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A Tribute to Matt Byrne

John Van de Kamp*

- 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.¹ 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.² Four students were killed; nine wounded.³

On May 14, 1970, city and state police were called to Jackson State University in Mississippi after disturbances arose.⁴ The police opened fire killing two black students and wounding twelve.⁵

By the end of that May, nearly one third of the 2500 colleges and universities in America had experienced some kind of protest activity.⁶

On May 18, 1970, Matt Byrne resigned as U.S. Attorney of the Central District of California.⁷ A 1967 Lyndon Johnson appointee, he was nominated by Johnson for a federal judgeship in 1968, only to have his

* 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.

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

2. Charles Phillips, *May 4, 1970*, 39 AMERICAN HISTORY 16, 18 (2004).

3. *Id.* at 16.

4. *Id.* at 72.

5. *Id.*

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

7. Jack Rosenthal, *Nixon Panel Calls Hearings on Public on Campus Unrest*, N.Y. TIMES, July 7, 1970, at 1, 29.

nomination stalled in the Senate and withdrawn by the Nixon administration when it took office.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.⁸

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.”⁹ President Nixon asked the Commission to begin work “immediately” and report by October 1, 1970.¹⁰

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.¹¹ Matt spoke with Scranton, Lloyd Cutler, and others who had worked on President Johnson’s Violence Commission and networked around town.¹² He also spoke with Justice Department friends from both the present and past administrations.¹³ He learned that the Kerner Commission took nine months to complete its report and the Violence Commission took almost twice as long.¹⁴

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

8. *Chief of Campus Unrest Study: William Matthew Byrne, Jr.*, N.Y. TIMES, July 7, 1970.

9. 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=>.

10. *Id.*

11. Interview with John Kirby (May 9, 2006).

12. *Id.*

13. *Id.*

14. 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).

Printing Office under the title *The Report of the President's Commission on Campus Unrest*.¹⁵

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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

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

15. THE REPORT OF THE PRESIDENT'S COMMISSION ON CAMPUS UNREST (Arno Press 1970) [hereinafter RPCCU].

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

17. RPCCU, *supra* note 15, at vi-viii.

18. WMB files (on file with author).

19. WMB files (on file with author).

No titles were issued to the staff until most of the Commission's work was completed.²⁰ 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."²¹

Matt was the general and the ringmaster.²² 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.²³ 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).²⁴ Matt also brought from the U.S. General Services Administration in Washington Jim Arthur (Chief Administrative Officer).²⁵ 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.²⁶ 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).²⁷

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.²⁸

20. Interview with John Kirby (May 9, 2006).

21. RPPCU, *supra* note 15, at 149-83.

22. Interview with John Kirby (May 9, 2006).

23. *Inside the Commission*, *supra* note 14, at 4.

24. For a list of the individuals involved in the Commission see RPPCU, *supra* note 15, at vii.

25. *Id.*

26. *Id.*

27. Interview with John Kirby (May 9, 2006).

28. See RPPCU, *supra* note 15, at vii.

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.²⁹

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, 1970.³⁰

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.”³¹ 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).³² He recalled taking an extra suit and four shirts when he first went to Washington in June.³³ 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.”³⁴ 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.³⁵

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

29. *Id.*

30. Interview with Peter Blackman (Apr. 27, 2006).

31. Interview with Paul Brest (Apr. 27, 2006).

32. *Inside the Commission*, *supra* note 14, at 1.

33. From the personal files of William Matthew Byrne entitled *The Rainy Day Oration* (on file with author).

34. *Inside the Commission*, *supra* note 14, at 1.

35. *Id.* at 2.

Columbia incident in 1968.³⁶ 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, 1970.³⁷

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.³⁸ 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.”³⁹ For black students, the bitterness was not so much about the war, but about white racism, pervasive discrimination, and segregation.⁴⁰

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.”⁴¹ 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.⁴²

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.”⁴³

In effect, the Commission said ‘cool the rhetoric.’⁴⁴ The Commission noted that “[h]arsh and bitter rhetoric can set citizen against citizen, exacerbate tension, and encourage violence.”⁴⁵

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.”⁴⁶ It was an

36. See RPCCU, *supra* note 15, at 22-38 (discussing the background of student protests in the 1960s).

37. *Id.* at 38.

38. *Id.* at 412.

39. *Id.* at 94.

40. *Id.* at 103.

41. *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”).

42. *Id.* at 11.

43. *Id.* at 7.

44. See *id.* at 10.

45. *Id.*

46. Press Release, Address by the Vice President, South Dakota Republican Luncheon, Sioux

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?”⁴⁷

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.”⁴⁸

“[N]othing is more important,” said the Commission, “than an end to the war in Indochina.”⁴⁹ The reaction of disaffected students to the Cambodian invasion “was a measure of the intensity of their moral recoil.”⁵⁰

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.”⁵¹ He attributed Agnew’s remarks to a misreading of the President.⁵² 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.”⁵³

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

Falls, South Dakota, Sept. 29, 1970.

47. *Id.*

48. RPCCU, *supra* note 15, at 8, 9.

49. *Id.* at 9.

50. *Id.*

51. Roscoe Drummond, *Agnew exceeds his mandate*, CHRISTIAN SCIENCE MONITOR, Oct. 24, 1970, at 24.

52. *Id.*

53. *Id.*

designed to refute it.”⁵⁴ 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.⁵⁵ 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.”⁵⁶

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.”⁵⁷

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.”⁵⁸

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.”⁵⁹ 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.”⁶⁰

Most notably, the Commission singled out the National Guard, calling for more Guard training in controlling civil disturbances.⁶¹ 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.⁶² The Commission recommended that the Guard have “nonlethal weaponry so that it [would] use deadly force only as the absolute last resort.”⁶³ 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.”⁶⁴

54. RPCCU, *supra* note 15, at 10.

55. *Id.*

56. *Id.*

57. *Id.* at 11.

58. *Id.*

59. *Id.*

60. *Id.* at 12.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 180.

At Kent State, the Guardsmen were armed with M-1 rifles, high velocity weapons with a range of almost two miles.⁶⁵ Sixty-one shots were fired by twenty-eight guardsmen—without an order to fire—leaving four dead.⁶⁶

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."⁶⁷ 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.⁶⁸

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.⁶⁹

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."⁷⁰

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.⁷¹ The Commission argued that "universities as institutions must remain politically neutral" except where "their own integrity, educational purpose, or preservation, is at stake."⁷²

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

65. *Id.* at 289.

66. *Id.*

67. *Id.* at 12.

68. *Id.* at 182.

69. *Id.*

70. *Id.* at 185.

71. *Id.* at 13.

72. *Id.* at 14.

that the undesirable results of undertaking such a project are outweighed by compelling advantages.”⁷³

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,”⁷⁴ and called for the removal of perpetrators of violence.⁷⁵

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.”⁷⁶

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.”⁷⁷

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.⁷⁸ Rhodes had told people in Lawrence that he would be advocating for such a hearing.⁷⁹ He was also upset that there were not more black staff members and wanted a Commission meeting that week.⁸⁰ 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.”⁸¹ 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

73. *Id.* at 195.

74. *Id.* at 8.

75. *Id.* at 7.

76. *Id.* at 14.

77. *Id.* at 15.

78. From the personal files of William Matthew Byrne, Memorandum of Conversation (July 27, 1970) (on file with author).

79. *Id.*

80. *Id.*

81. *Inside the Commission*, *supra* note 14, at 2.

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].”⁸² Wicker had opined that the prevailing feeling was that it was blacks who were killed and that it wasn’t that important.⁸³

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.⁸⁴ The President left soon thereafter on his European trip, and on September 26, 1970, the Report was issued publicly.⁸⁵ According to John Kirby, the White House never released the photos with the President.⁸⁶

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.”⁸⁷

The press reaction was largely positive. The following article titles from major newspapers typify the contemporary journalistic response to the

82. 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).

83. Tom Wicker, *Jackson State and Orangeburg*, N.Y. TIMES, Oct. 5, 1970.

84. Interview with John Kirby (May 9, 2006). In addition, Matt’s files do not contain any Commission-related photos with President Nixon.

85. 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>.

86. Interview with John Kirby (May 9, 2006).

87. See *supra* note 46.

Report: *Calm and Sound Advice*;⁸⁸ *The Blame Distributed*;⁸⁹ *Sound Practical Advice*;⁹⁰ *Toward Reconciliation*;⁹¹ and *What the Scranton Commission Really Said*.⁹² 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.”⁹³

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.”⁹⁴

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.⁹⁵

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.”⁹⁶ 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”;⁹⁷ “[t]he call for tolerance . . . for the rights and feelings of one another”;⁹⁸ and that “university reform [is] properly the concern of the campus community,” including the role of controlling disorder.⁹⁹ President Nixon expressed thanks for the Commission’s support

88. *Calm and Sound Advice*, LONG BEACH PRESS TELEGRAM, Oct. 2, 1970.

89. *The Blame Distributed*, GRAND RAPIDS PRESS, Oct. 6, 1970.

90. *Sound Practical Advice*, SEATTLE TIMES, Sept. 29, 1970.

91. *Toward Reconciliation*, WALL ST. J., Sept. 29, 1970.

92. *What The Scranton Commission Really Said*, WASH. POST, Oct. 4, 1970, at D6.

93. *Id.*

94. *Lack of Objectivity Plagues Probes of Campus Violence*, SAN DIEGO TRIB., Oct. 20, 1970.

95. *The President’s Commission On Campus Violence Makes a Report*, CLARION-LEDGER (Jackson, Miss.), Oct. 9, 1970, at 14.

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

97. *Id.* ¶ 5.

98. *Id.* ¶ 17 (quoting unknown source).

99. *Id.* ¶ 23-24.

of the student aid provisions which he had proposed,¹⁰⁰ and noted that he had called upon the Cabinet to review the recommendations pertaining to their jurisdiction.¹⁰¹

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”¹⁰²

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.”¹⁰³ 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.”¹⁰⁴

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.”¹⁰⁵ “High in that category I would place the Vice President”¹⁰⁶ 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.”¹⁰⁷

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

100. The provisions formed the proposed Higher Education Opportunity Act of 1970. *See id.* ¶ 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>.

101. Nixon Letter, *supra* note 96, at ¶ 35.

102. *Id.* ¶ 39.

103. *Id.* ¶ 45.

104. *Id.* ¶ 7.

105. *Id.* ¶ 46.

106. *Id.* ¶ 47.

107. *Id.* ¶ 49.

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.¹⁰⁸ Matt also reported that “the Pentagon is now buying 120,000 additional Flak Vests, and 140,000 face masks.”¹⁰⁹

Matt reported, however, that in Mississippi “nothing’s been done.”¹¹⁰ 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.¹¹¹ The *L.A. Times* reported Matt as saying that “[t]he U.S. Government should not be funding the Mississippi National Guard.”¹¹²

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

108. WMB Files (on file with author).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

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.

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 discussion [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.

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

complicated today, changing fast; the consequences of mistakes and of misunderstanding seem greater than ever before.¹¹³

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.¹¹⁴ In the House, Democrats strengthened their existing majority with a net gain of 12 seats, giving them a 255-180 advantage.¹¹⁵ 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.¹¹⁶

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."¹¹⁷ 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.¹¹⁸ 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."¹¹⁹

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

113. *Inside the Commission*, *supra* note 14, at 5-10.

114. 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>.

115. *Id.*

116. *Nov. 3 Results: A Mixed Bag for the 2 Parties*, CONGRESSIONAL QUARTERLY, Nov. 6, 1970, at 2743.

117. Bryce Nelson, *College Unrest Still Festering, Advisors Say*, L.A. TIMES, Mar. 31, 1971, at A21.

118. *Id.*

119. *Id.*

like Matt's prosecution of a friend in the Friars Club card cheating case.¹²⁰ 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.

120. See U.S. v. Roselli, 432 F.3d 879 (9th Cir. 1970).

