 *St. Louis-Warsaw Transatlantic L.J.* 15 (2001).

[FN5]. This was an agreement between the Government of the Republic of Ireland, and the Government of the United Kingdom of Great Britain and Northern Ireland. See Kate Fearon & Monica McWilliams, [The Good Friday Agreement: A Triumph of Substance Over Style](#), 22 *Fordham Int'l L.J.* 1250, 1250 n.2 (1999).

[FN6]. See [id.](#) at 1250 n.1.

[FN7]. *A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, at 1.1-1.3, available at <http://www.belfast.org.uk/report/fullreport.pdf>.

[FN8]. Seamus Heaney, *From the Republic of Conscience*, in *The Haw Lantern* 12, 13 (1987).

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
***291 FRIEND, MENTOR, COLLEAGUE: A TRIBUTE TO JUDGE MATT BYRNE**
Judge Pamela Rymer [\[FNa1\]](#)

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Friend, mentor, colleague. That's what Judge Byrne was to all of us privileged to know and to work with him. "Ask Matt" was a mantra that I, and my fellow judges, invoked over and over. It is impossible to believe that he can't respond, as he did over and over, for Matt has always been there for us.

It never mattered whether what we asked was big or little, simple or complex. He was always there. And the touching thing is, he was there for us as a friend, mentor, and colleague all the while that he was there one hundred percent for the Central District of California, for the proper administration of justice in our country, and for the rule of law throughout the world.

I had been a business litigator with little exposure to criminal law before my appointment to the district court, and was quite nervous about it. Inevitably, I sought Matt out. He freely shared his wealth of experience. From time to time I would pop into his chambers and ask to run something by him. Inevitably, he would say "of course." Perhaps for some of the same reasons that he was a remarkable settlement judge, Matt was a great sounding board. He listened, counseled, and reassured. Matt's magic as a mediator is legendary. I witnessed it first-hand in practice, when he was able to settle a multiparty antitrust action that none of us thought was settleable. Charm helps, and he had it in abundance. He also knew what he was talking about, and that helps, too. But the defining thing is that Matt had a knack for bringing people--even lawyers and judges--together.

One example of Matt as a remarkable settlement judge occurred while I was on the district court, presiding over a major criminal prosecution of a large corporation and several of its officers. Pretrial motions raised a number of issues of first impression, and it was apparent that the matter would take months to try. It occurred to me that if it were a civil case, it would be ripe for settlement. Although plea bargains in individual cases *292 were common, judges could not be involved in the process and up until then, there was no such thing as a "settlement conference" in a criminal case. Still, I floated the idea and all counsel turned out to be amenable--if Judge Bryne were the "settlement" judge. So we asked Matt, characteristically he said, "of course," and also predictably, he ended up resolving the entire case. I have no doubt that this would never have occurred but for Matt. The fact that he pulled it off was a testament to his skill. More importantly, for the United States Attorneys Office and all defense counsel to agree to this first-ever process in a high-stakes case was a testament to the bar's respect for Judge Byrne. How Matt treated his fellow judges also demonstrated how he was always there for the court and for his colleagues. One such act happened long after I had moved from the district court to the court of appeals. Over the years a number of district judges had left the court for retirement or different appointments. When Matt became Chief Judge, he arranged for a black tie dinner to be held in our honor and he presented each of us with a beautiful photograph of 312 North Spring inscribed "with deep appreciation and affection of your colleagues on the United States District Court." This was so Matt, always there for the court as an institution, and for his colleagues individually.

On a completely different note, for several years it fell to me to arrange tennis games and put a tournament to-

(Cite as: 34 Pepp. L. Rev. 291)

gether for the Ninth Circuit Judicial Conference. Frequently we would have a Supreme Court Justice, or other VIP, who wanted to play. So, naturally, I asked Matt and, as always, he said "of course." He could be counted on to host a good match that was fun for all, and . . . to lose.

In ways both sublime and ridiculous, Matt has been there for us, and always will be. That's the mark he made as consummate friend, mentor, and colleague.

[\[FN1\]](#). Judge Rymer has been a judge on the Ninth Circuit since 1989. Prior to 1989, she served as a judge for the United States District Court for the Central District of California beginning in 1983.

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Pepperdine Law Review
January 2007

A Tribute to Judge Byrne
***293 A TRIBUTE TO MATT BYRNE**
John Van de Kamp [\[FN1\]](#)

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I. Background

II. The Product

A. For Government

B. For Law Enforcement

C. For the University

D. For Students

III. Commission Tensions

I. Background

On April 30, 1970, President Nixon announced that American and South Vietnamese forces were moving against enemy sanctuaries in Cambodia. [\[FN1\]](#) Student protests ensued and on May 4, 1970, Ohio Guardsmen fired tear gas and weapons into a crowd of students at Kent State University in Ohio. [\[FN2\]](#) Four students were killed; nine wounded. [\[FN3\]](#)

On May 14, 1970, city and state police were called to Jackson State University in Mississippi after disturbances arose. [\[FN4\]](#) The police opened fire killing two black students and wounding twelve. [\[FN5\]](#)

By the end of that May, nearly one third of the 2500 colleges and universities in America had experienced some kind of protest activity. [\[FN6\]](#)

On May 18, 1970, **Matt Byrne** resigned as U.S. Attorney of the Central District of California. [\[FN7\]](#) A 1967 Lyndon Johnson appointee, he was nominated by Johnson for a federal judgeship in 1968, only to have his ***294** nomination stalled in the Senate and withdrawn by the Nixon administration when it took office. However, Matt remained a U.S. Attorney, staying on after he had submitted his resignation in 1969. In so doing, he scored well with Justice Department officials, so much so that he reportedly received and turned down an offer for the top job in the Law Enforcement Assistance Administration, which then channeled millions of dollars to police, courts, and correctional institutions. [\[FN8\]](#)

The incidents at Kent State and Jackson State, along with student discontent, brought a new opportunity for Matt. At a May

meeting between President Nixon and university presidents, the idea of a national commission first materialized. After meeting with ABA leaders on May 13, 1970, the President on June 13 appointed former Pennsylvania Governor William Scranton to chair a Commission of nine, including one student and three academic figures, to "identify the principal causes of campus violence," to "assess the reasons for breakdown in the processes for orderly expression of dissent," and to "suggest specific methods and procedures through which legitimate grievances can be resolved." [FN9] President Nixon asked the Commission to begin work "immediately" and report by October 1, 1970. [FN10]

Matt's official appointment as Executive Director of the President's Commission on Campus Unrest is dated July 7, 1970, but he came to Washington in June just after Scranton's appointment. [FN11] Matt spoke with Scranton, Lloyd Cutler, and others who had worked on President Johnson's Violence Commission and networked around town. [FN12] He also spoke with Justice Department friends from both the present and past administrations. [FN13] He learned that the Kerner Commission took nine months to complete its report and the Violence Commission took almost twice as long. [FN14]

Having given up a trout fishing trip to Norway, Matt decided, after assurances of cooperation and administrative support, to tackle the new job and finish it quickly. The October 1 deadline was important, not only to Matt, but to many of those he brought on who had to return to their work at academic institutions when the school year began. And, indeed, the Commission presented its basic report to the President on September 26, 1970, with special chapters on Kent State and Jackson State reported soon thereafter. The entire document was published by the U.S. Government *295 Printing Office under the title The Report of the President's Commission on Campus Unrest. [FN15]

At first, Matt was housed in Bud Wilkinson's office in the Executive Office Building. Of this experience, Matt said:

I thought I was doing pretty well for a boy from California. Bud came back and I suddenly realized that a President's Commission has no office, no pencils, paper, furniture, secretaries, etc. You start from scratch. It began to dawn on me I had none of these, a staff of no one but myself, and had 10 or 11 weeks to complete the job. [FN16] What went into this effort speaks volumes about Matt's character and ability. It was perhaps the greatest test he ever faced with respect to his organizational skills. At the end of the day, as a result of his efforts, the Commission's staff included 147 full-time and part-time members. [FN17]

The Commission held public hearings in Washington (five days) and Los Angeles (two days). Following hundreds of witness interviews and a study of the voluminous investigative reports relating to those incidents, the Commission held three days of open hearings at Jackson State and three days at Kent State in August. The Commission also sent investigative teams to Lawrence, Kansas to examine town and gown relations, and to the University of New Mexico, where they spoke with Mexican-American students and examined the May incidents involving the National Guard. Another team spent three days in Madison, Wisconsin following the bombing of the Army Mathematics Center. A final pair of teams conducted interviews on fourteen campuses from New York to Oregon, speaking with students, faculty, administrators, and police officials about university crisis management. [FN18]

In late July, the Commission mailed questionnaires to university administrators, student body presidents, and faculty chairpersons to determine their past experiences with incidents of disruption. Of 2700 colleges and universities polled, about 68% responded. [FN19]

During late August and most of September, the Commission itself met in a series of meetings to decide upon its report.

*296 No titles were issued to the staff until most of the Commission's work was completed. [FN20] Upon reading the final report, I was surprised to find that I had been given the title Special Assistant for Administration, even though I spent much of my time on the Commission with Lt. John Konstanturas of the Los Angeles Police Department editing and reworking a chapter titled "Law Enforcement Response." [FN21]

Matt was the general and the ringmaster. [FN22] He described himself as a "short-order cook," handling problem after problem, dealing with those in front of him, and forgetting the old ones as new ones came in the door. [FN23] Everyone else

just did what they were told to do, taking on their assigned tasks. Matt put together his staff from a variety of quarters. Old friends came from Los Angeles like Doug Dalton, who was later titled Director of Investigations, NBC's Bob Abernathy, Los Angeles Police Department's Deputy Chief Jim Fisk and John Konstanturas, Peter Blackman (dragooned from L.A.'s O'Melveny & Myers), the FBI's Chuck Stine, his long-time secretary, Ann Hope, and me (his former Chief Assistant U.S. Attorney). [FN24] Matt also brought from the U.S. General Services Administration in Washington Jim Arthur (Chief Administrative Officer). [FN25] Arthur worked wonders finding usable space and office equipment and helped put together the administrative staff by begging and borrowing help from all over Washington.

From academia, later to be Georgetown President Tim Healy joined the Commission. In addition, old friends who had been in the Justice Department joined the Commission like John Kirby, who became the Commission's Deputy Director and was a central figure in the investigative efforts. [FN26] Kirby recalled that a call from Attorney General John Mitchell to a partner was able to release him from his duties at Mudge Rose in New York (Mitchell's old law firm). [FN27]

Others Matt brought in included Bob Owen from the Department of Justice who worked on the Jackson State investigation, as did Jack Bass of The Charlotte Observer. Owen Fiss (formerly with the Civil Rights Division of the Department of Justice) served on the editorial staff, as did well known academics and authors such as Nathan Glazer and Kenneth Keniston. Contributors included Seymour Martin Lipset, Ralph Salerno, Fred M. Vinson, Jr., and James Q. Wilson. [FN28]

*297 Paul Weaver of "Public Interest" served as Chief Editor; he was assisted by Paul Brest (later Dean of Stanford Law School), Erwin Glikes of Basic Books, and John Labovitz of the University of Chicago. [FN29]

Matt's charge to all was to turn out a quality product, stay out of the political fray, and get it done by October 1, 1970. [FN30]

For the diverse group of people selected for the Commission gathered together in Washington, it was a typical hot, humid summer. Most of those who came into town took up short-term rentals. For the staff who worked there regularly, the days were long; Paul Brest's best recollection of the summer's work was that it was "intense." [FN31] I recall often working late into the night, surviving on the pizza provided by the nearby pizza parlors.

For Matt, it was a seven day a week job (with one Sunday afternoon off). [FN32] He recalled taking an extra suit and four shirts when he first went to Washington in June. [FN33] He didn't get back to Los Angeles for over six weeks. Matt recalled that "even on that brief trip I barely had time to replenish my wardrobe, which by then was sinking rapidly despite--or perhaps because of--the vigorous services of the Farragut laundry." [FN34] Office social events were rare. Matt did, however, celebrate his fortieth birthday that summer, an event that brought cake and liquid refreshment to his Spartan office.

In many ways the Commission was like a three-ring circus--with Commission meetings in and out of town, investigators reporting in from all over the country, assignments being sent out to the researchers, and writers collecting the background material that went into the drafting of the Report, which began in earnest in mid-August. The staff wrote and rewrote the Report several times and went through more than a dozen drafts. [FN35]

II. The Product

The final Report was not only about 1970s campus unrest, but about its history. It spoke of its antecedents in the civil rights movement, the SDS reorganization at Port Huron in 1962, the Berkeley revolt in 1964, and the *298 Columbia incident in 1968. [FN36] For a flavor of the time, one turns to the 1970 report of Secretary of the Treasury Eugene Rossides, who wrote that over 8200 bombings, attempted bombings, and bomb threats could be attributed to "campus disturbances and student unrest" between January 1, 1969, and April 15, 1970. [FN37]

At issue was not only the war in Vietnam, but the conditions of minority groups. Jackson State brought the plight of the black student movement front and center. In 1970, Jackson State's student body of 4300 was made up of 4295 black students. [FN38] The Commission devoted a chapter to the black student movement, describing "a depth of bitterness among black

students at black institutions that surpassed anything found among white students." [\[FN39\]](#) For black students, the bitterness was not so much about the war, but about white racism, pervasive discrimination, and segregation. [\[FN40\]](#)

In describing the status of black students in higher education, the Commission reported that it "adds up to one of the most glaring inequities of American life: an inequality of quantity as well as an inequality of quality." [\[FN41\]](#) The plight of black students in higher education led the Commission to recommend greatly increasing financial aid to black colleges and universities, supporting "efforts of formerly all-white universities to recruit Black, Mexican-American, Puerto Rican and other minority students," and making available "adequate government-sponsored student aid" to these students. [\[FN42\]](#)

The Commission's Report walked a fine line, strongly condemning violence, calling for swift removal, and urging vigorous prosecution of those responsible from university campuses, yet placing a high value on dissent and peaceful protest as part of "this nation's way of governing itself." [\[FN43\]](#)

In effect, the Commission said 'cool the rhetoric.' [\[FN44\]](#) The Commission noted that "[h]arsh and bitter rhetoric can set citizen against citizen, exacerbate tension, and encourage violence." [\[FN45\]](#)

Vice President Spiro Agnew, noted for his alliterative rhetoric, referred to the Report while speaking at a Republican luncheon in Sioux Falls, South Dakota. He called the Report a "pabulum for the permissivists." [\[FN46\]](#) It was an *299 off-year election and Agnew, having just campaigned in ten states, offered this analysis of the forthcoming election: "Will the radical liberalism that controls the Senate of the United States prevail in the nation--or will America be led into the future by moderates, centrists and conservatives who stand behind the President of the United States?" [\[FN47\]](#)

What brought about Agnew's flash response was the first series of recommendations directed to the President. Among these recommendations, the Commission urged the President to exercise "his reconciling moral leadership" to take the lead in explaining the causes of campus unrest, and to articulate those values Americans hold in common, while pointing out the "importance of diversity and coexistence to the nation's health." [\[FN48\]](#)

"[N]othing is more important," said the Commission, "than an end to the war in Indochina." [\[FN49\]](#) The reaction of disaffected students to the Cambodian invasion "was a measure of the intensity of their moral recoil." [\[FN50\]](#)

The Commission's recommendations were directed not only to the President, but to government, law enforcement, universities, and students. Agnew's quick response appears to have been a reaction to press accounts that keyed into the Commission's recommendations regarding the President, who at the time of the Report's release was preparing to leave for Europe. In response to Agnew's comments, columnist Roscoe Drummond wrote that he did "not know anyone who has read the report who believes that such statements can be justified by what it says." [\[FN51\]](#) He attributed Agnew's remarks to a misreading of the President. [\[FN52\]](#) He concluded his column: "[W]hen the Vice-President begins to enunciate government policy before the President has established it, something will have to be done to see it doesn't happen again." [\[FN53\]](#)

A. For Government

The recommendations were also directed to the government generally. The Commission urged federal, state, and local officials to "be sensitive to the charge of repression and to fashion their words and deeds in a manner *300 designed to refute it." [\[FN54\]](#) The recommendations called upon these officials for cooperation in handling campus disorders and precise guidelines as to when and where they would be justified in ordering the National Guard to intervene. [\[FN55\]](#) The Commission urged that public officials "reject demands that entire universities be punished because of the ideas or excesses of some members and honor their responsibility to help preserve academic freedom." [\[FN56\]](#)

In light of the attacks on campus ROTC programs, the Commission recommended that the Department of Defense "establish alternatives to ROTC so that officer education is available to students whose universities choose to terminate on-campus ROTC programs." [\[FN57\]](#)

Further, because of the danger it saw connected to bombings and arson on campus, the Commission urged enactment of "strict controls over the sale, transfer, and possession of explosive materials." [\[FN58\]](#)

B. For Law Enforcement

After expressing sympathy for peace officers who must deal with "all types of campus disorder," the Commission noted "sometimes fatal instances of unnecessary harshness and illegal violence by law enforcement officers." [\[FN59\]](#) The Commission recommended "the development of joint contingency plans among law enforcement agencies," with shoulder weapons employed only "as emergency equipment in the face of sniper fire or armed resistance." [\[FN60\]](#)

Most notably, the Commission singled out the National Guard, calling for more Guard training in controlling civil disturbances. [\[FN61\]](#) The Commission noted that the National Guard had "been called [out] to intervene in civil disorders at home more than 200 times" in the previous three years. [\[FN62\]](#) The Commission recommended that the Guard have "nonlethal weaponry so that it [would] use deadly force only as the absolute last resort." [\[FN63\]](#) In its chapter on Law Enforcement response, the Commission concluded that "[t]he Guard should generally be deployed in a manner that supplements rather than supplants the efforts of local and state police agencies." [\[FN64\]](#)

***301** At Kent State, the Guardsmen were armed with M-1 rifles, high velocity weapons with a range of almost two miles. [\[FN65\]](#) Sixty-one shots were fired by twenty-eight guardsmen--without an order to fire--leaving four dead. [\[FN66\]](#)

The breakdown in control by the Guard at Kent State and by police officers and the Mississippi Highway Safety Patrol at Jackson State, as described in the Commission's special reports, led it to conclude that "too frequently, local police forces have been undermanned, improperly equipped, poorly trained and unprepared for campus disturbances." [\[FN67\]](#) On the other hand, the Commission noted in its chapter on the subject, in 1970, police responded to mass student demonstrations with "professional skill" in hundreds of cities. [\[FN68\]](#)

The chapter sets forth for law enforcement a summary of detailed responses to campus disorders, a virtual what-to-do guide based on the best thinking available at the time. [\[FN69\]](#)

C. For the University

Universities were not spared by the Report: "Recent history has made it only too clear that the failure of the university to pursue effectively its stated goals, let alone to live up to them, has also contributed to student unrest." [\[FN70\]](#)

The Commission's broad recommendations ranged from defining the university as an open forum with speech as broad as that protected by the First Amendment, to a conclusion that faculty members who engage in or lead disruptive conduct have no place in the university community. [\[FN71\]](#) The Commission argued that "universities as institutions must remain politically neutral" except where "their own integrity, educational purpose, or preservation, is at stake." [\[FN72\]](#)

Federal defense projects on campus had been under attack. While observing that much of that type of research had academic merit, the Commission recommended that universities "avoid acceptance of new classified projects and terminate existing classified projects unless it is clear ***302** that the undesirable results of undertaking such a project are outweighed by compelling advantages." [\[FN73\]](#)

D. For Students

The Commission noted that "[t]oo many students have acted irresponsibly and even dangerously in pursuing their stated goals and expressing their dissent," [\[FN74\]](#) and called for the removal of perpetrators of violence. [\[FN75\]](#)

Short on specifics, the Commission said that students "should be reminded that language that offends will seldom persuade" and that "giving moral support to those who are planning violent action is morally despicable." [\[FN76\]](#)

The Commission called for patience: "The fight for change and justice is the good fight; to drop out or strike out at the first sign of failure is to insure that change will never come." [\[FN77\]](#)

III. Commission Tensions

Preparation of the Report was not without tension, conflict, and differences of opinion. Joseph Rhodes, a Harvard Junior Fellow and the only student on the Commission, called Matt from Boston on July 27, 1970, and complained that the Commission wasn't going to hold hearings in Lawrence, Kansas. [\[FN78\]](#) Rhodes had told people in Lawrence that he would be advocating for such a hearing. [\[FN79\]](#) He was also upset that there were not more black staff members and wanted a Commission meeting that week. [\[FN80\]](#) No hearing ended up being held in Lawrence.

In describing his staff, Matt described several of its noted members, its "many brilliant lawyers," "outstanding editors and social scientists," not to mention a "Vassar-trained panther-symp. and scores of White House spies." [\[FN81\]](#) Outside of the known and trusted staff, one had to be careful what one said.

With such a diverse staff, there were several intellectual and editing disputes that couldn't be avoided. For example, a draft that had been *303 prepared dealing with unrest in Lawrence, Kansas ended up on the cutting room floor--not a happy event for its drafters.

Similarly, Jack Bass of the Charlotte Observer complained that "the purging of all mention of Orangeburg in a major report of the federal government must appear to sensitive blacks as one more example of the point that Tom Wicker makes in the [New York Times column]." [\[FN82\]](#) Wicker had opined that the prevailing feeling was that it was blacks who were killed and that it wasn't that important. [\[FN83\]](#)

On or about September 25, 1970, Matt and Governor Scranton took some of their remaining staff over to the White House to present the Report, adopted unanimously by the Commission, to the President. John Kirby recalled that photographs were taken and that Governor Scranton and the President met privately. [\[FN84\]](#) The President left soon thereafter on his European trip, and on September 26, 1970, the Report was issued publicly. [\[FN85\]](#) According to John Kirby, the White House never released the photos with the President. [\[FN86\]](#)

The press reaction was a story in itself. When Vice President Agnew gave his "pablum of permissivists" speech, he noted that there were "two reports, the real one and the cosmetized one . . . the one purveyed by press and TV to America" for which "we can thank the self-appointed interpreters and translators on the Commission, and within the Nation's 'academic-journalistic complex,' who rushed before the cameras to tell us what it said." [\[FN87\]](#)

The press reaction was largely positive. The following article titles from major newspapers typify the contemporary journalistic response to the *304 Report: Calm and Sound Advice; [\[FN88\]](#) The Blame Distributed; [\[FN89\]](#) Sound Practical Advice; [\[FN90\]](#) Toward Reconciliation; [\[FN91\]](#) and What the Scranton Commission Really Said. [\[FN92\]](#) One commentator called the Report an "admirable response . . . to the request the President made," noting that "[i]t did the exceptional thing: it tried to answer the President's questions, and it did its work with a rare degree of seriousness and maturity." [\[FN93\]](#)

But there were differing voices: "The scattergun charges of the President's Commission were not necessarily a reasoned analysis of events leading to the shootings at Kent State . . . Instead, the commission report recognized the varied opinions of its members, conceded that the commission would never achieve unanimity and incorporated all views in its conclusions." [\[FN94\]](#)

Another disapproving commentator wrote:

There is widespread and thoroughly justified criticism of the . . . Commission which has made our city and state a prime target for its biased and arbitrary conclusion . . . Public indignation is increased, not lessened by the . . . Report, just as public sentiment more strongly supports the forces of law and order which this prejudiced report apparently seeks to hamstring and discredit. [\[FN95\]](#)

President Nixon did not speak publicly about the Report until December 10, 1970, when he wrote a nine page single spaced "Dear Bill" letter to Governor Scranton, thanking him and the "Commission and its staff for the considerable time and energy [they] invested in this task." [\[FN96\]](#) The letter conveyed the President's agreement with many of the Commission's findings: the "rejection of the use of violence as a means of effecting change--on or off campus"; [\[FN97\]](#) "[t]he call for tolerance . . . for the rights and feelings of one another"; [\[FN98\]](#) and that "university reform [is] properly the concern of the campus community," including the role of controlling disorder. [\[FN99\]](#) President Nixon expressed thanks for the Commission's support *305 of the student aid provisions which he had proposed, [\[FN100\]](#) and noted that he had called upon the Cabinet to review the recommendations pertaining to their jurisdiction. [\[FN101\]](#)

President Nixon used the letter to defend his Presidency. With respect to those recommendations pertaining to the Presidency, he spoke directly of his efforts to diminish "America's involvement in the Asian war" and "to end that war in a way that will justify the sacrifices of this generation of young Americans . . ." [\[FN102\]](#)

President Nixon noted that moral authority in the country does not reside in the Presidency alone: "There are thousands upon thousands of individuals-- clergy, teachers, public officials, scholars, writers--to whom segments of the nation look for moral, intellectual and political leadership." [\[FN103\]](#) Nixon noted that "[r]esponsibility for maintaining a peaceful and open climate for learning in an academic community does not rest with the Federal Government . . . it rests squarely with the members of that academic community themselves." [\[FN104\]](#)

The letter speaks of leaders of the national community who "have spoken or acted with forthrightness and courage, on and off the campus, unequivocally condemning violence and disruption as instruments of change and reaffirming the principles upon which continuance of a free society depends." [\[FN105\]](#) "High in that category I would place the Vice President . . ." [\[FN106\]](#) It was the only reference to Vice President Agnew in the letter.

He concluded by stating: "The work of the Commission has expanded our understanding of what has been happening . . . necessary public and political discussion of the issue will surely continue--and indeed be advanced by your report." [\[FN107\]](#)

In an undated statement found in his files, Matt reported: (1) "over seventy-five percent of the newspapers around the Country, have editorially praised the report"; (2) numerous universities have said they are "preparing new disciplinary procedures setting forth permissible conduct on the *306 campuses, and making appropriate plans to cope with 'impermissible conduct'"; (3) there are many courses offered at universities around the country based on the Report; (4) "[Department of Health Education and Welfare] has suggested special funding for black colleges that are sorely in need of federal aid"; and (4) Secretary Laird has said that the National Guard will now be equipped with non-lethal weapons. [\[FN108\]](#) Matt also reported that "the Pentagon is now buying 120,000 additional Flak Vests, and 140,000 face masks." [\[FN109\]](#)

Matt reported, however, that in Mississippi "nothing's been done." [\[FN110\]](#) There was no inclination to change policies that allowed state police to take inappropriate weapons onto college campuses. Further, there was no willingness to vary the composition of the state police force, which had no black patrolmen, or the National Guard, which had only twenty-one black members. [\[FN111\]](#) The L.A. Times reported Matt as saying that "[t]he U.S. Government should not be funding the Mississippi National Guard." [\[FN112\]](#)

Matt also expressed unhappiness about the public portrait drawn of the Report:

The actual report bears very little resemblance to what I will call the reputed report--by which I really mean the impression of the report which was created by the mass media and by politicians, book reviewers, and other public spokesmen.

This reputed report, if I may make a composite portrait of it, is a rather short and apocalyptic document. It declares that campus unrest is the most serious public problem ever to face the nation. It asserts that the [sic] President Nixon, and especially President Nixon's rhetoric, are the principal cause of campus unrest and that only the President, by articulating unifying ideals and offering a healing and reconciling rhetoric, can put an end to campus unrest. In general, the reputed report says very little about students, faculty, administrators, and what little it does say is permissive and approving. It does take note of a youth culture which is emerging among some of our universities, but it does so in a way that endorses this culture and its perceptions of American society and the world. The reputed report also muddles everything, deliberately laying blame on everyone and thereby evading all the tough questions and deep issues. It condemns the police and national guard for using deadly force against students at Jackson State and Kent State and thus implies that law enforcement *307 officers should do nothing in the face of student riot, disruption, and violence. What's more, this reputed report doesn't say anything that everyone didn't already know. It's useless and it's mindless.

In every respect,--I repeat, in every respect--this portrait of the report of the President's Commission on Campus Unrest is absolutely wrong. I won't go into the specifics because I promised you I wouldn't summarize the report. But we did not say the President was a cause of campus unrest; we did not say that Presidential leadership can or should end campus unrest; we took extensive note of students, faculty, and administrators, their roles in campus unrest, and their great responsibilities in responding to it; in no way did we endorse the new youth culture or condemn American society in general. We did not lay blame on people; instead, we attempted to distinguish between "cause" and "fault" just as we also attempted to distinguish between "fault" and "responsibility." Police officers, for example, are not at fault for the existence of crime; yet it is their responsibility to deal with crime and with criminals. Far from trying to evade the tough issues, the report made a special effort to meet them head-on. It is true that these issues did not seem to yield clear-cut, one-sentence answers and solutions. Really tough questions and problems rarely do, and when they do not, that is hardly the fault of the report that seeks to analyze and understand them. The report is not soft on students; neither does it deal harshly or unsympathetically with law enforcement, and neither does it suggest that police and national guard at Jackson, Kent, or elsewhere should do nothing in the face of student riots, disruptions, or violence. Finally, the report brings new data to light and offers new analysis of what we already know about campus unrest. Or at least it attempts to do these things. How well it succeeded is something I can't speak to without prejudice.

Why did the mass media, the politicians, and the public pundits manage to do such a shamefully inadequate job of describing the report to the public at large? This is a big and difficult question to answer, but I believe that the outlines of the answer are not too hard to find.

*308 Throughout the summer, it was easy to see a vicious cycle at work. At first through its hearings and later in its report, the Commission offered a prominent public platform. Especially in an election year, a prominent platform draws advocates the way truffles draw hogs. The platform was created in the first place---presumably---in order to find facts, ascertain causes, and suggest practical and reasonable courses of remedial action, both public and private, insofar as remedies existed and seemed advisable.

Yet because the subject being analyzed was partly political in its character, there was a chance that analysis would be subverted and displaced by advocacy. And because the subject was an important one which had figured with increasing prominence in the mass media, whatever got said in hearings, or about hearings, or in the report, or about the report, was guaranteed to receive prominent coverage in the mass media. The more extreme, or dramatic, or colorful the statement; the more political the statement; the more hostile or divisive the statement, the more likely it was to receive prominent coverage.

I do not necessarily mean to blame the mass media. Their job is to report what people who are important say and do on subjects that are important. The more important or dramatic the person, the statement, the action, or the subject, the more prominently the media will report it. That is as it must be in a nation which hopes to be democratic. But we discovered that mass media that operate in this way are not without their disadvantages.

Briefly, in outline:

1. People were trying to use the platform of the Commission as a place to make propaganda: student witnesses, Commissioners, etc.

2. From the very beginning, there was the Rhodes-Agnew spat, which defined the one issue around which all subsequent media coverage and most public discission [sic] centered: would the Commission blame the President, thereby biting the hand that created it? This is a political question, and really a question only of propaganda; it is also a dramatic story, regardless of propaganda, if it happened.

*309 3. Media were constantly emphasizing the question of whose propaganda would dominate the commission.

4. The report tried--by and large successfully--to rise above such propagandistic bickering; yet despite its success in doing so, the media and the politicians and commentators in general insisted on discussing the report only in terms of the political-propaganda categories.

5. Result: the report, in the form that it reaches the overwhelming majority of Americans, failed to educate them because the system of public discussion-- politicians, public speakers, and mass media--distorted the report. Rather, they ignored the report. They discussed the report using the preexisting, propagandistic ideas and concepts which the report rejected. That made it impossible for the report to change those ideas and concepts--anything the report said that wasn't in line with the existing rhetoric on campus unrest (ie, with existing propaganda) was ignored, or treated as if it were in line with propaganda.

7. [sic] What we have here, then, is an object lesson in the limits of public discussion in a democracy and in the capacity of public discussion to improve itself. This is not a new lesson: similar reports--eg, Moynihan report on Negro family--have been similarly assimilated to pre-existing propaganda categories even though the intention and substance of the report was to show how these categories were inadequate.

8. If there is any solution--and basically there isn't one--but to the extent that there can be a solution to this failure of public discussion communication, it is to be found in improving the minds and sense of responsibility of the men, or at least the statements, who have access [sic] to the mass media; and in restricting the amount of information the mass media pretend to carry. This, of course, is the unending struggle of any decent political system, democratic or otherwise. It is one that must be taken seriously. Things are *310 complicated today, changing fast; the consequences of mistakes and of misunderstanding seem greater than ever before. [\[FN113\]](#)

The Commission closed its doors on October 30, 1970, under budget. On November 3, 1970, elections were held nationwide. The Democratic Senate majority was retained 54-44, a net gain of 2 for Republicans. [\[FN114\]](#) In the House, Democrats strengthened their existing majority with a net gain of 12 seats, giving them a 255-180 advantage. [\[FN115\]](#) Democrats scored their biggest gain in gubernatorial races, reversing control of state houses from 32 Republicans and 18 Democrats to 29 Democrats and 21 Republicans. The Republican Senatorial and Congressional candidates for whom Vice President Agnew had campaigned in South Dakota lost. [\[FN116\]](#)

Six months after the Report was issued, concerns were expressed about the calm that appeared to be present on college campuses. Alexander Heard, Chancellor at Vanderbilt University and a special campus advisor to President Nixon, said, "While the temperature has been lower . . . the thermometer does not register the state of mind of students around the country." [\[FN117\]](#) Heard said that there had been reports from a number of campuses indicating that students were withdrawing into themselves and into their own small personal groups. [\[FN118\]](#) Sol Libowitz, Chairman of the American Council on Education Commission on Campus Unrest, said, "With all the problems the nation has, a campus which is not troubled today is not worth its salt." [\[FN119\]](#)

After finishing his work on the Commission, Matt returned to Los Angeles and was appointed a U.S. District Court judge in 1971. He served effectively there until his death on January 12, 2006.

As one who worked with him closely while he was U.S. Attorney and on the Commission, and remained his friend to his death, I have often wondered how different his ultimate path could have been. Looking through his files I found notes of an effort to get him appointed L.A. County District Attorney in late 1970 (after then District Attorney Evelle Younger was elected Attorney General). However, a member of the Board of Supervisors--the appointing authority--killed the idea because he didn't *311 like Matt's prosecution of a friend in the Friars Club card cheating case. [\[FN120\]](#) Had Matt become District Attorney, I have little doubt that he would have succeeded there, using his personal and administrative skills to transform that office. And with his success there I have no doubt that he could have run for California Attorney General in 1978 and won. He would have been good there as well.

But his career took a different turn. He left behind a good public life, well lived, with friends everywhere, friends who love to tell **Matt Byrne** stories with fondness and admiration.

[\[FN1\]](#). John Van de Kamp served as the District Attorney for the County of Los Angeles from 1975 until 1983, and then as the

28th Attorney General of California from 1983 until 1991.

[FN1]. President Richard Nixon, Speech on Cambodia (Apr. 30, 1979), available at <http://vietnam.vassar.edu/doc15.html>.

[FN2]. Charles Phillips, May 4, 1970, 39 American History 16, 18 (2004).

[FN3]. *Id.* at 16.

[FN4]. *Id.* at 72.

[FN5]. *Id.*

[FN6]. May Fourth Task Force, Chapter 1: Student Protest in the 1960's, http://dept.kent.edu/may3/Campus_Unrest/Campus_Unrest_chapter1a.htm.

[FN7]. Jack Rosenthal, Nixon Panel Calls Hearings on Public on Campus Unrest, N.Y. Times, July 7, 1970, at 1, 29.

[FN8]. Chief of Campus Unrest Study: William Matthew Byrne, Jr., N.Y. Times, July 7, 1970.

[FN9]. Richard Nixon, Statement on Establishing the President's Commission on Campus Unrest (June 13, 1970), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=2544&st=&st1=>.

[FN10]. *Id.*

[FN11]. Interview with John Kirby (May 9, 2006).

[FN12]. *Id.*

[FN13]. *Id.*

[FN14]. Many of the sources used throughout this article came from untitled documents in William Matthew Byrne's personal files. This information came from an article in Matt's files containing his handwritten edits entitled Inside the President's Commission on Campus Unrest [hereinafter *Inside the Commission*] (on file with author).

[FN15]. The Report of the President's Commission on Campus Unrest (Arno Press 1970) [hereinafter *RPCCU*].

[FN16]. From an untitled document in William Matthew Byrne's personal files [hereinafter *WMB files*] (on file with author).

[FN17]. *RPCCU*, supra note 15, at vi-viii.

[FN18]. *WMB files* (on file with author).

[FN19]. *WMB files* (on file with author).

[FN20]. Interview with John Kirby (May 9, 2006).

[FN21]. *RPCCU*, supra note 15, at 149-83.

[\[FN22\]](#). Interview with John Kirby (May 9, 2006).

[\[FN23\]](#). Inside the Commission, *supra* note 14, at 4.

[\[FN24\]](#). For a list of the individuals involved in the Commission see RPPCU, *supra* note 15, at vii.

[\[FN25\]](#). *Id.*

[\[FN26\]](#). *Id.*

[\[FN27\]](#). Interview with John Kirby (May 9, 2006).

[\[FN28\]](#). See RPPCU, *supra* note 15, at vii.

[\[FN29\]](#). *Id.*

[\[FN30\]](#). Interview with Peter Blackman (Apr. 27, 2006).

[\[FN31\]](#). Interview with Paul Brest (Apr. 27, 2006).

[\[FN32\]](#). Inside the Commission, *supra* note 14, at 1.

[\[FN33\]](#). From the personal files of William Matthew Byrne entitled The Rainy Day Oration (on file with author).

[\[FN34\]](#). Inside the Commission, *supra* note 14, at 1.

[\[FN35\]](#). *Id.* at 2.

[\[FN36\]](#). See RPCCU, *supra* note 15, at 22-38 (discussing the background of student protests in the 1960s).

[\[FN37\]](#). *Id.* at 38.

[\[FN38\]](#). *Id.* at 412.

[\[FN39\]](#). *Id.* at 94.

[\[FN40\]](#). *Id.* at 103.

[\[FN41\]](#). *Id.* at 107 (noting that although black youth have a desire to attend college, the end result is not equality with whites, but rather further "disprivilege and disparity").

[\[FN42\]](#). *Id.* at 11.

[\[FN43\]](#). *Id.* at 7.

[\[FN44\]](#). See *id.* at 10.

[\[FN45\]](#). Id.

[\[FN46\]](#). Press Release, Address by the Vice President, South Dakota Republican Luncheon, Sioux Falls, South Dakota, Sept. 29, 1970.

[\[FN47\]](#). Id.

[\[FN48\]](#). RPCCU, *supra* note 15, at 8, 9.

[\[FN49\]](#). Id. at 9.

[\[FN50\]](#). Id.

[\[FN51\]](#). Roscoe Drummond, Agnew exceeds his mandate, *Christian Science Monitor*, Oct. 24, 1970, at 24.

[\[FN52\]](#). Id.

[\[FN53\]](#). Id.

[\[FN54\]](#). RPCCU, *supra* note 15, at 10.

[\[FN55\]](#). Id.

[\[FN56\]](#). Id.

[\[FN57\]](#). Id. at 11.

[\[FN58\]](#). Id.

[\[FN59\]](#). Id.

[\[FN60\]](#). Id. at 12.

[\[FN61\]](#). Id.

[\[FN62\]](#). Id.

[\[FN63\]](#). Id.

[\[FN64\]](#). Id. at 180.

[\[FN65\]](#). Id. at 289.

[\[FN66\]](#). Id.

[\[FN67\]](#). Id. at 12.

[\[FN68\]](#). Id. at 182.

[\[FN69\]](#). Id.

[\[FN70\]](#). Id. at 185.

[\[FN71\]](#). Id. at 13.

[\[FN72\]](#). Id. at 14.

[\[FN73\]](#). Id. at 195.

[\[FN74\]](#). Id. at 8.

[\[FN75\]](#). Id. at 7.

[\[FN76\]](#). Id. at 14.

[\[FN77\]](#). Id. at 15.

[\[FN78\]](#). From the personal files of William Matthew Byrne, Memorandum of Conversation (July 27, 1970) (on file with author).

[\[FN79\]](#). Id.

[\[FN80\]](#). Id.

[\[FN81\]](#). Inside the Commission, *supra* note 14, at 2.

[\[FN82\]](#). Letter from Jack Bass, Charlotte Observer, to Matthew Byrne, Staff Director, President's Commission on Campus Unrest (Oct. 5, 1970) (on file with author). Orangeburg is mentioned briefly in the Commission Report in a quotation from a statement coming from the president, faculty, and students of a predominately black Southern university. See RPCCU, *supra* note 15, at 97- 98. The authors of the statement used the killings of three student protesters in Orangeburg, South Carolina as an example of the "systemic repression of Black people" occurring at the time. See *id.* at 98; see also BrainyHistory, Officers Kill Three Students Demonstrating in South Carolina State, http://www.brainyhistory.com/events/1968/february_8_1968_134434.html (last visited Oct. 11, 2006).

[\[FN83\]](#). Tom Wicker, Jackson State and Orangeburg, N.Y. Times, Oct. 5, 1970.

[\[FN84\]](#). Interview with John Kirby (May 9, 2006). In addition, Matt's files do not contain any Commission-related photos with President Nixon.

[\[FN85\]](#). Richard Nixon, Letter to the Chairman, President's Commission on Campus Unrest, on the Commission's Report (December 12, 1970), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=2844>.

[\[FN86\]](#). Interview with John Kirby (May 9, 2006).

[\[FN87\]](#). See supra note 46.

[\[FN88\]](#). Calm and Sound Advice, Long Beach Press Telegram, Oct. 2, 1970.

[\[FN89\]](#). The Blame Distributed, Grand Rapids Press, Oct. 6, 1970.

[\[FN90\]](#). Sound Practical Advice, Seattle Times, Sept. 29, 1970.

[\[FN91\]](#). Toward Reconciliation, Wall St. J., Sept. 29, 1970.

[\[FN92\]](#). What The Scranton Commission Really Said, Wash. Post, Oct. 4, 1970, at D6.

[\[FN93\]](#). Id.

[\[FN94\]](#). Lack of Objectivity Plagues Probes of Campus Violence, San Diego Trib., Oct. 20, 1970.

[\[FN95\]](#). The President's Commission On Campus Violence Makes a Report, Clarion-Ledger (Jackson, Miss.), Oct. 9, 1970, at 14.

[\[FN96\]](#). President Richard Nixon, Letter to the Chairman, President's Commission on Campus Unrest, on the Commission's Report P 2 (Dec. 10, 1970) [hereinafter Nixon Letter], http://www.nixonfoundation.org/clientuploads/directory/archive/1970_pdf_files/1970_0458.pdf.

[\[FN97\]](#). Id. P 5.

[\[FN98\]](#). Id. P 17 (quoting unknown source).

[\[FN99\]](#). Id. P 23-24.

[\[FN100\]](#). The provisions formed the proposed Higher Education Opportunity Act of 1970. See id. P 33. For more on the Act, see generally President Richard Nixon, Special Message to Congress on Higher Education (Mar. 19, 1970), available at <http://www.presidency.ucsb.edu/ws/print.php?pid=2915>.

[\[FN101\]](#). Nixon Letter, supra note 96, at P 35.

[\[FN102\]](#). Id. P 39.

[\[FN103\]](#). Id. P 45.

[\[FN104\]](#). Id. P 7.

[\[FN105\]](#). Id. P 46.

[\[FN106\]](#). Id. P 47.

[\[FN107\]](#). Id. P 49.

[\[FN108\]](#). WMB Files (on file with author).

[\[FN109\]](#). Id.

[\[FN110\]](#). Id.

[\[FN111\]](#). Id.

[\[FN112\]](#). Id.

[\[FN113\]](#). Inside the Commission, *supra* note 14, at 5-10.

[\[FN114\]](#). See Office of the Clerk, U.S. House of Representatives, Statistics of the Congressional Election of November 3, 1970, at 42 (1971), available at <http://clerk.house.gov/members/electionInfo?1970election.pdf>.

[\[FN115\]](#). Id.

[\[FN116\]](#). Nov. 3 Results: A Mixed Bag for the 2 Parties, *Congressional Quarterly*, Nov. 6, 1970, at 2743.

[\[FN117\]](#). Bryce Nelson, College Unrest Still Festering, Advisors Say, *L.A. Times*, Mar. 31, 1971, at A21.

[\[FN118\]](#). Id.

[\[FN119\]](#). Id.

[\[FN120\]](#). See *U.S. v. Roselli*, 432 F.3d 879 (9th Cir. 1970).

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