

Riots & Rockets - Table of Contents

Chapter 1

Riots & Rockets—Army Days	9
Family in the Military	10
The Vietnam War Heats Up	12
The Decision to Enlist.....	13
Fort Holabird and Intelligence Training.....	16
CIAD in the CD of OACSI at DA in DC.....	21
The Vance Report.....	24
Directorate of Civil Disturbance Planning and Operations.....	27
Bernardine Dohrn and the SDS Revolutionaries	28
The Army Operations Center (AOC).....	36
The Blue U and CIA Training.....	39
The Safeguard Anti-Ballistic Missile System.....	40
Huntsville, Alabama, and the Army Missile Command	41
NORAD and Cheyenne Mountain	42
Johnston Atoll and the Origins of Space Warfare	43
Kwajalein Atoll—The Ronald Reagan Missile Test Site	47
Kent State University and the Aftermath	51
Yale, The Black Panthers, and the Army.....	53
The Secretary of the Army's Special Task Force	57
Getting Short—The 1971 Stop the Government Protests	60
1974 Congressional Hearings on Military Surveillance.....	64
Bernardine Dohrn Revisited.....	31
Lunch with Gen. William Westmoreland	65

Chapter 2

Becoming a General Counsel.....	77
Rod MacArthur & The MacArthur Foundation.....	80
Hiring Lawyers	86
Copyright and Trademark Mastery.....	88
Hammacher Schlemmer	89
Bradford Then and Now	90

Chapter 3

Jane Byrne Burned—Chicago Politics in the 1970s ..	99
The Machine Weakens after Daley’s Death.....	100
Mayor Byrne’s 90-Day Report Card	107
Mayor Jane Byrne’s Secret Transition Report.....	109
Rob Warden	110
“Innuendo, Lies, Smears, Character Assassinations and Male Chauvinist”	113
Rally ‘Round the First Amendment	115
Will She or Won’t She?	116
The Aftermath—Harold Washington Defeats Jane Byrne.....	118

Chapter 4

Before the Deluge—United Press International	125
UPI—Second Banana to the Associated Press	127
Moving to Nashville as UPI Assistant General Counsel.....	133
UPI Begins Its Descent into Bankruptcy.....	135
Ruhe and Geissler Lose Sway as UPI Implodes	139
The Los Angeles Blow Up	143
UPI’s Bankruptcy Unfolds with a Shock.....	147

Chapter 5

Inventing the Future—Encyclopaedia Britannica..	157
The Proper Study of Mankind	159
The Encyclopædia Britannica First Edition.....	161
The Encyclopedist's Art	162
William Benton, EB Owner and Publisher.....	164
Robert Hutchins, University of Chicago President	164
Mortimer Adler, Philosopher	165
Charles Van Doren, EB Editorial Vice President.....	168
Reinventing the Encyclopedia in Electronic Form	172
Solving the PC Data Storage Problem	173
Patricia Wier, EB, Marvin Minsky, MIT, and Alan Kay.....	174
Peter Norton Takes Britannica into the Software Business	177
Harold Kester, SmarTrieve, and Compton's Encyclopedia.....	178
Dr. Stanley Frank, Vice President, Development	180
Compton's Patent R.I.P.—An Afterthought.....	182
A Look Back from Encyclopaedia Britannica	190

Acknowledgments	203
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Appendix 1

Excerpts from Encyclopaedia Britannica	
Petition for a Writ of Certiorari in the Supreme Court	
of the United States	205

Appendix 2

The Building of Britannica Online	219
Introduction	220
Part I.....	222
Background.....	223

CMME.....	224
Electric Britannicas.....	225
Part II	234
Bibliolinks	236
Mortimer.....	238
Gateway Britannica	243

Introduction

The month after Dr. Martin Luther King Jr.'s assassination in 1968, I enlisted in the Army's Intelligence Branch for three years. President Lyndon Johnson had just sent the Regular Army simultaneously to Baltimore, Washington, D.C., and Chicago to help control the ensuing violence and riots that had overwhelmed police and National Guard. This was a very strange and violent time. We've been lucky the country has largely been free of this kind of large-scale mayhem and destruction until the recent looting and riots we saw during the pandemic in the summer of 2020.

After eight weeks Basic Training and 16 weeks Advanced Individual Training at its Intelligence Branch school in 1968, the Army put me in the middle of the race-related and antiwar violence of that earlier time. I was assigned to the Pentagon and almost immediately found myself tasked with providing estimates of civil disturbances likely to involve the Army. In this role I had access to relevant classified intelligence of the federal government relating to internal security and the widespread politically based violence of the period. This function soon had me tracking a former law school classmate. This was Bernardine Dohrn, the SDS Weather Underground domestic terrorist leader and self-described "revolutionary communist." In 1970, this helped make her one of only 11 women to make it on the FBI's 10 most wanted list.

Having learned something about the intelligence aspects of controlling riots and anti-war civil disturbances when I was in the

Army, I was asked to testify before Congress in 1974 on the subject of military surveillance of civilians. My testimony was before the U.S. Senate Judiciary Committee.

In the course of preparing for the hearings on military surveillance, I met privately with Committee Chair Sen. Sam Ervin (D-NC) and had a chance to discuss the issues with him in some depth. For a person of such gravitas, he was as personable and down to earth as they come. Just the year before, I had been transfixed like most of the country watching Ervin chair the most important hearings of his career, the Senate Watergate hearings. His cross-examination of John Dean and the other Watergate witnesses helped bring about President Nixon's resignation.

These reflections on my Army tour of duty between 1968 and 1971 not only touch on the broad civil disruption afoot at the time. They also provide a snapshot of what I saw of some of the era's advanced military technology at isolated atolls in the Pacific Ocean. The closest I got to Vietnam during my service was when I was asked to undertake a counterespionage and counter-sabotage threat assessment that took me to Johnston and Kwajalein Atolls in the Pacific.

If the Atomic Age can be said to have begun with the dropping of the atomic bomb on Hiroshima in 1945, the Space Age can be said to have begun with the Soviet Union launching the first Sputnik satellite in 1957. Sputnik was akin to a beeping medicine ball in that it was round, about two feet across, and chirped proof of its presence back to earth. Nobody was thinking of shooting it down in 1957. By 1962, however, Nike-Zeus anti-ballistic missile rockets had already been tested on Kwajalein Atoll to see if they could perform an anti-satellite mission. The perceived threat was the U.S.S.R. orbiting satellites with nuclear weapons aboard. The Nike-Zeus rockets of the day literally fell short in this task. They couldn't fly high enough.

By 1969, when I stopped at Johnston Atoll in the Pacific on my way to Kwajalein, I saw recently modified Thor missiles that could kill satellites. The Thor-based anti-satellite system of the Defense Department's secret Project 437 was mothballed the year after my

visit. Beyond budget constraints, tests showed the nuclear detonations it would use to eliminate hostile satellites would also destroy useful satellites. Among Program 437's unintended test victims was Telstar, the world's first telecommunications satellite. I had a chance to talk about some of these Ballistic Missile and Satellite Defense issues at The Cliff Dwellers right before the pandemic lockdown in early 2020.

Though I didn't appreciate it at the time, the development of offensive and defensive military satellite systems of the sort I saw and thought about in 1969 in a way marked the dawn of space emerging as a distinct and novel war theater. The evolution of warfare to a non-terrestrial platform has taken a while since then and was not formally recognized until 2019. That was the year the U.S. Space Force was created and given the primary missions of defending our cities from a space-based attack and protecting our military and navigation satellites from being attacked from space or earth.

In a postscript to this account of my Army days, when I was General Counsel of United Press International in 1985, I had the unlikely opportunity of having lunch with Gen. William Westmoreland, retired commander of U.S. troops in Vietnam and former Chief of Staff of the Army during my time in the Pentagon. He had just settled his \$120 million libel lawsuit against CBS. At the time, this was regarded as his throwing in the towel on a losing proposition. Our conversation proved Winston Churchill's adage right on target, "Generals always fight the last war."

Back in 1971, decompressing from three years in the Army, I took a brief stab at trying to write about the unusual events I'd been involved in in my three Army years. If I'd ever finished such an account, it might have been titled, *A Spook Speaks*. Instead, I filled the hiatus I had plugged into my schedule for this writing effort by travelling to Europe and the Middle East. My vacation done, I returned to Chicago to restart my life as a lawyer.

I was 28 and still single when I emerged from the Army. Though I always had in mind the goal of marriage and a family, I was determined to remain single at that point. By 1974, my attitude on marriage had slowly come around, and I had married Judy Arndt, the

sister-in-law of my law firm colleague Bill Singer. The marriage didn't last long, and with my personal life back on hold for a while, I threw myself into local politics while continuing to develop my professional skills as a corporate lawyer representing businesses.

While not so lucky in the way my personal life evolved, I got off to a good start in the law at the Roan & Grossman law firm in the early 1970s. I found I enjoyed my clients and practicing law, and my clients seemed to appreciate having me as their lawyer. So as the years unfolded, I was growing in confidence professionally and maturing personally as well. I remarried in 1979, and Cathy Vanselow and I began family life sooner than expected with the premature birth of our son, Andy, the next year. I shifted course away from the private practice of law when I had an opportunity to become General Counsel of a Chicago-based collectibles company with substantial business overseas. This work gave me an exposure to international law and supplemented my development as a corporate lawyer with a specialty in intellectual property.

The company's main business at the time was selling so-called limited edition collector's plates. They might have been mistaken for high-end dinnerware, but for the fact that the clay plate blanks had been fired in a kiln with decorative artwork on them. Most of them usually weren't dishwasher safe, and you couldn't eat food on collector's plates due to the embedded toxicity of their paints and dyes.

As you might imagine, the impetus in my taking the job did not have to do with the excitement and thrill of selling plates. For me, it had more to do with the fact that the business was owned by Rod MacArthur (J. Roderick MacArthur), the son of the recently deceased billionaire, John D. MacArthur. At his death, John D. MacArthur was reportedly the second- or third-richest American, and he left the bulk of his fortune not to his son Rod and daughter Virginia, but to the John D. and Catherine T. MacArthur Foundation. The MacArthur Foundation immediately became one of the nation's largest foundations.

Rod needed a lawyer for his growing collectibles business, and he also needed a lawyer to provide legal help and guidance as he carried out his increasingly acrimonious duties as a director of the Foundation. Before his irritation with his fellow Foundation directors devolved into suing them, Rod creatively took the lead in developing the MacArthur Foundation's Fellows Program, popularly known as the "genius grants." Though on occasion Rod could be quirky and cantankerous, I got along fine with him and appreciated his offer to provide mail order expertise when in 1979 I decided to run against a Mayor Richard J. Daley machine-backed candidate for 43rd Ward Democratic Committeeman. I left Rod MacArthur's company in the early 1980s and, after a brief time as Of Counsel to a Chicago Loop law firm, I headed again into the role of in-house counsel, this time with United Press International.

Concurrently with my law practice in the 1970s, I had done volunteer work for Bill Singer and Dick Simpson, both liberal, non-machine aldermen of the 43rd and 44th lakefront wards on Chicago's north side. At the time, Bill Singer and I had practiced with the same law firms, and had overlapped briefly as brothers-in-law. I served as General Counsel and Research Director in Singer's campaign against Mayor Richard J. Daley in the Democratic primary election in 1975, and I later drafted ordinances for Simpson. I also carried over as Secretary of the 43rd Ward Aldermanic Office when Singer's successor Marty Oberman followed him into office.

During this period, I was also occasionally writing articles for local Chicago publications on business and political topics. This latter role threw me unexpectedly into the middle of a media-political storm that erupted in 1980 when Mayor Jane Byrne blew her stack and banned the *Chicago Tribune* from City Hall. The story was both bizarre and telling. It was bizarre because the whole affair was completely wacky, and it was telling because it highlighted some of the mayor's underlying flaws. These were the flaws that helped turn her into a one-term mayor. The tale I recall here was just one of the events that helped set the stage for the 1983 arrival of Chicago's first Black mayor, Harold Washington.

When I was offered the job of Assistant General Counsel at the newswire service, United Press International, UPI had recently moved its headquarters to Brentwood, Tennessee, a Nashville suburb. My wife, Cathy, son Andy, and I moved to Brentwood shortly thereafter.

UPI competed with the larger Associated Press newspaper syndicate throughout the 20th century. When I joined it as Assistant General Counsel in 1984, it had recently been purchased by two young Nashville entrepreneurs. My engagement with UPI lasted only two years. In that period, I had a front-row seat watching the company slide into bankruptcy. It was just emerging from bankruptcy when I left. In the course of UPI's denouement, I received a battlefield promotion from Assistant General Counsel to General Counsel.

The story of UPI in this period provides a cautionary lesson you can take to the bank. If a company is struggling financially, it's more likely to go down the tubes faster and for sure if it's owned and controlled by self-centered, inexperienced managers who are in way over their heads, and more full of themselves than full of cash.

Given the uncertainty facing UPI as it emerged from bankruptcy in 1985, it was fortuitous that I was approached by a headhunter looking for a new General Counsel for reference publisher Encyclopaedia Britannica back in Chicago. What followed was a 28-year run at Britannica that gave me a chance to move beyond a strictly legal role. This included serving as President of its subsidiary Encyclopaedia Britannica Educational Corporation and for a short period heading up the country's premier dictionary publisher, Merriam-Webster.

My time with EB also gave me a bird's-eye view of the revolution in intellectual property law wrought by the arrival of the internet in the 1990s. While I had long been conversant with trade secret, trademark, and copyright law adapting to the internet revolution, the emerging digital era gave me added expertise in software patents.

Beginning in the mid-1980s, EB had begun developing *Compton's Interactive Encyclopedia*, later *Compton's Multimedia Encyclopedia*, a digital version of its reference work for younger readers. It seems counterintuitive to imagine that a multi-volume print encyclopedia

publisher born in Edinburgh, Scotland in 1768 would be on the cutting edge of a breakthrough invention in the computer age. Yet, beginning with the *Compton's Multimedia Encyclopedia*, EB in this period made a massive research and development investment that resulted in a revolutionary advance in the evolution of the human/machine interface.

Vannevar Bush had foreseen the information society as early as 1945 in a landmark article in *The Atlantic* magazine. In the following decades, Doug Engelbart, Alan Kay, Ted Nelson, and many others struggled to create a simple interface that would permit humans to easily interact with the computers of the day. Their pioneering efforts were constrained because the computer hardware of the times wasn't sufficiently advanced. The mouse and graphical user interface had been invented, and content like text, graphics, video, and sound could all be digitized by this time. However, no one had yet cracked the nut of how to make substantive content in all these formats easily accessible on a computer in a unified and coherent form that was searchable.

I first filed a patent application for Britannica's multimedia search system invention in 1989. After a thorough investigation of its foundational uniqueness, the patent was duly issued by the U.S. Patent and Trademark Office in 1993. Because of its landmark nature, the publicity attendant to its issuance quickly created a political football for President Bill Clinton's administration. Representatives of the high-tech behemoths of the day didn't take kindly to an upstart of the 18th century horning in on the digital revenues they saw in the offing. Their representatives promptly met with Vice President Al Gore and Bruce Lehman, then Commissioner of Patents and Trademarks. They urged a fast revocation of the patent.

Bowing to the pressure, the Commissioner promptly ordered a rare patent reexamination. The procedure has been likened to giving the subordinate reexamination officer, if not a direct order, a "license to revoke." In due course, and not surprisingly, the patent was then revoked. EB brought suit in the first of many subsequent court battles.

After a thorough and independent review of the patent's claims, the Federal District Court in the District of Columbia, on the recommendation of a Special Master, found the patent in order and directed the Patent Office to reconsider its revocation of the patent. The Patent Office duly reissued the patent in 2002, nine years after its original issuance. What continued on from there was surely one of the great patent litigation sagas of our era. The end came nearly a quarter century after the original filing of the patent application when a different court finally ruled that the patent was invalid. The court concluded in a legal malpractice case that the patent shouldn't have been issued in the first place. Move along folks, not really an invention, old hat, been around for thousands of years, nothing to see here.

Oh well, such are the vagaries of patent law. What can't be denied is that this advance made by Britannica took computers beyond their limited presence in government and business and helped bring them into the home and everywhere else. We would not have arrived so quickly at today's level of immersion in the digital world had not the 1989 Britannica invention first led the way to giving even very young children the ability to easily search and navigate through content rich in text, pictures, video, and sound elements.

My high-level review of Britannica's epic battle to legally mark the Compton's patent invention as a fundamental one of the Digital Age would not be complete without including here the company's 2016 Petition for a Writ of Mandamus to the U.S. Supreme Court. Though the Court chose not to hear the case, the Petition is at Appendix 1 and offers a good summary of the ins and outs of the legal saga since the patent's 1989 filing.

As this legal battle played out in the 1990s, talented software engineers at Britannica's Advanced Technology Group in La Jolla, California turned their attention to putting the massive, 33-million-word *Encyclopaedia Britannica* first on a CD-ROM and then on the internet. Robert McHenry, Britannica's exceptional Editor in this period, has written the definitive tale of where this effort was successful and where it fell short. You'll find his account of *The Building of Britannica Online* at Appendix 2.

Chapter 1

Riots & Rockets—Army Days

After Army Intelligence School training at Fort Holabird in Baltimore, I was assigned to the 902nd Military Intelligence Group. Its headquarters occupied office space above stores in a Bailey's Crossroads, Virginia, strip mall.

My Counterintelligence Analysis Division work in the 902nd was at first in converted warehouse space nearby in Bailey's Crossroads. Later I had office spaces in the Office of the Assistant Chief of Staff of the Pentagon, the newly built duplex war room called the Army Operations Center, and the Hoffman Building in Alexandria, Virginia.

For several weeks in 1969, I also attended a CIA school in a building in Arlington, Virginia, then known as The Blue U.

My living arrangements were first in an Annandale, Virginia, apartment with two 902nd roommates, and then on my own in a Capitol Hill apartment in the District of Columbia. Throughout, I was technically assigned to Fort Meyer, just to the north of the Pentagon.

Family in the Military

My enlisting in the Army during the Vietnam War years was in part influenced by my knowledge of other family members who had served in the military.

Both sides of my family had members in the military. My mother's grandfather, Richard Lawrence Gwinn, Sr., lived in Covington, Georgia, and served in the Confederate Army during the Civil War. Among my mother's family memorabilia was a picture of him decked out in his uniformed regalia.

In my immediate family, my father, William John Bowe, Sr., enlisted as a part-time soldier in the Illinois National Guard shortly after graduating from Loyola University law school in Chicago in 1915. He trained at Camp Grant, near Rockford, Illinois, before the U.S. entered World War I. In time he became a supply sergeant in the Quartermaster Corps. When President Woodrow Wilson called the National Guard into federal service to fight in World War I, a massive influx of draftees came into Camp Grant for training. The camp exploded in size, and in short order my father went to France with the other doughboys. Not long after his arrival in France, while trying to board a moving troop train, he slipped, and his left foot was run over by the train. The good news was that he never made it to the front, but the bad news was that he did make it to French hospitals in Blois and Orleans. The amputation of part of his foot required a long convalescence, and the war was over before he could get home.

The summer of 1967, right after my law school graduation, the young French hospital nurse who had cared for my father in Orleans

came to Chicago for a visit. She missed seeing her former patient, as my father had died in 1965. Nonetheless, my mother, my brother, Richard Bowe, and I had a pleasant moment as Mme. Marie Loisley reminisced about that time in the Great War.

As a young child in the 1940s, I, of course, noticed his stump and the fact he was missing his toes on one foot. When I got older, I asked him about it. He answered in a matter-of-fact way and showed me the lead insert he wore in one of his high-topped laced shoes and explained its purpose. He also let me play with his cane without complaint.

In the early 1950s, as my father entered his sixties, his cane had fallen into disuse and largely remained in an umbrella stand inside the front hall closet. Perhaps it was because he was no longer out and about as much. But later in the 1950s, as I was going through high school, it certainly reflected the inexorable progress of his Alzheimer's disease and its accompanying dementia.

When World War II came along, my Uncle John Dominic Casey, recently married to my mother's sister Martha Gwinn Casey, also served in the Army. As a child I remember visiting my Uncle John when he was recuperating from a broken leg at a military hospital in Chicago at 51st Street and the lake. After the war, the building served as the 5th Army's Headquarters before the command was moved in 1963 to Fort Sheridan just north of the city.

In the mid-1950s, my older brother, Dick, was in the Army's Reserve Officers Training Corps (ROTC) in high school and, like his father before him, later enlisted in the Illinois National Guard.

While my father had caught World War I, Dick was luckier. He was too late for the Korean War and too early for the Vietnam War. Between Dick and my father, it appeared to me that wars of one sort or another tended to engage American men each generation.

However, as I turned 18 and headed off to college in 1960, I thought it unlikely that I would have to follow in either Dick or my father's military footsteps.

The Vietnam War Heats Up

As I started college in the fall of 1960, I just wasn't prescient enough to see that, like my father and brother, I also would indeed enter the military. While the Vietnam War ended with a bang with the fall of Saigon in April 1975, it had started with a whimper in spring of 1961, just as I was finishing my freshman year at Yale. That was when President John Kennedy ordered 400 Green Beret Army soldiers to South Vietnam as "advisers."

Then, in August 1964, after my Yale graduation, but before I started law school at the University of Chicago, Congress passed the Gulf of Tonkin Resolution. This came in the wake of an apparent attack on the USS Maddox off Vietnam. It authorized the president to "take all necessary measures, including the use of armed force" against any aggressor in the Vietnam conflict. Shortly thereafter, in February 1965, President Lyndon Johnson ordered the bombing of North Vietnam, and the U.S. was in the war big time. I was just halfway through my first year of law school.

After World War II, the draft structure to meet the country's military needs had been left in place. Thus, it was ready to be employed in my era when volunteers no longer met the needs of the services. Indeed, the draft was increasingly relied upon as the U.S. deepened its involvement in Vietnam. But during the Vietnam War years between 1964 and 1973, the U.S. military drafted only 2.2 million men from a large pool of 27 million. With less than 10 percent of those eligible for the draft being called up, and the lottery mechanism to choose them not put in place until 1969, the question of who got drafted was left up to local draft boards and their use of an elaborate system of draft deferment categories.

Being in graduate school at the time automatically removed the risk I would be taken into the military involuntarily prior to my graduation. After graduation, I'd be single and only 25. Unless I married and had children before I reached the safe harbor of 26, there was a real possibility that I could be drafted.

What to do? I had no desire to marry at that time, and a similar desire not to be killed in Vietnam War. This wasn't an entirely irrational fear, as the Vietnam Veterans Memorial in Washington, D.C., lists more than 58,300 names of those killed or missing in action. Though my personal odds of being cut down might have been small, the threat did loom large in my thinking. The off chance of catching an errant bullet in an inhospitable place far from home was simply not on my young man's to-do list.

The Decision to Enlist

While I had no desire to be drafted, I was not adverse to military service. Both my father and brother had entered the military as volunteers. They both seemed proud to have stepped up in the service of their country. I also thought if I weren't killed, I might enjoy the military or at least gain valuable experience of some sort. Having watched my Uncle Augustine Bowe enter public life as a judge late in life and seem to enjoy it, I also thought Army service such as my father's or Dick's couldn't hurt if I later wanted to pursue that path in some fashion. In my third year of law school, I had unsuccessfully applied for a direct commission as an Army officer. While these half-in, half-out alternatives were not remotely appealing choices for me, as I waited for that process to run its course, the Army Reserve and National Guard openings for enlisted men grew far and few between.

With the draft and these military service options off the table for one reason or another, I graduated from law school in June 1967 at the age of 25 and started working at a downtown Chicago law firm. Among other clients, the firm represented Northwestern Railway and various gas and electric utilities. The mid-sized Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons had its offices in a National Register of Historic Places classic. The building was architect Daniel Burnham's 21-story, 1911 Beaux-Arts building at 122 South Michigan Avenue, just across the street from the Art Institute of Chicago.

During law school, I had bypassed living in Hyde Park near the University of Chicago to help my mother care for my father in his

declining health. He had died halfway through my time in law school, so after graduation I left my widowed mother and moved into the Hyde Park apartment of my college and law school friend Bob Nichols. I traveled to my new lawyering job on the Illinois Central commuter train from the 56th Street Station in Hyde Park to the Van Buren Street Station by the Loop. That left me a short walk to the Ross, Hardies office.

The main military option that still seemed open to me, in this period, other than the draft, was to enlist in the military in a way that might improve my odds of living long enough to get discharged. If I didn't enlist in the military in the ensuing year, and got drafted as a result, it would most likely mean service in the Army's infantry, and I'd be out of the military in only two years. A big negative of the draft was that I'd be out even earlier if I were killed in Vietnam.

Of course, why didn't I think of it sooner?! Forget joining the military the way my father and Dick did. Instead of the Army or National Guard, join the Navy or Air Force. Or better yet, join the Army, Navy, or Air Force as a lawyer. I was pretty sure those folks weren't getting killed much in Vietnam. With a law degree and admission to the Illinois bar in hand, I could enter the Judge Advocate General branches as an officer and gain directly pertinent experience for my chosen profession.

The unappealing part of this choice for me was the time commitment. With demand high to stay out of the infantry, these slots typically required a minimum four-year commitment. The other problem I had with being a military lawyer was the great danger I saw of being bored.

The possibility of being assigned to spend several years of my life defending or prosecuting AWOLs, handling damage claims brought about by tanks taking too wide a turn, or otherwise spending my time on mind-numbing tasks, was completely abhorrent to me. My solution to this quandary, six weeks before I turned 26, was to enlist for three years in the Army Intelligence Branch on May 13, 1968.

Like all recruits, I was going off to Basic Training that day. Seriously hung over from a farewell party thrown by friends the night

before, I was dropped off that morning at 6 a.m. at a large yellow brick building west of Chicago's Loop. Later converted into a headquarters for Tyson's Chicken, this was the same building where I had recently had the physical exam that found me qualified to enter the Army. That was literally my first exposure to Army life. I was required to strip off my clothes and walk naked single file with dozens of other men along a painted line that wove up, down and around two floors. Sprinkled along the painted line were way stations for you to pause at for various intrusive inspections of your body. To this day, I remember the impolite request barked at the most humiliating stop, "BEND OVER AND SPREAD 'EM." This experience gave me a better understanding of how those Tyson chickens must feel as they head down their own conveyer line of peril.

Bused to O'Hare International Airport, we were flown to St. Louis, and then bused from there to Fort Leonard Wood in central Missouri. I, and the other recruits I had been batched with, got off the buses and were ushered into a large room where we were seated in pews.

We were told that if any of us had any guns, knives, brass knuckles, or other weapons on our person, we were to take them out and leave them on our seats. Left unspoken was the, "Or else!" part. To this day I remember the continuous clanking of metal hitting wood that seemed to go on and on. I had no idea that some of the folks I was travelling with were well armed long before they were even issued a uniform.

The eight-week training regimen had the usual components: calisthenics, learning how to march, marching, the rifle range, the grenade range, and the low crawl under chicken wire with machine gun fire above.

In a large gymnasium filled with sand pits we were given pugil sticks for mano a mano battles. I think this was to teach us that as soldiers we needed to be a little more aggressive in our approach to life.

Large signs with slogans adorned the gym's walls. One read, "Wars were never won with conscience or compassion." I recall

thinking at the time that while that may be true, it was also true that a little more conscience or compassion might help stop wars from starting in the first place.

Approaching the end of Basic Training we were sent out into the field for a week's long bivouac exercise.

In a final reminder that Army life was going to be different than civilian life, my training company of 120 men were marching for what seemed like forever down a gravel road surrounded by pine trees on both sides.

These woods were most unusual in that nature hadn't made this forest. The forest was a man-made, manufactured forest. All the trees were the same 20 feet in height, and all had been planted and cultivated in perfectly lined up rows.

As we marched along the road in single file (so as not to be bunched up and more vulnerable as a group to sniper fire), I noticed two signs, one above the other, on one of the trees. The top sign read, "Hunting Area 7."

The sign beneath it read, "No Hunting." It was at this point that it really sunk in that my life the next three years was going to be very, very different.

Fort Holabird and Intelligence Training

One of the first things I noticed once I had stepped out of civilian life was that I had stepped into a world of acronyms I never knew existed.

After two months of Basic Combat Training (BCT) at Fort Leonard Wood, I was assigned to Fort Holabird in my mother's hometown of Baltimore, Maryland. There I did my Advanced Individual Training (AIT) at the United States Army Intelligence School (USAINTS). At Fort Holabird, I would complete a 16-week course in my Military Occupational Specialty (MOS) and become an Army Counterintelligence Agent (97 Bravo).

At Fort Holabird, I was taught the general difference between what an intelligence agent did and what a counterintelligence agent did. I learned the job of an intelligence agent is to find out an enemy's secrets, often through espionage. The job can also include disrupting an enemy through sabotage or psychological warfare. The job of a counterintelligence agent is to prevent an enemy from finding out your secrets, and to secure critical assets from attack or degradation. It's a spy, counterspy, sabotage, counter-sabotage kind of thing.

All of us at the Intelligence School knew that wherever the Army might have troops stationed around the world, the bulk of our graduating class of 97 Bravos would be headed to Vietnam, Germany, or South Korea. Most others would likely be assigned to one of the U.S. Army areas in what the Army called CONUS (Continental United States). Being assigned to duty in the U.S. usually meant spending most of your Army days doing what all counterintelligence agents coming out of USAINTS were trained to do. That meant conducting background investigations of Army personnel being considered for a security clearance. Since I had been investigated this way for my enlistment into the Intelligence Branch, if I ended up assigned to do this kind of work, I feared I would have a safe, but terribly boring, circular trip in the Army.

Towards the end of my time at Intelligence School, a major assigned to the Office of the Assistant Chief of Staff for Intelligence at the Pentagon addressed our class. His job was to describe the organization of the Army's Intelligence Branch worldwide and the nature of available counterintelligence assignments.

When the major wound up his tour d'horizon of the Intelligence Branch realm, he closed by saying that if anyone needed to know anything further, he'd be happy to talk to him after he returned to his Pentagon office. I'm sure he thought nobody would ever actually pick up the telephone and try to take him up on his offer. However, I was so unnerved by the prospect of terminal boredom for the better part of the next three years that several days later, I called his office from a Fort Holabird pay phone. The phone was answered by a sergeant in the major's office. I explained that I was a student soon to graduate from the Intelligence School and that I was taking up the major's offer

to personally discuss my assignment options. I was no doubt the first student that ever tried to take the major up on his offer, because the sergeant was clearly taken aback. However, he couldn't very well tell me the major had made a mistake and now couldn't be bothered seeing me.

The upshot was that when I hung up the phone, I thought that I had secured an appointment with the major in the Office of the Assistant Chief of Staff for Intelligence the next week. I also thought it was going to be easy getting there, as the major's Pentagon office was relatively convenient and only an hour down the turnpike from Baltimore. However, I still needed permission from my Fort Holabird superiors to absent myself from class and leave the fort. Up the chain of command I went with my request for a temporary leave. It turned out to be one hurdle after another. There were probably four or more levels that had to clear this, and it went all the way up to the fort commander himself.

It was a struggle at each level. Normally, they all would have instinctively squashed my request just because it was unusual, and hence out of bounds. Didn't I know there was a war on? However, every approval step ultimately caved in. I had been careful to note the Pentagon major's promise in my request for a temporary leave of absence, so, like the sergeant, they all grudgingly acceded to the request rather than buck their own higher-ups.

Needless to say, with my fate in the immediate years ahead completely up in the air, I allowed plenty of time to drive my second-hand 1964 Volkswagen Bug down the Baltimore-Washington turnpike to the Pentagon. The last thing I wanted to do was be late for my appointment. Unfortunately, I hadn't given thought to how and where I might park when I got there. There is no street parking at the Pentagon, which is encircled by intersecting and confusing freeways. To accommodate members of the 26,000 Pentagon workforce that drive their cars to work, the building is surrounded by massive parking lots on several of its five sides. As I quickly discovered, almost all of this parking was clearly marked as reserved for those with parking permits, and it took a long time for me to finally find that there were only two or so aisles reserved for visitors. To

make things worse, there was a long queue of cars in line waiting for the occasional space there to open up. With the clock ticking and eating away at my time cushion, I got in line and began to inch forward.

It seemed like forever, but I finally got to the head of the line of cars waiting their turn to pull into the visitors' aisle. As another car finally left, and I began turning into the aisle to park in its space, a car driving by in the opposite direction on the lot's perimeter rudely swung in front of me and attempted to jump the line. As I rolled down my window to yell at the offender, I recognized the driver. It was my good friend from graduate school days at the University of Chicago, Jan Grayson.

My anger quickly dissipated as we both pondered the oddness of our meeting. He told me he was in the Army Reserves in a biological warfare unit that had a meeting at the Pentagon. Under the circumstances, I decided to forgive him when I understood he knew even less than I did about the parking challenges at the Pentagon. I took him at his word when he promised to never cut me off in the visitors' parking lot again. Further proof of my charitable nature came when I asked him years later to be my son Pat's godfather.

When I finally got inside the Pentagon for my meeting, the sergeant said something had come up, and the major was tied up. He told me he would be meeting with me in his stead. My argument to the sergeant was simple. I told him I was older than almost all of the Intelligence School trainees and had college, law school, and a year of private law practice under my belt. I said it might benefit both me and the Army if there was an assignment for me that could make use of this specialized training. He pulled my class roster tacked to a bulletin board behind him and found my name on the list. Then he gave me the bad news.

He said all the assignments were pretty much computer-driven, and there was really no way my ultimate assignment could be predicted at that point. He politely thanked me for driving down to chat and told me to drive safely on my return to Fort Holabird.

While I was disappointed that I had been left still swimming in a sea of uncertainty, I did have the satisfaction of having at least taken a shot at influencing the nature of my next two and a half years in the Army.

Assignment to the 902nd Military Intelligence Group

Before long, assignment day arrived. Next to my name on the class roster was “902nd MI Group.” All I could find out about the 902nd was that it was an organization attached to the Office of the Assistant Chief of Staff for Intelligence of the Army and was located at Bailey’s Crossroads in Virginia, just west of the Pentagon.

I found out it was also a stabilized tour. I then knew I would be working in the Washington, D.C., area until I left the Army and that I would wear civilian clothes to work each day. Being in mufti instead of a uniform was an unexpected perk.

Not long before graduation at USAINTS, I drove down to Bailey’s Crossroads to where I was told the 902nd offices were. All I could find there was a small L-shaped suburban strip mall at a crossroads. I was certain I’d been given bum instructions either accidentally or on purpose as a ruse.

After graduation, I got a better address for the 902nd Headquarters where I was to report. Strangely, it was the same L-shaped strip mall I’d been directed to earlier.

This time I noticed there was a second story to the building on the mall’s west side with unusual antennas on the roof.

I also noticed that there was one nondescript entrance on the lower level with a glass door, but no store behind it. Instead, there was a narrow staircase leading up to who knows what on the odd second story. I passed multiple surveillance cameras as I climbed the stairs.

At the top, I found a Mr. Parkinson. He was a Department of the Army civilian, and the administrative chief of the office. I was

welcomed and told I would be technically attached to nearby Fort Meyer, assigned to the Counterintelligence Analysis Division of the 902nd, have an office elsewhere, and could rent an apartment with two other 902nd enlisted men anywhere we chose within commuting distance.

This was my introduction to the world of Army spooks.

CIAD in the CD of OACSI at DA in DC

In November 1968, the Counterintelligence Analysis Detachment (CIAD) of the Counterintelligence Division (CD) of the Office of the Assistant Chief of Staff for Intelligence (OACSI) of the Department of the Army (DA) in the District of Columbia (DC) was located in an obscure warehouse building off the beaten path of Bailey's Crossroads. The adjacent space was taken up by a Northern Virginia Community College automotive repair training workshop. A traditional mission of the 902nd MI Group, of which CIAD was a part, was maintaining security at the Pentagon. This had taken on greater importance following the October 21, 1967, antiwar march on the Pentagon. The march of 20,000 to 35,000 demonstrators had followed the 100,000 strong rally on the Mall by the National Mobilization Committee to End the War in Vietnam. This large demonstration against the Vietnam War was immediately chronicled when *Harper's Magazine* published Norman Mailer's 25,000-word article, "The Steps of the Pentagon," in March 1968. This piece later appeared as the epilogue to Mailer's Pulitzer Prize-winning antiwar book of New Journalism, *The Armies of the Night*.

Apart from physical security issues, since the Pentagon was the center of the nation's military establishment, the building always housed a motherload of military secrets the Soviet Union and other bad actors of the day were always targeting. As a result, part of the 902nd was colloquially referred to as "the night crawlers."

This group was largely made up of enlisted men who spent their nights patrolling the Pentagon corridors and offices looking for

security violations such as filing cabinets left unlocked. This was the kind of boring drudgery I mostly escaped at CIAD. However, I did get assigned once to one of these night crawler details. As soon as the day workers at the Pentagon departed, I began the rounds of a section of deserted offices looking for filing cabinets left unlocked and collecting the large striped paper trash bags filled with all the classified documents people had thrown out during the day. That was the night I learned the way to the Pentagon's municipal-grade furnace for daily classified document disposal.

The Counterintelligence Analysis Detachment, as the name suggests, didn't directly run any spies. It was instead in the business of digesting the production of pertinent intelligence gathered primarily by other Army and service intelligence units, the Defense Intelligence Agency, the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, among others. The goal was to sift through this production and cull out what pertained directly to performing the Army's designated counterintelligence missions.

A number of CIAD analysts were assigned to read and evaluate counterintelligence reports from Vietnam. During my time there, a young analyst with this job had the time to put two and two together in a way that wasn't possible for his time-pressed counterparts in Saigon. Though the details of his breakthrough were as usual kept under "need to know" wraps, the CIAD chief organized a small party to celebrate and honor my colleague. Thanks to his careful analysis of the counterintelligence traffic crossing his desk, he had pretty much single-handedly caused a North Vietnamese spy ring in Saigon to be rolled up.

When I began my day-to-day work at the Pentagon, my lowly rank as an enlisted man was disguised by my civilian dress. The point of this was to let me freely interact with the many uniformed senior officers I was working with by eliminating rank from the interaction. Being in my mid-20s at this point, these soldiers were not only all senior to me in age. As I also quickly learned, their Pentagon slots were frequently either pre-retirement, capstone assignments at the end

of 20 years of service or waystations to major command responsibilities elsewhere in the Army's global footprint.

A further element that distinguished these senior officers from me was the fact that many had just rotated into the Pentagon from wartime combat assignments in Vietnam or other Cold War hotspots. At one time or another, many of these men had come from leadership roles that had directly exposed them to the random death and destruction inherent in wartime combat, the very combat that I had intentionally tried to steer my military career away from.

One of these men that I became particularly close to was a Lieutenant Colonel his late 40s at the end his Army career. He had grown up in a working-class Boston family, and his Boston accent had not diminished during his nearly two decades in service. I was aware he had recently returned from leading combat troops in Vietnam. Being curious, when I had an opportune moment with him one day, I asked him what struck him most about his own particular wartime service. While he had at least one Vietnam tour of duty behind him, and maybe two, he spoke to me of only a single incident.

He said at one point he was in command of soldiers looking for members of another unit that had recently gone missing after a battle. He described how they made their way through thick vegetation until they came to a clearing with a devastating scene. "There they were --- the men we were looking for. They couldn't be rescued at that point, because they were all dead. As we got closer to their corpses, I could figure out what happened. They had been captured by the Viet Cong but hadn't been kept long as prisoners. They'd been lined up and shot with a bullet to the back of their heads."

"What did you do?" I asked. "Obviously, I directed my guys to begin to gather the remains, so we could bring them all back." As he went on, he spoke more slowly and began to weep, "My guys were mostly just kids 18 or 19, and here they were looking at this absolutely horrific scene. But they knew they had a job to do, and they went about that job methodically, like adults, but stone-faced. I was so proud of them. And they were only 18 and 19-year-old kids doing this kind of thing!" When he stopped talking, he was crying. Thinking

about him reminds me that it isn't only the dead who pay a price in wartime. Those that may be ineligible for a Purple Heart can bear a painful psychic scar. Often, one that can last a lifetime.

Some parts of the 902nd's duties, like Pentagon security, never changed much. But race riots, which had racked the country in 1919 and 1943, were recently back on the Army's agenda. In the summer of 1967, right before the march on the Pentagon, the Regular Army had been called into Detroit by the Michigan Governor and the President to help quell its violence.

After the Detroit riot and the march on the Pentagon, the recent takeaway for the Army was that it needed to be much better prepared for a continuing period of civil and racial unrest.

The Vance Report

Following the Detroit riot, former Secretary of the Army Cyrus Vance (then serving as Special Assistant to the Secretary of Defense Concerning the Detroit Riots) prepared a study to reassess the Army's preparedness for this new role.

The *Vance Report* had concluded that the use of the Army to help control antiwar demonstrations and racial disturbances wasn't an isolated, one-off mission, and the requirement wasn't going away any time soon.

An abstract of the Report's lessons learned reads:

Based on the experiences in Detroit, where rioting and lawlessness were intense, it appears that rumors are rampant and tend to grow as exhaustion sets in at the time of rioting. Thus, authoritative sources of information must be identified quickly and maintained. Regular formal contact with the press should be augmented by frequent background briefings for community leaders. To be able to make sound decisions, particularly in the initial phases of riots, a method of identifying the volume of riot-connected activity, the trends in such activity, the critical areas, and the deviations from normal patterns must be established.

Because the Detroit disorders developed a typical pattern (violence rising then falling off), it is important to assemble and analyze data with respect to activity patterns. Fatigue factors need more analysis, and the qualifications and performance of all Army and Air National Guard should be reviewed to ensure that officers are qualified (National Guard troops in Detroit were below par in appearance, behavior, and discipline, at least initially). The guard should recruit more blacks (most of the Detroit rioters were black), and cooperation among the military, the police, and firefighting personnel needs to be enhanced. Instructions regarding rules of engagement and degree of force during civil disturbances require clarification and change to provide more latitude and flexibility. Illumination must be provided for all areas in which rioting is occurring, and the use of tear gas should be considered. Coordination at the Federal level to handle riots is emphasized. Appendixes include a chronology of major riots, memos, a Detroit police incident summary, police maps of Detroit, and related material.

Secretary Vance's report came out in early 1968, just before race riots had exploded in Black neighborhoods of 130 cities after the assassination of Dr. Martin Luther King Jr. on April 4. Many states called up their National Guard troops to join police in bringing the rioting and looting under control. Simultaneously Regular Army troops had to be flown or trucked into Baltimore, Washington, D.C., and Chicago from various Army bases. In all cases, they had to back up overwhelmed police and National Guard security forces. In the middle of the Vietnam War, this was not a mission for which the Army was either structured or prepared for. Two months later, the sense of mayhem in the country increased further when Presidential candidate Robert Kennedy was assassinated in Los Angeles.

I was familiar with this new problem for the Army, since right before I enlisted, I had watched Chicago's west side erupt in flames from my Loop office window, and later directly witnessed some of the rioting firsthand with my brother, Dick, who worked for the City's Human Relations Commission. I also monitored bail and other court proceedings involving rioters at the Criminal Courts building at 26th Street and California Avenue.

In this period, Regular Army troops were bivouacked near the Museum of Science and Industry in Chicago's Jackson Park. The next month I was in the Army, and six months after that, I was again engaged with civil disturbances.

During the summer of 1968, Chicago remained in turmoil. Though Regular Army troops had left and returned to their barracks, violent anti-war demonstrations continued to wreak havoc on the city. Rampaging groups of demonstrators before the Democratic National Convention that August brought out the Chicago police in full force as well as the Illinois National Guard.

My brother Dick remained in the middle of this activity. His Report to the Director of the Chicago Human Relations Commission provided a detailed account of the anti-war demonstrations and violence he witnessed between August 24 and 28, 1968. The Report gives a street-level view of the disturbances in both Lincoln and Grant Parks. The final confrontation between the demonstrators and police and National Guard in front of the Hilton Hotel took place during the Democratic Convention's proceedings and provided a violent backdrop to its nomination of Hubert Humphrey to run against President Richard Nixon that fall.

In 1964, there had been race-related riots in Harlem and Philadelphia. In 1965, the Watts neighborhood of Los Angeles had seen a major race-related riot. Chicago, Cleveland, and San Francisco saw riots the next year. Then in 1967's "Long Hot Summer," a total of 163 cities were enflamed, including Atlanta, Boston, Buffalo, Cincinnati, Detroit, Milwaukee, Newark, New York, and Portland. Following Dr. Martin Luther King's assassination in 1968, President Johnson dispatched Regular Army troops to Baltimore, Washington, and Chicago to supplement overwhelmed police and National Guard.

In the aftermath of these troop deployments, President Johnson created the National Commission on the Causes and Prevention of Violence.

With the nationally televised violence directly in the political realm later that year at the Democratic Convention, the Commission had

delegated to Daniel Walker, later Illinois governor, the job of undertaking a study of the violence surrounding the Convention.

The Walker Report was formally titled *Rights in Conflict: The Violent Confrontation of Demonstrators and Police in the Parks and Streets of Chicago During the Week of the Democratic National Convention of 1968*.

It found there had been a “police riot” in addition to violence on the part of more than 10,000 anti-war demonstrators.

In *The Walker Report*, you will find a picture taken by a *Time Magazine* photographer of my brother, Dick, about to remove a burning trash basket blocking traffic in the middle of La Salle Drive at the south end of Lincoln Park.

If not for Dick’s ever-present pipe sticking out of his mouth, I might not have recognized him or taken him to be one of the demonstrators, rather than an observer from Chicago’s Commission on Human Relations.

Directorate of Civil Disturbance Planning and Operations

One of Vance’s recommendations after Regular Army troops had been sent to quell the extreme violence in Detroit in 1967 was to create a joint service command unit to oversee the mission of controlling civil disturbances when the Army was called to deploy troops by a Governor and the President. Thus, was born the Department of Defense’s Directorate of Civil Disturbance Planning and Operations. DCDPO had an Army Lieutenant General in command, with an Air Force Major General as his Deputy.

Immediately prior to my arriving at CIAD, the then-classified *Department of the Army Civil Disturbance Plan* (Code Name: Garden Plot) was published on September 10, 1968. In a strange coincidence that arose later, Garden Plot’s author and the first head of DCDPO I worked for was Gen. George R. Mather. After my brother Dick’s divorce, Mather’s son later became my niece and nephew’s stepfather. The good General went on to retire from the Army at the same time

I did. However, while I left as a Sergeant, he wrapped up his distinguished Army career with four stars after leaving DCDPO to serve as head of the Army's Southern Command.

When I began my work at CIAD in November 1968, I was given the task of reviewing domestic intelligence relating to the likelihood of DCDPO being asked to again deploy troops to American cities. With this background in mind, I was assigned to provide intelligence needed by DCDPO for both planning and operational purposes. My reading diet for this task included classified government documents which were primarily and voluminously produced by the FBI, and to a lesser extent the Army. I found open-source, non-classified material was usually of more utility than the classified sources in making judgements about whether and when Regular Army troops needed to be alerted for possible deployment.

By the mid-1970s I was back in civilian life, and the country had become considerably calmer. I imagine DCDPO withered away with the changing times, and a half-century would have to pass before the country again saw the widespread civil unrest of the early 2020s.

Bernardine Dohrn - The SDS Revolutionaries Then and Now

In summer 1968, I had been going through the Army's Intelligence School at Fort Holabird, and that fall I had been getting my arms around providing intelligence assessments to the Directorate of Civil Disturbance Planning and Operations on the likelihood of Regular Army deployments to assist in controlling racial unrest. In this short period of time, another major factor began to enter into my professional purview besides the continuing deterioration of race relations in the country. This new factor had a lot to do with what one of my University of Chicago Law School classmates had been up to in her year since graduation.

Bernardine Dohrn had earned her undergraduate degree from the University of Chicago and had been one of the small number of

women who entered the University's law school with me in fall 1964. Our law school class had 150 incoming students. While most of the first-year students wore trousers, Bernardine stood out with both her miniskirts and her politics.

The summer after our second year in law school, my brother Dick was working for the City's Commission on Human Relations. A large rent strike with racial overtones was underway at the former Marshall Field apartment complex in the city's Old Town neighborhood. I was interested in landlord/tenant law reform at the time, so I took my brother up on his invitation to join him in looking at what was going on. At the site, I found my classmate Bernardine by the picket line. While I was there out of a largely academic interest, Bernardine explained she was there to directly assist the cause of the rent strikers and show her solidarity with the tenants.

The only other law school contact with Bernardine I recall was when I pulled a group of classmates together to help prepare a traditional third-year spring skit. The goal of the exercise was always to relieve some of the tensions of upcoming final exams by poking fun at student obsessions of the day and making sport of notable faculty. I'm not sure why Bernardine turned up, because she found absolutely no humor in any of the subjects put on the table for discussion and took no further part in the effort. While I was in no position to conclude from this that Bernardine was humorless, looking back on much of the language Bernardine later came to use, it occurred to me that it might be difficult to find anything to laugh about if you're a Marxist-Leninist revolutionary committed to using violence to overthrow the U.S. Government because it's a racist, imperialist, capitalist, misogynist, and xenophobic regime with its white supremacist jackboot on the oppressed necks of the under trodden.

Following graduation from law school in 1967, Bernardine took a job organizing law students for the left-wing National Lawyers Guild and became active in the Students for a Democratic Society (SDS). In June 1968, just as I entered Intelligence School, she became the Inter-organizational Secretary of SDS, and just three months later, SDS played a role in the violence that broke out in Chicago during

September's Democratic National Convention. The ensuing battles of anti-war demonstrators with police and National Guard in the Convention's run-up drew a worldwide television audience.

In December 1968, Bernardine helped lead a celebration in New York City of *The Guardian* newspaper's 20th anniversary. *The Guardian* had a Maoist bent and was then a prominent weekly organ of the New Left. Her co-host at the gathering was Herbert Marcuse, a leading academic philosopher of revolutionary upheaval then teaching at the University of California, Santa Barbara. In her remarks, Bernardine denominated Marcuse as "the ideological leader of the New Left." Marcuse in his own remarks went on to envision the New Left's coming "political guerrilla force."

In this increasingly roiled political atmosphere, large scale anti-war demonstrations and anti-government violence in the form of bombings and arson events began to loom large as I prepared my estimates on the likelihood of the President having to deploy Regular Army troops in a civil disturbance control mission. Indeed, in one 18-month period in 1971-72 alone, over 2,500 domestic bombings were cataloged. This new development of broad-scale political unrest joined the extant racial violence as possible contributors that might call for Regular Army troops to supplement police and National Guard forces in a domestic peacekeeping role.

In June 1969, Bernardine Dohrn led a split in the SDS at its national convention in Chicago and, in an accompanying manifesto, Bernardine and her Third World Marxists group in SDS advocated street fighting as a method for weakening U.S. imperialism. The Third World Marxists presented a position paper titled "You Don't Need a Weatherman to Know Which Way the Wind Blows" in the SDS newspaper, *New Left Notes*. The position paper title was taken from a song by Bob Dylan and argued that Black liberation was central to the movement's anti-imperialist struggle. It explained the need for a white revolutionary movement to support liberation movements internationally. The manifesto became the founding statement of the SDS Weatherman faction. The Weather Underground, as the hard-core group soon called itself, quickly became responsible for what it called the Days of Rage violence in Chicago in October 1969. The

premise for this mayhem was the commencement of a criminal trial of the Chicago Seven, leaders of the Chicago Convention violence the prior year. Not long after this, the Weather Underground followed with bombings of the United States Capitol, the Pentagon, and several police stations in New York, as well as a Greenwich Village townhouse explosion in New York City that killed three Weather Underground members. Along the way, Bernardine was quoted as announcing, "I consider myself a revolutionary communist."

With these events unfolding, Bernardine appeared as a principal signatory of the Weather Underground's "Declaration of a State of War" in 1970. This document formally declared "war" on the U.S. Government. Having confirmed the group's dedication to revolutionary violence, Bernardine went on to record the declaration and send a transcript of it to *The New York Times*. In my role providing intelligence support to DCDPO, among other open and classified materials, I read a steady flow of Federal Bureau of Investigation reports on internal security matters. For decades the FBI had focused its counterespionage and countersubversion resources on the Communist Party of the United States.

By the late 1960s, however, CPUSA, as the acronym had it, had faded in the priority list of targets. It had been displaced in importance by what was termed by the FBI as the New Left. So it was that a little over a year following my law school graduation, fat FBI dossiers on my classmate Bernardine Dohrn and her later husband, Bill Ayers, landed on my desk in the new Army Operations Center. These reports on Dohrn and Ayres were typical background compilations. As the pair's bent towards violence increased, so did the FBI's surveillance activities. In a major embarrassment for the FBI, the government's misconduct and overreaching in this regard resulted in them escaping punishment for the serious criminal charges they faced.

Bernardine Dohrn Revisited

The Weather Underground Days of Rage battles with police in Chicago in October 1969 had produced a count of three shot and

more than three hundred demonstrators arrested. Ready to plan next steps, Bernardine helped organize a “war council” for the group in Flint, Michigan, at the end of the year. Not surprisingly at this point, the FBI had been able to infiltrate a confidential informant into the proceedings. In remarks attributed to her, Bernardine is said to have made passing reference to the recent Los Angeles murders of movie director Roman Polanski’s wife, Sharon Tate, and four others by cult followers of Charles Manson: “Dig it! First, they killed those pigs, then they ate dinner in the same room with them. They even shoved a fork into the victim’s stomach! Wild!”

In a further sign of how far out revolutionary fantasies were becoming, the FBI informant reported on conversations on the need down the road to establish post-revolution reeducation centers in the Southwest when the time came to turn recalcitrant capitalists into right-thinking supporters of the new order.

About the same time the Flint war council was going on, I had the duty as agent for my law school class to solicit my classmate Bernardine for an alumni contribution. Under the circumstances of the day, I’m sure you can appreciate why I thought this was likely a bridge too far. Nonetheless, I dutifully wrote to her at her last known address and made the only argument I thought might elicit a contribution. I told her any amount she could afford would go to buy out the teaching contract of a widely unpopular law professor. My ploy failed when my letter was returned as undeliverable.

I was not the only one trying to get in touch with Bernardine at the time. On March 17, 1970, a federal arrest warrant was issued charging her with interstate flight to avoid prosecution for mob action, riot, and conspiracy. Though FBI Director J. Edgar Hoover put her on the FBI’s 10 most-wanted list, Bernardine was nowhere to be found. She had gone to ground.

Though Bernardine was on the lam and out of sight, she made sure the Weather Underground was not completely out of mind. In 1974, she, Bill Ayers, and Jeff Jones published 40,000 copies of their manifesto, *Prairie Fire*, so called from Mao Zedong’s revolutionary slogan, “a single spark can start a prairie fire.” Distribution was made

through college bookstores, left-wing organizations, and similar outlets likely to reach their most sympathetic audience. *Prairie Fire* laid out the then-radical idea that the underlying principles of the American Revolution were capitalism, racism, sexism, imperialism, and colonialism. It also explained that white supremacy was being perpetuated “by the schools, the unemployment cycle, the drug trade, immigration laws, birth control, the army, the prisons,” and “white-skin privilege.”

With the bombing of government targets a then-failed strategy for the revolution, the new strategy laid out in *Prairie Fire* was to focus on America’s educational system. The manifesto called on radical teachers to coalesce as an “anti-racist white movement” within the educational system to radicalize other teachers and bring about a completely new educational environment for the students in their charge.

In his book *America’s Cultural Revolution*, conservative author Christopher Rufo observed that though the *Prairie Fire* tract didn’t revive the fading New Left in the 1970s:

Over time it would become the entire vocabulary of American intellectual life: “institutionalized racism,” “white supremacy,” “white privilege,” “male supremacy,” “institutional sexism,” “cultural identity,” “anti-racism,” “anti-sexist men,” “monopoly capitalism,” “corporate greed,” “neocolonialism,” “Black liberation.”

The next year Bernardine surfaced again, this time as the author of a Weather Underground magazine article “Our Class Struggle.” It was said to be based on a recent speech given to Weather Underground cadres. While some precincts of the New Left had tended by this time to play down some of the traditional communist party rhetoric as beginning to sound out of step and old fashioned, this article was certainly a reversion to the older Marxist-Leninist argot:

We are building a communist organization to be part of the forces which build a revolutionary communist party to lead the working class to seize power and build socialism. ... We must further the study of Marxism-Leninism within the WUO [Weather Underground Organization]. The

struggle for Marxism-Leninism is the most significant development in our recent history. ... We discovered thru our own experiences what revolutionaries all over the world have found—that Marxism-Leninism is the science of revolution, the revolutionary ideology of the working class, our guide to the struggle ...

By 1980, Bernardine and her Weather Underground cohort Bill Ayers were raising children and were tired of the underground life. They surrendered. Bernardine pleaded guilty to misdemeanor charges of aggravated battery and jumping bail but served no time for these offenses. Bill Ayers faced more serious charges, but they were dismissed on grounds of government misconduct.

The later career trajectories of Dohrn and Ayers put truth to the observation made by Paul Buhle, a scholar from the left. In his book *Marxism in the United States*: “To the question: ‘Where did all the sixties radicals go?’ the most accurate answer would be: neither to religious cults nor yuppiedom, but to the classroom.”

True to this form, though never admitted to practice law in any state, Bernardine went on to teach in the clinical practice of Northwestern University Law School in Chicago. Bill Ayers went on to teach in the education department of the University of Illinois Chicago. They receded from the public eye for years but roared back into the headlines in 2008 when Barack Obama ran for president, and it was revealed that one of his early backers was Ayers.

Both were retired teachers in spring 2022 when Bernardine unexpectedly turned up with Ayers at the 55th reunion of our University of Chicago Law School’s Class of 1967.

As the frequent emcee of these gatherings over the decades, it fell to me to introduce Bernardine as the main speaker. Bernardine talked about her career at Northwestern law school and then took questions from her classmates.

Still present in the answers to her classmates’ questions was the woman who saw white supremacy and racism as primary causes of her world’s ills.

However, for those classmates paying close attention, there was something new to be heard: hints of misgivings. In a late in life stab at self-abasement, Bernardine even allowed as how perhaps she might have done some things that weren't "perfect."

Arrogance and white supremacy?

"I'm saying we were part of the problem. I was, I think, by that arrogance, and by that sense that we could will our way into a changed society. But I also think that the depth and virulence of white supremacy is very much here right, right at our hands."

Consequences and self-righteousness?

"I was so certain about some things that I forgot to stop and look at what the consequences were of what we were doing. I think we pulled back from the brink. We, you know, that part of the movement. But I think that the cost of self-righteousness is certainly high."

Risky business and not exactly sorry?

"You know, I made the decision that waking up the American people about particularly the war in Vietnam ... But I felt that the other piece about white supremacy wasn't getting the same amount of attention. ... So, we felt that that it was essential to kind of hurl ourselves into solidarity. I'm trying to think of the language that we used and what I felt at the time. And in a way, I'm not exactly sorry for that. I think that we were lucky. We tried to be very careful. We didn't kill anyone, but what we did was dangerous. I don't know what other word to use for it. We worked very hard to make it about property damage, and kind of a scream and wake-up to what was happening, but not to hurt anyone. And you know, I realized as an old lady how risky that was. And I don't claim that it was even the perfect thing to do, just saying what we thought we were doing."

It has been 60 years since Bernardine Dohrn and I entered the University of Chicago Law school in 1964. Most law school students by the time they graduate understand that one role of lawyers in society is to serve as conflict resolution professionals helping to work through human disagreements peacefully within a system of laws. In

an unusual way after law school, Bernardine took the opposite path and became a prominent instigator of broadly based social violence aimed at destroying our democracy and replacing it with an authoritarian Marxist state.

In her answers to the questions of her reunion classmates, she couldn't seem to bring herself even to clearly acknowledge that the bombing of Congress, and police stations was wrong. Bernardine explains in justification of her actions, that you had to understand there was a war going on she didn't agree with, and "white supremacy" was afoot. The most she can say as to the error of her ways is that she doesn't claim that what she did was "even the perfect thing." She also goes so far as to say she participated in "risky business," but "I'm not exactly sorry for that," and "we didn't kill anyone."

In her middle and later years, Bernardine worked in a more productive way by engaging with young people involved in the criminal justice system. Fair enough, but for me it didn't reset the scales in my opinion of her earlier political radicalism. I believe her life of violence in the 1960s and '70s badly damaged the country at the time, and that some of the scars of her excesses are present with us still.

The Army Operations Center (AOC)

The 1967 emergency deployment to Detroit had caught the Army by surprise, and Secretary Vance had also recommended that a new war room in the Pentagon be built to coordinate up to 25 simultaneous deployments of Regular Army troops to American cities. And so was built the new Army Operations Center (AOC).

I remember being on duty in the new AOC in January 1969 when President Richard Nixon was being sworn in. With the country on edge in the aftermath of the riotous Democratic Party convention in Chicago the preceding fall, the seat of the federal government was a

constant target for antiwar demonstrators, and the frequency and size of their gatherings in Washington were increasing. The AOC was in a subbasement Pentagon space. Built as a duplex war room with ancillary offices, its entrance was guarded day and night and restricted to those with proper security clearances. On one side of the two-story war room atrium was a glassed-in command balcony where civilian and military decision makers sat. From this perch they could look down upon the military worker bees at their desks on the floor below, or they could look straight across the atrium at the wall opposite.

This wall was filled with several large projection screens showing maps and troop positions. Other screens could display any live television coverage of ongoing demonstrations.

In standard military fashion, operational briefings in the AOC began with a uniformed Air Force officer giving the weather report. Addressed always as Mr. Bowe, with no indication of rank, I would follow in civilian dress with the intelligence report. As you might expect, the most useful intelligence had to do with the expected size and likely activity of demonstrators. For this purpose, widely available, non-classified newspapers and other common publications were a primary source I used to build my estimates.

The Air Force weather officer and I would precede the operations portion of an AOC briefing. All speakers would deliver their remarks from glass briefing booths on either end of the upper level of the AOC. The briefers were visible to the adjacent command balcony, and, because the pulpit-like booths jutted out a bit over the lower level, briefers were also visible to the joint service officers coordinating information on the lower level. The only thing I had seen like this was the isolation booth Charles Van Doren was in when he answered questions on the rigged Twenty-One television quiz show in the late 1950s, and the bulletproof glass cage where Nazi Adolf Eichmann stood when he was on trial for war crimes in Israel in 1961. While the AOC was a state-of-the-art war room for 1968, later decades made it in retrospect look like a modest starter home compared with the McMansion war rooms that became all the rage.

I always thought Van Doren and I did better than Eichmann after we left our respective glass booths. Eichmann, of course, got the noose, but both Van Doren and I later in life worked on a Greek-language publishing project that Van Doren had initiated at Encyclopaedia Britannica. This was shortly before he retired and I arrived. Years later, when Van Doren came to Chicago in 2001 for his mentor Mortimer Adler's funeral, I mentioned to him that I had inherited this last project of his.

The AOC could be a strange place at times. In December 1968, I saw accused mass murderer Lieutenant William "Rusty" Calley, Jr. in the AOC. I had my desk at the time in the AOC, and one day after lunch, as I came in past the security desk at the entrance and entered the complex, I happened to glance to my left into the anteroom. There, looking very much alone, sitting by himself at a small table, was Calley. I recognized him immediately. His time in Vietnam had landed him on the cover of both *Time* and *Newsweek* that week. With the tragic My Lai Massacre all over the press, he had been sequestered for interrogation by the Army in the safest out-of-the-way spot it could find for him, the AOC.

Sometime in 1969, before I got my office in the AOC, CIAD had moved from our windowless quarters next to the Northern Virginia Community College's automobile shop to more upscale quarters in the Hoffman Building office complex in Alexandria, Virginia. This building had plenty of light, was near the beltway, and was close to the Wilson Bridge over the Potomac. While I had a desk there for the duration, I was spending most of my time in either the AOC or another Pentagon office.

Another space at the Pentagon that I rotated through daily was entered through a nondescript door on a busy corridor on one of the Pentagon's outer rings. I was moving up in the world. Having started with an interview in OACSI's lowly assignment office, I had moved up to a first-class basement duplex with the AOC. Now I had been promoted part of the day to an above-ground cubby hole in one of the prestigious outer rings.

In this easily overlooked spot in a highly trafficked hall, one indistinctive door led to a small reception area. I regularly had on a neck chain my Army dog tags, my Pentagon ID, my Hoffman Building ID, my AOC ID, and an ID for this area. Behind the door's guard was an inner sanctum of windowless offices. This space was where highly compartmentalized, secret intelligence information collected by various foreign and domestic intelligence agencies could be viewed. It was interesting stuff to plough through daily, but rarely bore directly on my main job of preparing and delivering written and oral briefings on the likelihood of demonstrations or civil disturbances.

The Blue U and CIA Training

In June 1969, just as I turned 27, I was selected to join a dozen other Army counterintelligence agents at a special school conducted by the Central Intelligence Agency's Office of Training. The focus of the two-week course was a survey of worldwide communist party doctrine and organization. Being designed for counterintelligence agents, the survey explored both open and underground tactics used to expand communist power and influence. I had been a political science major in college, concentrating on international relations in the 20th century, so some of the curriculum was more entry level than not from my point of view. The most interesting of the topics covered for me was the examination of Soviet and Chinese intelligence agency organizations and tactics.

As was true for the Safeguard Anti-Ballistic Missile System Security Group I later joined, this activity took place in an Arlington, Virginia, office building. Now long gone, the building then was known colloquially as The Blue U for its unusual color and shape. I found that my first day of school at The Blue U was a lot like my first day trying to find the 902nd MI Group headquarters. I had general directions to get there, but no idea of what I'd find when I actually set foot in the place. The CIA training activity was under what was called "light cover" inside the Blue U. It seemed from the lobby directory

that the building housed a variety of routine, non-intelligence Defense Department activities. There were Army and other service functions listed in the lobby directory, but nowhere did I see the CIA school listed. That's because it was operating under an innocuous and forgettable pseudonym like "Joint Military Planning Office." I got in the elevator with a handful of others dressed in both uniforms and civilian clothes and pushed the button for my floor. At each floor the elevator stopped, and people got off as normal. However, when we got to my floor, those left on the elevator with me immediately pulled out previously hidden identification cards. The result was that when the elevator door opened on the top floor, and an armed guard immediately confronted us, everyone else already had an ID out. They were the regulars, and I was obviously the newbie.

The office had lots of closed doors on both sides of narrow corridors. None of the doors had names or any indication of what functions lay within, so it was more than a little spooky.

It turns out another member of my extended family also spent time in The Blue U. Years later, I was visiting my cousin John Bowe and his wife, Kathie, at their summer home in Cape Porpoise, Maine. Kathie Bowe's brother Allan joined us for dinner one evening, and before long we found out we had both done time at The Blue U. While I was a student employed by the Army, he had been a teacher there employed by you know who.

The Safeguard Anti-Ballistic Missile System

Though large antiwar demonstrations and racial disturbances were a common part of the American scene when I was in the Army between 1968 and 1971, they weren't demanding all my time by any means.

One project that I devoted a lot of time to in 1969 was a counterintelligence study related to the Army's Safeguard Anti-Ballistic Missile (ABM) System under development. I was appointed to a working group in downtown Arlington, Virginia, tasked with

understanding the counterintelligence issues associated with the Army's new Safeguard ABM system. Safeguard was a successor to earlier Nike missile systems.

Nike had been designed to intercept Soviet nuclear bombers. Safeguard was to defend against intercontinental ballistic missiles (ICBMs).

My contribution to the group's work was to make a detailed analysis of the possible espionage and sabotage threats to the Safeguard system's functionality.

Huntsville, Alabama, and the Army Missile Command

As I thought about what it would take to do the counterintelligence study correctly, it quickly became apparent that I needed to get out of the Pentagon and talk firsthand to the people who were or would be designing, building, testing, and operating the Army's new high-tech weapons system then under development.

This meant I had to travel first to the Redstone Arsenal in Huntsville, Alabama, at the time the headquarters of the Army Missile Command. Next, I needed to go to the North American Air Defense Command (NORAD) in Cheyenne Mountain, near Colorado Springs, Colorado. The NORAD part of the trip was key for me to understand how the system was designed to operate in wartime conditions. Finally, I needed to travel to Kwajalein Atoll.

What was then known as the western terminus of the U.S. Pacific Missile Test Range is today called The Ronald Reagan Ballistic Missile Test Site. In 1969, the Safeguard ABM system's radars and Sprint and Spartan missiles were being tested there.

As expected, I learned a great deal at my first stop at the Redstone Arsenal in Huntsville.

NORAD and Cheyenne Mountain

My following visit to Cheyenne Mountain and NORAD's Headquarters wasn't just interesting and useful. It turned out to be absolutely fascinating as well. NORAD was a joint U.S.-Canadian command that had begun in the 1950s with its backbone being the Distant Early Warning (DEW) line of radars across the Canadian tundra. By 1969, when I received my NORAD Mission Briefing, it was already tracking space junk, and reorienting its mission from defending against the earlier era's nuclear-armed Soviet bombers to defending against Soviet nuclear-tipped ICBMs. Today, NORAD describes its missions this way:

Aerospace warning, aerospace control and maritime warning for North America. Aerospace warning includes the detection, validation, and warning of attack against North America whether by aircraft, missiles, or space vehicles, through mutual support arrangements with other commands.

You entered the NORAD complex by being driven deep into a tunnel under all-granite Cheyenne Mountain, just outside of Colorado Springs, Colorado. Getting out of the vehicle, you had to pass through two enormous blast doors. They were designed to keep those inside the doors safe from the radiation and blast effects brought about by nuclear warheads hitting the mountain. Through the blast doors, a short tunnel took you into an enormous cave-like chamber. In it were multi-story prefabricated offices rising to the cave ceiling many stories above. These office structures sat on large I-beams on the cave floor. All the communication, water, and power utilities fed into the office structures through giant spring connections on the I-beams. The whole design was to permit the structures to ride out a nuclear attack on the mountain complex without its functionality being knocked out.

In James Bond parlance, this was to make sure that, in the event of a nuclear attack on NORAD's mountain headquarters, those working within would be stirred, but not shaken. My early education here regarding space-related defenses was a preview of what we would all come to see in later years. Today, space is doctrinally and

organizationally recognized as its own theater of war. But official recognition of this evolution didn't occur until recently, a full 50 years after my visit to Cheyenne Mountain. It was only in 2019 that the President and Congress shifted the mission of ballistic missile and satellite defense to our newly created U.S. Space Force.

Johnston Atoll and the Origins of Space Warfare

I knew Kwajalein was going to be a very different place, but I didn't understand that getting there would turn out to be a surprise, too.

Northwest Airlines, with its distinctive fleet of red-tailed passenger jets, had a contract with the government to fly military personnel and civilian contractors with security clearances from Hickam Air Force Base in Honolulu, Hawaii, west to Kwajalein Atoll in the Marshall Islands. I knew how long the non-stop flight to Kwajalein was going to take, so I was surprised when we suddenly began descending well short of our destination. There was no engine malfunction, so why land in the middle of the Pacific if you didn't have to? I had no desire to emulate Amelia Earhart, so I was increasingly nervous about what might be an unexpected descent into oblivion.

My anxiety was quickly relieved when the pilot came on the squawk box to say we should buckle up for landing to refuel at Johnston Atoll. The runway at Johnston seemed only about as long as the atoll itself, leaving no room for error on the pilot's part. I stared out the airplane window in awe as we decelerated, finally rolled to a stop, and then taxied back to the other end of the runway to deplane.

Though my visit was short, Johnston Atoll ended up being one of the strangest places I have ever been to in my life. It's a small, isolated, and currently uninhabited atoll in the vastness of the south-central Pacific, and it lacks natural access to any fresh water. Despite these impediments to human habitation, I later learned that Johnston Atoll had a long, if fitful, history of human habitation before my

arrival in late August 1969. Indeed, there was a period when over 1,000 personnel, some accompanied by their families, lived on Johnston Atoll. These folks were working on extremely dangerous military projects in the highest level of secrecy.

Johnston's history started late. In 1796, the Boston-based brig "Sally" first discovered the atoll when it ran aground there while transiting the Pacific. The British ship HMS Cornwallis bumped into Johnston a few years later in 1807. Its Captain, one Charles Johnston, quickly and immodestly named the atoll after himself. Commercial development of the Atoll's substantial guano deposits began after the U.S. Congress authorized this business in the mid-19th century. In the 20th Century, when the guano enterprise was long gone, the U.S ships Tanager and Whippoorwill did scientific surveys in the 1920s.

During World War II, Johnston served as a Navy and Army Air Force refueling depot. Then, during the Cold War, military requirements changed. This led to substantial dredging of the Atoll's coral reef and shallows and the incremental expansion of the tiny Atoll's land.

Beginning in the late 1950s, U.S. defense planners began to become worried that the Soviets might soon be able to launch satellites into orbit with nuclear bombs aboard that could be launched at will on ICBM installations in the US or, God forbid, on U.S. cities. This worry raised the concomitant question as to whether such orbiting satellites could be destroyed by detonating a nuclear warhead in their vicinity. To test this theory, in 1958 the first of a series of lower altitude nuclear tests began at Johnston Atoll. The purpose of the Project Fishbowl test in 1962 was to find out what happens when you detonate a nuclear weapon in the upper atmosphere.

In the anti-satellite tests at Johnston, modified Thor missiles with nuclear warheads atop were launched to see whether X-rays generated by detonation of their warheads would actually be capable of destroying hostile Soviet satellites. In one early test failure, a Thor missile blew up on its launch pad and spewed plutonium over the Atoll. This resulted in a complicated and lengthy cleanup effort.

However, these early test failures were nothing compared with the spectacular 1962 nuclear explosion that was set off in the upper atmosphere 248 miles above Johnston. The first thing this early morning nuclear blast produced was a startling artificial sunrise, an Aurora Borealis that lasted for minutes and could be seen all the way from New Zealand to Hawaii. Of more consequence, no one had foreseen the startling and damaging effects of the electromagnetic pulse generated by the explosion of a nuclear device on the edge of space. On the benign side was the EMP effect that resulted in the inadvertent opening of automatic garage doors in faraway Honolulu. However, a more serious consequence of EMP effects was that the test showed a single detonation above some countries could knock out their entire electrical grid.

Also not foreseen was the negative impact of this detonation on the Van Allen Belt that protects the earth from solar storms, and the damage that could be caused to useful low orbit earth satellites. Among these victims, Telstar, mankind's first telecommunications satellite, was rendered dysfunctional by the blast. The next year following this unintended result, right after the Cuban Missile Crisis in 1963, the Limited Test Ban Treaty was signed by President John F. Kennedy. It forbids nuclear tests in the atmosphere, underwater, and in space.

I had never heard of Johnston Atoll and knew none of this history while en route to Kwajalein Atoll in 1969.

As a result, as we were landing at Johnston, my jaw dropped as I noticed that on either side of the runway were rows of large Quonset-like sheds. They seemed to be connected by train tracks and outside one of the sheds was a large horizontal missile being worked on by two uniformed men.

I was befuddled. What was I looking at here in the middle of nowhere? There seemed to be no rational explanation for what I saw. None of my many classified briefings on our missile and anti-missile developments up to that point had even hinted at the existence of such an unusual installation. It was not until many years later that the history of this secret installation was declassified, and I learned that

these all these sheds contained Thor missiles that were part of Project 437, a functional and operating anti-satellite weapon system authorized by President Johnson and fully capable of destroying Soviet satellites that might be carrying nuclear bombs. Oddly, almost at the same time as I landed at Johnston, the Air Force made the decision to shut down its anti-satellite installation.

From a counterintelligence planning standpoint, with defense troops far away in Honolulu, there had always been some concern about Johnston's vulnerability to attack from a submarine or a commando assault in a run up to a real-world nuclear exchange. However, Johnston's anti-satellite mission turned out to be more a victim of technological obsolescence and the increased budget constraints brought about by the still growing Vietnam War expenditures.

After we deplaned to refuel at Johnston, we had been ushered past a no-nonsense MP with his weapon drawn into a small, single-story, air-conditioned space. As we sat on plain benches waiting for the refueling to finish, it was hard not to notice the storage cubby holes on each wall and the multiple black hoses hanging down from the odd piping strung from the ceiling. Nothing was said by anyone about all this and in short order we reboarded our airplane and proceeded to Kwajalein uneventfully.

As was true with my delayed knowledge of the Thor anti-satellite weapons system, it was years later that I learned that Johnston Atoll's unique position in the Pacific Ocean made it a useful place for CIA SR-71 Blackbird reconnaissance aircraft to refuel on their missions over Vietnam and elsewhere in Southeast Asia in the 1960s and '70s. The Blackbirds could travel over 2,000 miles per hour and held an altitude record for flying over 85,000 feet. Their high-altitude flights required early versions of the space suits and helmets the astronauts later wore. Hence, the cubby hole storage cabinets. The ceiling pipes and related hoses were also a necessity in the Johnston ready room. They were there to feed the SR-71 pilots' oxygen in the acclimating runup to their departure.

In the most recent chapter in Johnston Atoll's history, in the 1990s Johnston was again reengaged to deal with a major national security threat. Vast stocks of aging chemical weapons secreted around the world were beginning to leak and were in danger of becoming unstable enough to explode. Johnston's new mission became the destruction of the deadliest non-nuclear weapons in the U.S. arsenal. It took over a decade, but an enormous furnace was built on Johnston that safely incinerated these stocks before they created an unintended disaster. At the peak of this effort, over 1,200 military and contractor personnel lived and worked on Johnston. Then, when the toxic stores were gone, all the housing and all of the other infrastructure on Johnston Atoll was destroyed and its runway shut down. Johnston wasn't just decommissioned in 2004, it's fair to say it was "terminated with extreme prejudice."

So today, Johnston Atoll has reverted to its long uninhabited state and has little wildlife other than the fish that inhabit its coral reef. Knowing something today of Johnston's history, I wouldn't be surprised if some of the fish glowed in the dark.

As our Red Tail jet took off from Johnston for Kwajalein, the then unanswered mysteries of Johnston Atoll went with me. I had a heightened curiosity as to what I'd find at my next stop. Kwajalein was an even bigger and more important outpost for the cutting-edge military technology being built at the time for the developing war theater of space.

Kwajalein Atoll—The Ronald Reagan Missile Test Site

Kwajalein Atoll was then the western terminus of the Pacific Missile Test Range. Then and now, Kwajalein functions as a critical facility that tests the accuracy of U.S. ICBM missiles and their Multiple Independent Reentry Vehicle (MIRV) nuclear warheads. For more than half a century it has also been testing the efficacy of anti-ballistic missile missiles designed to track, intercept, and vaporize hostile, incoming ICBM nuclear warheads. That so-called exercise of "hitting

a bullet with a bullet” was hard to do more than a half-century ago, and it hasn’t gotten any easier since with the recent Chinese and Russian development of hypersonic missiles.

Our plane landed on Kwajalein Island, the largest and southernmost island in the Kwajalein Atoll. Kwajalein is due north of New Zealand in the south Pacific and due east of the southern part of the Philippines. In short, like Johnston Atoll, it’s in the middle of nowhere. The Atoll is made up of about 100 islands in a coral chain 50 miles in length, stretching from Kwajalein Island in the south to Roi-Namur Island in the north. Kwajalein Island is only three quarters of a mile wide and three and a half miles long. The whole of the Atoll’s coral land is only 5.6 miles square. The Atoll is about 80 miles wide, which makes it one of the largest lagoons in the world.

The people I most needed to talk to on Kwajalein were the senior Massachusetts Institute of Technology scientists and Raytheon engineers most familiar with the Safeguard missile development (both the short-range Sprint Missile and the exo-atmospheric Spartan Missile). I also needed to learn more about the functioning of the Phased Array Radar (PAR) central to Safeguard’s ability to track and intercept incoming warheads before vaporizing them with X-rays from a nuclear detonation.

My interviews on Kwajalein Island and Roi-Namur were delayed due to my being bumped by a Congressional staff visit that happened to conflict with mine. Recent glitches in the Safeguard testing had apparently triggered a closer Congressional look at the state of the program and its related budgeting problems.

To have something to do in the meantime, my Army host, who also served as the base recreation officer, took me out to golf. What a course! It lay on either side of Kwajalein Island’s single runway. The narrow greensward where you could play was studded with radars used in the Island’s missile testing work. The so-called fairways had a picket fence on their ocean side that served as a no-go reminder. Should your golf ball go over the fence and plop down in front of one of the munitions storage bunkers there, you might have to kiss it goodbye. However, by the fences were long poles with a circular ring

on the end. If it reached your mis-hit ball, you could retrieve it. If the pole couldn't reach your ball, you were SOL.

There was not the same problem at Kwajalein's golf driving range. There was no way you could lose your golf ball there. That's because the range had repurposed an enormous and abandoned circular radar structure. The radar's construction had created a giant circular steel mesh so tall, and with such a large diameter, that no matter how hard you might hit a golf ball from the radar's perimeter, you couldn't knock it out of the enclosed space. This was no doubt the most expensive golf driving range ever built by mankind.

On one of our golf outings by the runway our play was interrupted by loud klaxon horns atop the many radars on the greensward. "What the hell is that?" I asked. My minder said that it was a warning that powerful, potentially harmful radar waves would soon be sweeping our fairway or perhaps there was a danger of debris from an incoming or outgoing test missile, and we needed to immediately take shelter. Believe me, he didn't have to tell me twice!

One evening after dinner I strolled down to the small harbor at nightfall. It was quiet and peaceful looking out at the lagoon. Soon I noticed another man out for an evening stroll. We struck up a conversation and I asked him what he did on Kwajalein. He said he was just visiting from California and that he was looking forward to the incoming ICBM later that evening. That was news to me, so I asked him how he knew about that. He said that he was the person who had programed the instrument package that replaced the ICBM's warhead for the test. He said this was his first opportunity to see the fireworks above Johnston as the incoming missile and his package headed through the atmosphere to preprogrammed coordinates in the lagoon. I quickly decided I too would stay up late for the fireworks. Sadly, when I woke up the next morning, I had to kick myself for sleeping through the night and missing the big show.

One of the issues that surfaced in my later counterintelligence report had to do with a Soviet spy ship, disguised as a fishing trawler. It permanently lingered just outside the Atoll in international waters. There, it constantly monitored the telecommunications of all the

personnel on Kwajalein, as well as the telemetry of every rocket test. Besides the communication security protocols in place to minimize the value of the trawler's signals intercepts, another very important procedure related to the spy ship had been put in place. When an incoming instrument package had separated from its ICBM and fell into Kwajalein's lagoon, at least three splash detection radars at different points on the Atoll would triangulate the precise location of the splash. This permitted an assessment of whether the accuracy of the missile launch was sufficient to destroy a hardened Soviet ICBM silo in the U.S.S.R. In a further security step, swimmers would immediately dive into the lagoon at the impact point and recover the instrument package and its data. This was a protocol to ensure no divers from the Soviet intelligence ship would ever beat them to the punch.

When the Congressional folks who had delayed my work hit the road, I caught the first available twin-engine commuter flight up to nearby Meck Island on the Atoll. Here was Safeguard's recently constructed Phased Array Radar that I needed to understand better. The large radar had a fixed and circular slanted face that permitted it to scan incoming missiles launched from Vandenberg Air Force Base in California. Air Force crews, plucked at random from Montana or other ICBM installations, would be trucked with their Minuteman missiles to Vandenberg. At Vandenberg, their launch proficiency would be tested, and the missiles were regularly topped off with instrument packages instead of warheads before being launched at a predetermined point in Kwajalein's lagoon.

As the Meck Island manager took me into the outsized computer room that formed the base of the large radar, he smiled, and, in a voice like that of a proud father talking about a child bringing home a good report card, he said that there was more computing power in that room than existed on the entire planet in 1955. As I digested the meaning of that, the thought occurred to me that he might in fact be telling me the truth.

From Meck, I flew up to Roi-Namur Island on the north end of the atoll. There were different radars and instrumentation issues I needed to learn about at that location as well. With my fieldwork

complete, I was ready to go home to Washington, D.C., and write my report. I quickly caught the last commuter flight of the day at Roi-Namur and flew the 50 miles south back to my Bachelor Officers Quarters (BOQ) accommodations on Kwajalein Island. Without delay, I was on the next red-tail Northwest jet that came through Kwajalein to shortly begin a week's leave from the Army in Honolulu visiting a college classmate and his family.

Upon my return to the Pentagon, I spent several weeks doing further research. Then I turned for several more weeks to writing up my report on the Safeguard System's espionage and sabotage vulnerabilities and the steps necessary to further harden the System's operational weaknesses. In late fall 1969, I completed my assignment by providing briefings on my report to the Safeguard Security Working Group, other senior Army officers, and various civilian technical and scientific advisers.

My effort must have met with approval as the Commanding Officer of the 902nd Military Intelligence Group awarded me at year-end a Certificate of Achievement for "exemplary duty" for this work. To me, that meant that the report had probably been more useful than anyone had imagined it would be when I was first assigned the task.

Kent State University and the Aftermath

My single worst intelligence assessment was in underestimating the future extensive campus demonstrations against the war that came in the wake of the events that unfolded in May 1970 at Kent State University in Ohio. The violence attendant to the Democratic National Convention in September 1968 had not gone down well with many people, and the Democratic candidate Sen. Hubert Humphrey had been defeated by Richard Nixon in the November election. During 1969, Nixon gradually came to conclude that the best strategy to end the War would be "Vietnamization." By this he meant the phased withdrawal of American troops concomitant with the strengthening of the South Vietnamese Army. Nixon announced this plan to the American people in a nationally televised speech in

November 1969. Opposition to the war had continued to grow throughout 1969, with bigger and more widespread antiwar demonstrations taking place across the country.

On April 20, 1970, Nixon announced that 115,500 American troops had left Vietnam and another 150,000 would depart by the end of 1971. To many it looked as if his Vietnamization strategy might be working. However, just 10 days later, on April 30, 1970, he announced that U.S. and South Vietnamese troops had entered Cambodia to attack the safe haven there that had been a refuge for North Vietnamese forces.

Many colleges and universities across the country were convulsed and promptly gave witness to both peaceful and violent demonstrations protesting the Cambodian expansion of the war. One such school was Kent State University in Kent, Ohio, some 30 miles southeast of Cleveland, with a campus of 20,000 students. On the day after Nixon's announcement of the Cambodian bombing, Friday, May 1, violence in the streets of downtown Kent resulted in the Governor calling up the National Guard for duty. The next night, Saturday, May 2, protesters set the Reserve Officers Training Corps (ROTC) building on fire. Elements of the Ohio National Guard arrived using tear gas and bayonets to clear the area.

The next day, Sunday, May 3, 1970, there were 1,200 Guardsmen on the Kent Campus to confront the student demonstrators. In the ensuing standoff, some of the Guardsmen fired their M-1 rifles into the crowd. When the shooting stopped, there were four dead students and nine wounded.

My job every Monday at the time was to drive to the Pentagon in the early morning hours before dawn and read the FBI teletype and Army spot reports that had come in over the weekend. My focus was on incidents of violence that might engage, or had engaged, National Guard forces. This level of violence would always be a prerequisite of any later call for Regular Army troops. When I had gone through the traffic and made my assessment, my job was to go up from the basement location of the AOC to the Office of the Under Secretary

of the Army and brief his military aide on what if anything was going on.

The Under Secretary was the civilian point person managing the Army's civil disturbance mission, and he and his office wanted to keep close tabs on anything that might evolve into a crisis engaging Army troops.

In 1969, David McGiffert had served as Under Secretary and had learned enough to conclude that the Army had drifted into collecting some information domestically through its U.S. counterintelligence units it shouldn't be collecting. He had further concluded that it could embarrass the Army if it continued unchecked. Though he was clearly on record in this regard, civilian leadership in the Nixon administration and the Department of Justice did not concur. As a result, various local Army counterintelligence units continued to funnel reports of demonstrations being planned or occurring that were not strictly necessary to carrying out the Regular Army's limited civil disturbance mission. I had been correct in the technical assessment that I gave the Under Secretary's aide that the Kent State student deaths and the other mayhem over the weekend would not lead to any engagement of the Regular Army. That was a no-brainer.

But I was about as wrong as you could get in my collateral observation that the outbursts would have a short life and that the campuses would settle down in the ensuing week.

The next week instead saw demonstrations of more than 150,000 in San Francisco and 100,000 in Washington, D.C. And on different colleges and universities, National Guards were deployed in 16 states on 21 campuses, 30 ROTC buildings were bombed or burned, and there were reportedly more than a million students participating in strikes on at least 883 campuses.

Yale, The Black Panthers, and the Army

Also in May 1970, at the same time as Kent State was becoming a symbol of the country's extreme division over the Vietnam War, a

different kind of seminal event of both racial and student unrest was about to unfold in New Haven, Connecticut, at my alma mater, Yale University.

A strange and rare mix of factors did put Regular Army soldiers on the move there. Just a year earlier, on May 22, 1969, the body of a member of the New Haven chapter of the radical Black Panther Party was discovered in woods outside New Haven. Before being shot to death in the woods, he had first been tortured at the Party's New Haven headquarters. He was suspected of being a police informant. Several members of the local Black Panthers chapter had since confessed to the crime. At least one person implicated Bobby Seale, the National Chairman of the Black Panthers, in the crime. Seale was a founder of the original Black Panther chapter in Oakland, California, and had visited the New Haven chapter at the time when the victim was being held. Seale was scheduled to go on trial for murder the next year in May 1970.

Coincident with the Kent State May Day protests in 1970, a National May Day rally was held on the New Haven Green to protest both the expansion of the war into Cambodia and to support the Panthers charged in the local murder trial.

Activists of all denominations turned up together with Yale students at the rally. Yale's chaplain, William Sloane Coffin, was quoted as calling the upcoming trial "Panther repression," and said, "All of us conspired to bring on this tragedy by law enforcement agencies by their illegal acts against the Panthers, and the rest of us by our immoral silence in front of these acts." Kingman Brewster, Yale's President, said he was, "skeptical of the ability of black revolutionaries to achieve a fair trial anywhere in the United States." He went on to say, "in large measure, the atmosphere has been created by police actions and prosecutions against the Panthers in many parts of the country."

In the aftermath of the Kent State event and the consequent student strikes at colleges and universities across the country, I had followed the New Haven events closely. Beyond a casual interest in my old school of course, my job was to provide intelligence support

to DCDPO by periodically assessing the likelihood of riots getting out of hand. That meant I was also watching the New Haven situation unfold from a purely professional perspective.

There had been a growing tendency in the charged atmosphere of the 1960s to think that antiwar student protests and demonstrations were somehow akin to the racial disturbances in cities that had required intervention by the Regular Army associated with the First and Second World Wars and now the Vietnam War. However, from a military planning standpoint, the thought that New Haven in the current context needed the Regular Army forces seemed to me completely unnecessary. Nonetheless, Connecticut's Governor and President Richard Nixon arrived at a different conclusion.

Through memory's haze, I seem to recall a newspaper story that John Dean, then a Department of Justice functionary under Nixon's Attorney General John Mitchell, had met Connecticut's Governor in Hartford, and that the Governor promptly thereafter issued a statement that the situation in New Haven was beyond the State's ability to control. The Governor's declaration legally permitted Nixon to commit federal troops if he chose to.

The situation in New Haven was coming to a head, and I soon found myself accompanying DCDPO's Deputy Director, an Air Force Major General, up to the offices of the Army's Vice Chief of Staff, General Bruce Palmer. Palmer was taking the meeting in the absence of then-Chief of Staff Gen. William Westmoreland. Palmer had commanded the Army troops President Lyndon Johnson had sent to Santo Domingo in the Dominican Republic not too long before.

He began to size up the matter with a few incisive questions, and once he had a detailed grasp of the tactical situation, he asked me what my opinion was. Did I think regular Army troops would be required? I told him that I was familiar with the New Haven community, having graduated from college there only a few years before, and said I didn't think there was a military requirement for deploying Regular Army troops then.

General Palmer scratched his head and said he didn't think it made much sense to send troops either. At this point my Air Force friend coughed and interrupted. He informed General Palmer, and me, that it was a passed point. Following presidential orders, the first airstream of airborne troops had just departed from Fort Bragg, North Carolina, headed north.

As it turned out, there was no cataclysm in New Haven at the commencement of the murder trial and questions about whether Bobby Seale could get a fair trial went away when he was acquitted. My recollection is that the Connecticut National Guard provided sufficient backup to the New Haven police.

The Regular Army troops got no closer to New Haven than Hartford and Rhode Island, where they bivouacked for a short period before being flown home.

During the New Haven affair, I provided my usual round of briefings to civilian and military managers at the Pentagon. I was supported as always by the graphics department at OACSI. The illustration I remember best was a map of New Haven, no doubt dug out of the DCDPO files.

It was centered on George and Harry's restaurant, across from my old room at Silliman College. Superimposed on this choice piece of real estate was a freehand black and white drawing of a long-haired, screaming student wearing a toga. The out-of-control youth seemed to be holding a scrolled diploma overhead in a clenched fist, looking much like a banana republic revolutionary holding a rifle.

In the years since, I often thought about the toga-clad students who came after me at Yale. Who would have guessed their style of dress and extracurricular interests would have been so different from mine only a few years before?

When I got out of class, I typically put on jeans, walked across the street, and grabbed a beer at George and Harry's. When they got out of class, at least in the Army artist's mind, the animals put on dresses, stormed into the street, and hoisted high school diplomas over their heads pretending they were AK-47 Kalashnikovs.

The Secretary of the Army's Special Task Force

In January 1970, Christopher Pyle, a former captain in Army intelligence, wrote an article in the *Washington Monthly* magazine criticizing the Army for going beyond proper bounds in collecting information on civilians.

Pyle's article prompted inquiries to Secretary of the Army Stanley R. Resor from various members of Congress, including Sen. Sam Ervin, the North Carolina Democrat who chaired the Senate Judiciary Committee's Subcommittee on Constitutional Rights.

The responsibility fell to the Army's Assistant Chief of Staff for Intelligence, Gen. Joseph McChristian, to gather the necessary information internally for the Secretary to respond to the detailed questions being raised. McChristian in turn asked the head of his OACSI's Directorate of Counterintelligence, Col. John Downie, to take on the task. Since CIAD was under the head of the Directorate of Counterintelligence, I had recently begun to work more closely with Downie than I had up to that point. I had come to like and respect him enormously and thought him a strong and principled leader.

Five years later, following his retirement, Downie was interviewed about this period at his home in Easton, Pennsylvania, by Loch K. Johnson. At the time Johnson was a Congressional investigator for the U.S. Senate Committee popularly known as the Church Committee, named such after its chairman, Sen. Frank Church of Idaho.

Johnson was looking into the origins of the so-called Huston Plan to ramp up domestic intelligence operations by the FBI and the military. It had been approved for implementation by President Nixon and then immediately curtailed by the Nixon White House.

In Johnson's later 1989 book, *America's Secret Power, The CIA in a Democratic Society*, Johnson explains that the Huston Plan was a crash effort to analyze how to expand domestic surveillance of internal

intelligence targets quickly and substantially, particularly student radicals and their foreign connections.

Johnson writes that Col. Downie represented the Army at critical meetings in June 1970 to review the Plan. The group met at CIA headquarters and was attended by FBI, DOJ, NSA, and other representatives of the pertinent civilian and military agencies who were tasked to respond to the White House directive.

While Johnson says that there was some enthusiasm for expanded efforts by representatives of the CIA, NSA, and most of the FBI representatives, he quotes Col. Downie as making clear that the Army wanted “to keep the hell out” of any such effort.

Contemporaneously with this, Col. Downie had tasked me to review the Army’s legal authorities for domestic engagement. I had reviewed with him the particulars of the Posse Comitatus Act, originally passed in 1878. This one-sentence law today reads:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

Since its passage, the law and its offspring have been bulwarks against permitting the military to meddle in what are essentially civilian law enforcement matters.

When Col. Downie had asked me to undertake this research, he had made no specific mention per se that the Huston Plan was afoot. However, it was clear something big was up and being treated as an emergency. I also was aware Col. Downie indeed had firm ideas on keeping the Army out of this kind of engagement. Furthermore, with the Army at the time facing Senate hearings on allegations of the military surveillance of civilians, the last thing it needed was a thoughtless push to apply its resources into what was by tradition and law a purely civilian responsibility.

With the first round of military surveillance hearings in the offing in early 1971, my immediate work area of the AOC was rearranged.

My desk was in the same place, but it had turned 90 degrees. This struck me as a symbolic reflection of the Army's own change of course in the intelligence gathering at this time. I was also given an elaborate new title that I didn't know I had at the time: Staff Researcher and Allegations Analyst, Allegations Branch, Office of the Assistant Chief of Staff for Intelligence, and Department of the Army Special Task Force.

What Under Secretary of the Army McGiffert had tried and failed to do in 1969, now got done. Secretary of the Army Stanley Resor told Gen. Westmoreland on March 6, 1970, to make sure no computerized data banks on civilians should be instituted anywhere in the Army without the approval of both the Secretary of the Army and the Chief of Staff. The new Under Secretary of the Army, Thaddeus R. Beal, wrote Sen. Ervin on March 20 that the spot reports on violence created by the Army would be kept for only 60 days. Later directives flatly banned the use of computers to store proscribed information on civilians.

Pyle wrote a second article with additional allegations in a July 1970 *Washington Monthly* article on military surveillance, and I went back to work with my fact gathering. Then at the end of the 1970s, a whole new batch of allegations of Army spying on civilians appeared and received wide media attention. John M. O'Brien, a former Staff Sergeant with the Military Intelligence Group in Chicago, told Sen. Ervin that prominent elected federal and state officials had been spied on by the Army, including Sen. Adlai Stevenson III, Rep. Abner Mikva, and former Illinois Governor Otto Kerner.

In the wake of all these allegations, the first Senate hearings on military surveillance took place on March 2, 1971. Fred Buzhardt, General Counsel of the Department of Defense, must have thought the hearings went well for the Army, as he sent a letter to the Army Chief of Staff, Gen. Westmoreland, complimenting him on the materials used to prepare for the hearings.

Westmoreland in turn complimented Gen. Joseph McChristian, his Chief of Staff for Intelligence. McChristian, who had also been Westmoreland's intelligence chief when Westmoreland was

commander of the forces in Vietnam earlier, in turn thanked the head of his Counterintelligence Division, Col. Downie. And Col. Downie kept the ball rolling by sending me an attaboy to round things out.

It meant something to me at the time, because I had come to know Col. Downie well in my time at the Pentagon, and I admired him as a decent, straightforward officer who had devoted his life in the honorable service of his country. When I first began working with Col. Downie at the Pentagon, I had been introduced to the heart and institutional memory of the Counterintelligence Division of OACSI. I don't remember her last name, but Millie had served as the CD's indispensable secretary for several decades. When I learned about her tenure, I asked her if she'd ever run across a now-retired counterintelligence officer in Chicago that was a family friend, Col. Minor K. Wilson.

Did she know him! She nearly fell off her chair that I knew him too. When she was a young secretary new in the Directorate, Col. Wilson was ending his Army career in the same job Col. Downie now held. Small world indeed, as after my father's death in 1965, Col. Wilson, a friend of my father's brother Augustine Bowe, sat at my father's desk for a time at the family law firm, Bowe & Bowe, at 7 South Dearborn Street in Chicago. Soon joining my uncle as a judge, Wilson gave up my father's chair for a new seat on the bench.

Getting Short—The 1971 Stop the Government Protests

My three-year enlistment was coming up in the spring of 1971, with my last day of active duty being May 12. In Army parlance, I was "getting short."

Given the times in Washington, I was also going out with a bang, not a whimper. The violent Weather Underground faction of the radical Students for a Democratic Society was being publicly led at the time by my former University of Chicago Law School classmate, Bernardine Dohrn. This SDS faction took credit for setting off a bomb in the early morning hours of March 1 underneath the U.S.

Senate Chamber of the Capitol Building. The bombing had been preceded by an anonymous telephone call to the Capitol's telephone operator saying, "Evacuate the building immediately. This is in retaliation for the Laos decision." The next month thousands of Vietnam Veterans Against the War poured into the city to throw their medals away on the Capitol steps. John Kerry, later the Democratic nominee for President in 2004, spoke on their behalf in his testimony before the Senate Foreign Relations Committee on April 24, 1971. Said Kerry, "The country doesn't know it yet, but it has created a monster, a monster in the form of millions of men who have been taught to deal and to trade in violence, and who are given the chance to die for the biggest nothing in history; men who have returned with a sense of anger and a sense of betrayal which no one has yet grasped."

The *Washington Post* reported that more than 175,000 protesters were outside the Capitol that day. Several thousand of the veterans stayed and camped out in tents on the Mall in a modern-day reminder of the Bonus Army's camp on Anacostia Flats during the Depression.

Militant groups had long been planning to make this May Day crowd large enough to fundamentally disrupt the normal functioning of the government. The organizing slogan was, "If the government won't stop the war, we'll stop the government." The goal of the May Day protests was to shut down the beltway around the capital with abandoned vehicles and keep commuting government workers out of the District. There were also 21 prime intersections within the District selected as high-value targets for traffic blockages. Detailed plans to barricade normal access to government buildings had also been made and widely circulated. The District of Columbia Mayor and police were not amused and revoked previously issued permits.

Thousands of protesters began arriving in the District in late April, and more than 45,000 began to set up camp in West Potomac Park, not far from the Mall. As with the veterans camped out earlier, bonfires lit the night there, with marijuana, acid, and other drugs helping set the mood.

The demonstrations began on May 1 and continued daily thereafter. In due course, thousands of protesters finally took to the

streets the morning of Monday, May 3, with the intent to shut down the government as best they could. As *The New York Times* reported on May 4:

The protesters ... did succeed in disrupting the city's normal functioning by impeding traffic and harassing government employees on their way to work, using as weapons trash, tree limbs, stones, bottles, bricks, lumber, nails, tires, rubbish bins and parked cars. ... At the height of the disturbances, tear gas fumes filled the air over some of the city's most famous monuments, streets, and grassy flowered parks. Garbage cans, trash, abandoned automobiles and other obstacles littered some chief arteries.

During all this mayhem I was putting in long hours in the AOC. When I wasn't in the glass briefing booth, I was assessing the very public tactics demonstration organizers were widely disseminating in their pamphlets and publications. I was particularly focused on trying to get a handle on the number of protesters arriving in Washington. The numbers in my estimates kept going up and up. The count of buses making their way into the District on Interstate 95 was of a magnitude no one had ever seen before.

The surreal moment for me in the AOC came when watching the local television coverage on the AOC's screens. At one point, on the Ellipse by the Washington Monument, several helicopters landed, and a small number of troops disembarked.

There seemed to be nothing for them to do there, as their commanding officers eventually figured out. To me and everyone else, helicopters disgorging troops had been a constant staple of the evening news in the preceding years. But all those scenes had taken place in Vietnam, not the nation's capital. To see the same thing underway with the Washington Monument as the backdrop was not only bizarre, but also seemed to be militarily unnecessary. When the boots got on the ground this time, and there was nothing there for them to do, they were marched off in good order and last seen headed up Constitution Avenue towards the Capitol. They may have ended up in the courtyard of the Department of Justice, where other troops were held out of sight, but in reserve.

The whole spectacle made me think of Walt Kelly's popular comic strip of the day, when he famously had his swamp character Pogo say, "We have met the enemy, and he is us." Originally intended as a comment on environmental consciousness-raising after the first Earth Day rallies the year before, it seemed equally to fit the conflicts in America a year later. When the day ended, 12,000 federal troops had been stationed in the Pentagon's internal courtyard and other strategic points in the District. These were all locations from which they could be easily deployed to hot spots if needed. The front lines had been manned not by the Regular Army or Marines, but by 5,100 District police and 1,500 National Guardsmen. The New York Times had estimated the crowd of protesters arrested as between 12,000 and 15,000 people. About 7,000 of them were arrested May 3, and another 5,000 or so in the immediate days before and after.

When May 3, 1971, finally ended for me, and I headed home to my apartment in the Capitol Hill neighborhood, I left the AOC and climbed the stairs to the ground level. To get to my parked car on the other side of the Pentagon, I took my usual short cut through the building's inner courtyard. As I walked across the large yard, I saw for the first time that Army troops were also being held here in reserve.

By the time I got to the other side of the courtyard, I noticed I had a few tears in my eyes. I thought that was odd. Although I was tired, I was not at all emotionally upset. I thought no more about it until the next day. That's when I learned that one of the troops in the Pentagon courtyard had set off a tear gas cannister by accident. I had just caught a whiff of the gas at the tail end of its presence in the courtyard. Again, Pogo's words came to mind.

I got a pleasant surprise when I left the Army in May 1971. I was awarded the Presidential Meritorious Service Medal for "highly valuable contributions to counterintelligence studies and briefings in connection with a wide variety of threats to the security of the United States Army."

Veterans who served in the military during the Vietnam War years were often subject to disrespect when they returned to civilian life. I

don't recall ever catching any of this guff, but I know many others did.

1974 Congressional Hearings on Military Surveillance

After I left the Army, Sen. Sam Ervin continued to work on making sure the military stayed out of the business of collecting intelligence on civilians. I had kept up with these developments and was opinionated about the legislation Ervin had introduced to deal with the subject. *Chicago Sun-Times* reporter Roger Simon interviewed me in 1973 in an article on the subject. By the time new hearings on military surveillance of civilians by Ervin's Judiciary Committee's Subcommittee on Constitutional Rights got under way in March 1974, Col. Downie had retired near State College, Pennsylvania.

Christopher Pyle, the author of the Washington Monthly articles, was working as a consultant for Ervin's Committee. Having earlier met me, he contacted me to see what I thought about Col. Downie testifying.

Downie had spent his entire professional career in counterintelligence, and I knew he and I saw eye to eye on its proper role in regard to its rare civil disturbance mission. As it happened, he was interested in sharing his perspective, so I drove from Chicago to his home in Pennsylvania, picked him up, and then drove down with him to Washington for the hearings.

We both had our say on Ervin's proposed legislation, with Col. Downie bringing to bear his wealth of practical experience. I had more lawyerly suggestions for amending Ervin's bill to try to correct some problems I foresaw if it became law. Sen. Ervin was having none of my advice on how to rewrite his bill and made sure that he created a record in the hearings that dealt with my points in the event a court ever had to interpret the statute. During the course of Sen. Ervin's work on the military surveillance hearings, I had the chance to privately chat informally with him in his Senate office.

At the time, I don't think I'd ever been so struck by a person. I came away feeling I had not only met a friendly, serious, and fair-minded man of purpose, but one with an outsized intellect and an even greater quotient of common sense.

Later in 1974, the Senate Watergate hearings Ervin had chaired the year before finally bore fruit. While Sen. Ervin's proposed bill regulating surveillance by the military never became law, his adroit conduct of the Watergate hearings ultimately gave him and the country a great victory. Fatally damaged by facts revealed in the Watergate hearings, and facing imminent impeachment and conviction by the Congress, Richard Nixon resigned as President on August 9, 1974.

Also in 1974, Lawrence Baskir, who served as Chief Counsel and Staff Director for the Senate Judiciary Committee's Subcommittee on Constitutional Rights, published an article in the *Indiana Law Journal* detailing the way in which the Senate hearings on military surveillance had unfolded.

This comprehensive account of the hearings provides a sophisticated look at the work in the Senate. It also provides another reason beyond his performance in the Watergate affair to admire the decency, legislative skills, and political acumen of Sen. Sam Ervin.

Lunch with Gen. William Westmoreland

In June 1968, while I was in basic training, Gen. William Westmoreland had been kicked upstairs by President Johnson. He was promoted out of his job as commander of our troops in Vietnam and into the job of heading up the Army as its Chief of Staff. I was once in a meeting with him and others at the Pentagon when it was thought a question might be asked about the Safeguard Anti-Ballistic Missile System.

I was off the hook and the only topic I remember being discussed that day was the M16 rifle. At Fort Leonard Wood, I had been trained to use the M14, though the more modern M16 had been in use in

Vietnam for some years by that time. All I remember of the discussion between Westmoreland and the others present was what an advance it was to put a handle on the M16 to make it easier to carry than the M14. This topic of the day may have related to the official designation in 1969 of the M16A to replace the M14 as the U.S. military's standard service rifle.

It wasn't until both Westmoreland and I had retired from the Army that I ran across him again. In 1985, I was General Counsel of United Press International. UPI had just moved its headquarters to Washington, D.C. from Nashville, but I was commuting frequently from our home in Nashville to the nation's capital. This commute was the product of UPI filing for bankruptcy in the District's Prettyman federal courthouse. On one of my trips to Washington for UPI, I arranged to have lunch at the Hilton downtown with a newspaper reporter friend from Chicago, Eleanor Randolph. She had left the *Chicago Tribune* and was then working for the *Washington Post*. We had started our lunch in the Hilton's dining room when I noticed Gen. Westmoreland come into the room by himself. He was waiting to be seated by the maître d'. Eleanor immediately said she was going to ask him to join us.

I thought that more than a little presumptuous on her part, but as she got up to retrieve him, she mentioned that she knew him because she had covered his recently concluded libel trial against CBS in New York.

In 1982, CBS had run a documentary, *The Uncounted Enemy: A Vietnam Deception*. Westmoreland had sued CBS for \$120 million for libeling him. His claim was that CBS had falsely said that he had misrepresented to his superiors intelligence estimates of enemy strength for political reasons. Like many others, I had been following the trial and was aware that the lawsuit had just been settled. Gen. Westmoreland had decided abruptly to end the case after 18 weeks, immediately before it was to go to the jury. I was also aware of the fact one of the key witnesses against him had been his former intelligence chief in Vietnam, Gen. Joseph A. McChristian. This was the same Joseph McChristian whom I worked under when he served as Westmoreland's intelligence chief at the Pentagon. They may have

worked closely together for years, but I'm sure there was no lost love between them as a result of McChristian's damaging trial testimony.

All and all, it was certainly the most interesting lunch conversation I had in all my time at UPI. We discussed current events, the trial, and Army matters. It appeared to me that Westmoreland must have thought he had gotten fair treatment from the stories Eleanor had filed from New York for the *Washington Post*. From their engagement, an onlooker might even have thought they were real friends, instead of former business acquaintances who were friendly, but still somewhat wary of one other.

As for me, I didn't miss the opportunity to mention to Westmoreland that I had worked under McChristian. Given the obvious touchiness of the subject, however, I saw no reason to probe into the details of their relationship over the years, as much as it would have interested me to hear his answers. Westmoreland died 20 years after that lunch, in 2005, and Eleanor moved on from the *Washington Post* to *The New York Times*, serving for a time on its Editorial Board.



My mother's grandfather, Richard L. Gwinn Sr., served in the Confederate Army.



In World War I, my father recovers in Orleans, France, after a foot amputation.



Leaving the hospital, there is a farewell picture with the French nurse who cared for him.



Nurse Marie Loisley visited the Bowes in America in 1967.



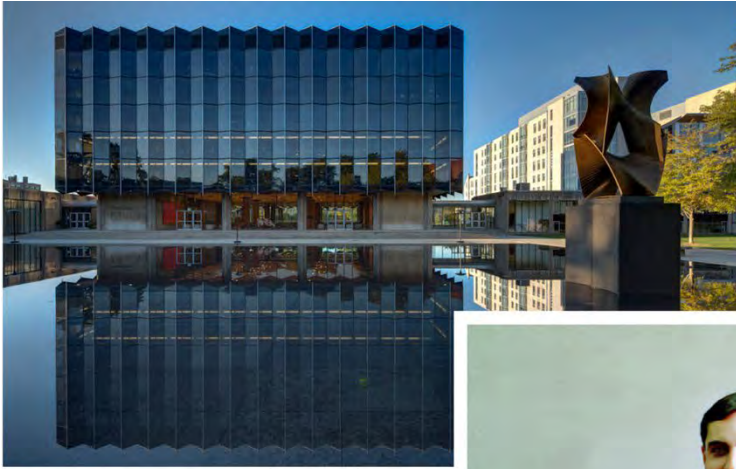
Later than most to board a ship home, he has a brief moment in the English countryside with another injured soldier.



My Uncle John Casey served in the Army during World War II.



My older brother, Dick, was in the Army ROTC in high school.



The University of Chicago Law School.

After a year in private practice after graduation, I enlisted in the Army for three years.



Army Intelligence School interrogation training at Ft. McHenry, Baltimore in 1968.



Paratroopers of the 82nd Airborne Division patrolled riot-torn areas of Washington D.C. after Dr. Martin Luther King's assassination in April 1968. (Bettmann Collection, Getty Images)



Army troops in Grant Park, Chicago during the riots after the King assassination. (Don Casper/Chicago Tribune/TCA)



My pipe-smoking brother Dick, an observer with Chicago's Human Relations Commission, turns up in the Walker Report on Democratic Convention violence in 1968. (Time Magazine)



My stabilized assignment in the Office of the Assistant Chief of Staff for Intelligence of the Army at the Pentagon had me in civilian clothes.



Johnston Atoll



1962 Thor explosion contaminated Johnston with plutonium



Radiation cleanup by mangled Thor rocket engine



Leaking Agent Orange Barrels at Johnston



Johnston furnace used to destroy toxic chemical weapons stocks.



A twin launch of Sprint anti-ballistic missiles from Meck Island, Kwajalein Atoll, Marshall Islands (U.S. Government)



When this early anti-ballistic missile radar at Kwajalein became technologically obsolete, it was repurposed as a golf driving range.

Arriving on Capitol Hill in 1973 to testify before the U.S. Senate Judiciary Committee in its hearings on the military surveillance of civilians.



Not having talked to her since graduation, I introduced Bernardine Dohrn as a speaker at our 55th law school reunion.



The one-time domestic terrorist spoke mostly about her post-fugitive life but did answer several pointed questions from her classmates.



In 1970, law school classmate Bernardine Dohrn was one of only 11 women ever to be put on the FBI's 10 most wanted list.

Chapter 2

Becoming a General Counsel

Recruitment by Rod MacArthur

I put the Army in my rear-view mirror at the beginning of the 1970s and got busy. It was an eventful decade. I returned to work as a lawyer, this time for the newly formed law firm of Roan, Grossman, Singer, Mauck & Kaplan (later Roan & Grossman). The Singer in the firm was Bill Singer. We had both been associate attorneys in the law firm I was briefly with before the Army. When the Army assigned me to Washington, D.C., I took Bill up on his suggestion that I look up his sister-in-law, Judy Arndt, then working on the Hill on one of the Congressional staffs. When I married her in 1974, Bill and I were briefly brothers-in-law.

Also in 1974, I took a leave of absence from my law firm to serve as General Counsel and Research Director for Singer's mayoral campaign as he took on Chicago's long-time Mayor Richard J. Daley and his political machine. With the anti-machine vote split among several candidates during the Democratic primary election, Singer

lost. However, Daley's winning margin had sharply dropped from his last election. Daley went on to win another term as Mayor in the 1975 general election, but for the first-time cracks had appeared in the Daley juggernaut. With the campaign over, I returned to the Roan & Grossman law firm and made partner at a younger age than was the norm at the time.

When my mother died in early 1979. I was divorced and living in a townhouse on Larrabee Street in Chicago's Lincoln Park neighborhood. In my social life, I had been dating Cathy Vanselow for a while, having been introduced to her by a friend from Bill Singer's mayoral campaign. I was thinking seriously of asking her to marry me.

This was the lay of the land when a litigator friend at Roan & Grossman sprung on me a job opportunity he thought would fit me. He said one of his former professors at Northwestern University Law School had asked him if he knew anyone who might be interested in becoming general counsel of a fast-growing direct mail company. He said he had immediately thought of me, and I should let him know if I were interested. I was initially curious about the opportunity but not particularly excited when I learned the company mostly sold plates of some kind or another.

Then I learned that the business involved was owned by the son of John D. MacArthur, reportedly the second or third-richest man in the country when he recently died. The son, Rod MacArthur (J. Roderick MacArthur), was also a director of the John D. and Catherine T. MacArthur Foundation, the beneficiary of most of the senior MacArthur's estate. Rod's main business at the time was the direct marketing of collector plates. It had grown very rapidly in recent years and was now at a size where it would be more economical for it to have lawyers in-house rather than remain completely reliant on outside law firms.

Of particular interest to me was the fact that Rod wanted a lawyer at hand to advise him on his burgeoning dispute with his fellow Foundation directors. The prospect of being involved in this indirect way at the birth of one of the country's largest foundations was an

attractive aspect of the work. All of these items made the situation interesting enough to look into further. In short order, I met with 58-year-old Rod MacArthur and his 31-year-old Executive Vice President Kevin McEneely.

I was also intrigued and attracted to the idea of leaving private practice and getting more closely involved in the running of a business.

Also weighing in the balance was the fact that staying with the law firm was not without risk itself. Roan & Grossman in the 1970s had not grown at an exceptional pace, and, after being defeated in his run for mayor in 1975, Bill Singer had left to join the Kirkland & Ellis law firm.

This had taken away one of the firm's better business getters for the future. Given that there was a real risk the firm might struggle in the future, I had to take that into serious consideration also in deciding whether to accept the offer to become The Bradford Exchange's General Counsel.

Finally, much like my decision after leaving the Army to join Roan & Grossman instead of returning to the firm I started with, I decided to again leave the certainty of a prior, known experience for the unknown world of what lay ahead.

Keeping a toe in my last pond, I acceded to Roan & Grossman's unforeseen request that I remain Of Counsel to the firm following my departure.

While fully committed to my career change, I figured that if life in my new position somehow went awry, keeping some form of tie to my old firm couldn't hurt.

On this basis, I began my new job as General Counsel of The Bradford Exchange. The heart of the business of The Bradford Exchange at this time was selling decorative collector plates that were to be displayed on a wall or put on a knickknack shelf. They were not to be eaten off of or, God forbid, put in a dishwasher.

The rampant inflation afoot at the time was having a wonderful effect on the collectibles business of Bradford. With a modest aftermarket in the sale of collectible plates, the plate you bought for \$29 the year before was often worth considerably more the next year.

This was not entirely a surprise. With the bill coming due for the extraordinary national expenditures during and after the Vietnam War, inflation in 1979 was running at over 11 percent. President Jimmy Carter would lose the election the next year in consequence.

Rod MacArthur & The MacArthur Foundation

When his father had died at the age of 81 in 1978, most of his wealth had been left to the Foundation in the form of his sole ownership of the Bankers Life & Casualty Co. His longtime attorney, William T. Kirby, filed the incorporation papers for the Foundation in 1970 and later served as an officer and longtime director.

I knew a little bit about Kirby, having met his daughter Cathy when both of us were attending the University of Chicago Law School. When I asked her recently about her father's hiring by John D. MacArthur and what his long relationship with MacArthur was like, she recalled that Paul Doolan, the Bankers Life house counsel, had first met Kirby when they were young and both had worked at the same summer resort in Lake County, Illinois.

Kirby later became a well-known attorney nationally for successfully representing carmaker Preston Tucker in a celebrated 1950 lawsuit. The Securities and Exchange Commission had sued Tucker for fraud in raising money for his Tucker Corporation. Then later in the 1960s, when MacArthur needed a lawyer to handle a legal question for Bankers, Doolan recommended Kirby. Doolan thought Kirby would be an economical hire because he had recently researched similar issues when he prevailed against Albert E. Jenner, Jr., another prominent Chicago attorney, in an Illinois Supreme Court case involving similar questions. Kirby was hired, but what cemented the long-term relationship with MacArthur was the fact that his bill

for services rendered was unexpectedly modest, just as Doolan had predicted.

As his daughter described MacArthur's reaction, "When Dad sent John a low bill, he called, amazed, and asked if that was really all he wanted. He won over John by his cheapness." MacArthur was indeed a notorious skinflint. The Bankers Life headquarters offices had expanded into an older low-rise apartment building on Lawrence Avenue on Chicago's northwest side. When the building's apartments were converted into offices, the kitchens and bathrooms were left intact to save the expense of removing them.

Oddly enough, MacArthur was not the only billionaire to ever make money by focusing on plumbing. Another wealthy Kirby client was A.N. Pritzker. His billionaire grandson, J.B. Pritzker, elected Illinois governor in 2018, tried an approach opposite to MacArthur's. During his campaign, it was revealed that, to expand his residential meeting space, J.B. had paid \$3.7 million to buy an adjacent house on Chicago's tony Astor Street. By removing the house's toilets, for a time he was saving over \$300,000 a year in real estate taxes by claiming the building was "uninhabitable."

With John MacArthur's strong desire to keep his estate from being largely consumed by the 70% income tax prevailing in the 1970s, Kirby's recommended option of leaving the bulk of his estate to the Foundation prevailed.

Rod's son, John R. "Rick" MacArthur, longtime publisher of *Harper's Magazine*, talked about his family's relationship with his grandfather in a 2003 interview with his alma mater's journal *Columbia College Today*. He explained he had grown up believing his family would inherit nothing:

MacArthur says he believed it when his grandfather "announced he was disinheriting us at an early age. My father told us, seriously, 'Do not expect to get a dime from him. You're going to have to work.' They didn't get along, even though my father worked for him for a long time."

According to *The Eccentric Billionaire*, a 2008 biography of John D. MacArthur by Nancy Kriplen, this was not the case prior to the

Foundation's organization in 1970. Kriplen writes that before that time MacArthur's earlier will left half of his estate to his wife Catherine, with the second half split between his children from his first marriage, Rod and Virginia. In the book, Kriplen also describes William Kirby's role in pointing out to Mac Arthur that this structure was a disaster from a tax and estate planning perspective, with most of his accumulated wealth going to pay taxes. A corollary of this prior structure was that applicable taxes could only be paid through the prompt sale or break up of Bankers Life & Casualty, the enterprise that was MacArthur's life's work.

Kirby's daughter added that her father had urged MacArthur to not completely disinherit his children Rod and Virginia. "He always told us that he had to insist that John leave something to his children." And indeed, though modest compared to the Foundation's bequest, both children ended up with substantial legacies.

The Foundation is mostly known for its annual program of giving large cash grants to creative individuals with no strings attached. The idea behind the program came from a noted internist and heart specialist at Tulane University, Dr. George Burch. While those receiving these grants are formally known as MacArthur Fellows, the media consistently refers to the stipends as the "genius grants."

In 1989, Kirby gave a lot of credit to Rod MacArthur as he explained how the program came into being in the early days of the Foundation with John D. MacArthur newly deceased:

Immediately after his death, our small Foundation Board discussed possible programs, and I told them of Dr. George Burch's idea. ... From the very beginning, Rod MacArthur was enthusiastic about the idea and supported it vigorously. No doubt about it, I am happy to testify, Rod MacArthur was the chief implementer of the details of the Fellows Program, and its strongest supporter throughout the remainder of his life. I don't mean the other Directors were not fully supportive, but the dynamism and dedication burned brightest in Rod. One can say, in all honesty, the MacArthur Fellows Program, as it stands today and as all of you have benefited from it, is a tribute to both George Burch and J. Roderick MacArthur. Rod, as you know, died in 1984.

This is certainly my recollection as well, as I remember many meetings in Rod MacArthur's open office at The Bradford Exchange as he consulted with a disparate group about the best way to structure the program and the Foundation's possible bailout of *Harper's Magazine*. The people he met with included Ken Hope, his assistant and later the first director of the MacArthur Fellows Program, as well as a number of academics and administrative experts. I also recall being detailed one day to pick up Gloria Steinem and a Ms. magazine colleague at O'Hare Airport. I drove them back to meet with Rod and sat in on the discussion. I remember they seemed more interested in soliciting grant money than pondering the Foundation's issues. They made it perfectly clear they had important and valuable ideas about possibly sharing details of favorable tax arrangements they were familiar with if grant money was on the table for Ms.

The senior MacArthur had two children with his first wife, Louise, Rod and his sister, Virginia. He had separated from Louise when Rod was six and later married his then-secretary, Catherine T. Hyland.

The second Mrs. MacArthur was closely involved in the growth of his insurance empire and real estate investments. For many years towards the end of his life, MacArthur conducted his widespread business affairs from a booth in the Colonnades Beach Hotel coffee shop in Palm Beach Shores, Florida. At his death, he owned more than 100,000 acres of prime real estate in Florida, much of it in Palm Beach County.

John MacArthur served in the U.S. Navy and Canadian Royal Air Force in World War I. He then had started working in an insurance company owned by his brother Alfred. A gifted salesman, during the Depression he had bought a failing insurance company. He later grew this into his estate's main asset, Bankers Life and Casualty Co. Over the decades that followed, with multiple acquisitions and shrewd real estate investments, he had turned Bankers Life into a successful and enormous insurance giant.

In the course of my interviews with both Rod and Kevin, I was treated to their thrilling tale of how Rod had started the company while working for his father at Bankers Life. When the little collector

plate company began to take off, Rod had to wrest control of the enterprise away from his father.

The struggle had included hijacking plate inventory from a warehouse and, in the telling, ultimately freeing Rod in his middle years from decades of subordination and tight control by his father.

While the story supposedly had a happy ending, with father and son fully reconciled before his death, I had my doubts. It smacked of being a better tale for public consumption than the likely reality. Rod's stories of his life working for his father were mostly focused on his having consistently achieved business breakthroughs that went unrecognized and unrewarded by his father. Rod MacArthur's struggles with the Foundation's initial board of directors loomed large following his father's death, and it certainly appeared a major dispute over the management of the Foundation would be unfolding.

In a way, Rod's later blood feud with his father's business associates on the Foundation's board of directors was nothing but a continuation of the rancor between father and son that had persisted through the decades that Rod had worked in his father's Citizens Bank and Macmart businesses as well as Bankers Life itself.

William Hoffman's book *The Stockholder*, a 1969 unauthorized biography of John MacArthur, paints a picture of a very warped father-son relationship. When the Foundation later came to publish a history of the MacArthur family, *The MacArthur Heritage*, it dismissed Hoffman's work as "a sensationalized version of John's life [that] should be read more as entertainment than as historical fact." While some of Hoffman's reconstructed dialogs in the book seem a stretch, for me this account has a ring of truth to it:

John considered it a personal affront that Roderick's interests ran in a different direction from his. He put his son to work for Bankers Life, then took pleasure in publicly insulting him at every opportunity. Often, in front of other employees, John would relate tasteless tales of Roderick's ineptitude. Many times...John would leave his office to scream down the corridor: "Hey, you worthless little son-of-a-bitch, get your lazy ass up here."

Hoffman had apparently spent time in the Banker Life organization as editor of one of its publications. This would have put him in a position to be privy to at least some of the internal gossip of the day. He offers this account of Rod in his middle years:

Roderick's middle-age has been spent bouncing from psychiatrist to psychiatrist, joining peace organizations, drinking, and perhaps trying to commit suicide. Once he plunged into a swimming pool and had to be bailed out. Another time he ran his car headlong into a tree on the PGA golf course, spent half a year recuperating. Roderick still works at Bankers, though his duties are vague, and is either feared or scorned by fellow employees. Those who know only that he's the owner's son believe he has great power over their careers and accord him a feigned deference. Others, usually higher-ups, know the father's feelings about the son and treat him the way their boss would want.

Hoffman, unlike Kriplen, offers no sources or footnotes for the reader to consult and I must say I never saw any behavior akin to this in my time working with Rod at Bradford. Thus, some or all of this may properly fall outside the factual realm and into the categories of made up, hearsay or rumor.

The last chapter of Hoffman's book is somewhat different in that it purports to recount a direct conversation the author had with John MacArthur in 1968 in the coffee shop of the Colonnades hotel. In his later years this is where the senior MacArthur lived and worked. Hoffman later told people he had lived for several weeks at the Colonnades while researching his book. In the exchange Hoffman writes that he asked John MacArthur about his son Rod:

"What about Rod?"

"You talk to him?"

"Yes."

"Damn. Is it necessary to dredge up unpleasantness? Why not just tell about what I've done? That's how people measure a man and that's what they want to know. Hell, though, you're a sensitive fellow. I'll level with you and let you decide. Okay, Rod's disappointment to me. I had great plans for him. Bankers could have been his. And all of the other things.

But if you talked to him you know that's impossible. He's got no sense at all. Would rather waste his time reading and attending classes. Christ, he's forty-eight years old. Forty-eight years old and he's going to class. Shit. I attended the school of hard knocks. But I blame myself. I should have taken him by the neck and made him do what was right. Now it's too late. He's a drinker and he's messed up mentally. It's the thing that makes me saddest. It would be nice to know as I grow older that my own boy would take over what I started. So---things aren't as sweet as they seem."

Hiring Lawyers

I got extensive experience at Bradford in managing litigation outside the United States. Bradford's collector's plates were usually made from isolated kaolin clay deposits in China, Japan, and Europe. With artwork on decals applied, they were then fired in limited, numbered volumes and delivered to Bradford in the U.S. for sale around the world. Bradford would then export them from the U.S. for sale by its own subsidiaries or other local dealers. When the plates crossed the border at this point, a customs declaration of their value was made when the imported plates came in bulk into the country of ultimate sale.

At one point, Canadian customs authorities disputed the value assigned to Bradford's imports, claiming it was losing customs duties that were due as a result. After concluding the Canadian valuation calculation Customs made was faulty, I went shopping in Canada for a lawyer there who could represent the company in putting forth its arguments. At the time in Canada and other British Commonwealth countries, lawyers weren't just lawyers, they were either solicitors or barristers and never the twain did meet. Solicitors generally only did office work, though they might appear as advocates in lower courts. Barristers were trial lawyers and had a monopoly on trying the bigger cases in the trial and appellate courts. This meant I needed a barrister.

Early in my search, I discovered a subset of barristers known as Queen's Counsel. This group turned out to be where I found my

lawyer. These advocates are appointed by the Canadian Minister of Justice. All were senior trial lawyers who were recognized for their contributions to the legal profession and public service with the Queen's Counsel (Q.C.) designation. Later in my career with Encyclopaedia Britannica, I also had a chance to be similarly guided through major disputes in trial and appellate courts of the United Kingdom and Australia.

Before Rod MacArthur sued his fellow directors of the John D. and Catherine T. MacArthur foundation, he had asked me for guidance in finding a premier trial lawyer. I took Rod on a round of interviews with several of Chicago's most prominent attorneys. I began by introducing him to Albert Jenner, a founder of the Jenner & Block law firm. Jenner struck both Rod and me as not right for the job. He clearly seemed to be in declining health and lacking the mental acuity of his better days.

Kirkland & Ellis was also on the list to talk to. When I was in law school and beginning to interview firms for a clerkship, my father's brother, Augustine J. Bowe, had left the Bowe & Bowe law firm to become the Chief Justice of the Municipal Court of Chicago. He suggested I ask for an appointment with one of Kirkland's founders, Weymouth Kirkland.

When I expressed doubt as to whether Kirkland would take time to see lowly me, Gus said not to worry. He said he and Weymouth had known each other for decades. I later discovered that these contemporaries had met not as leading Chicago lawyers who might have met as allies or adversaries, but because Gus and his wife, Julia, had bumped into Kirkland and his wife, Louise, on summer trips to France in the 1920s. As Gus predicted, Kirkland did take time to see me.

With the Kirkland firm on my list for the current assignment, I introduced MacArthur to its most prominent litigator of the day, Don Reuben. Reuben was much in the public eye, having such diverse clients as the *Chicago Tribune* and *Time* and sports teams such as the White Sox, Cubs, and Bears. Add to them the Illinois Republican Party, the Catholic Archdiocese of Chicago, and Hollywood

personalities Zsa Zsa Gabor and Hedda Hopper. Reuben wasn't hired then, but not long after I left Bradford, Rod finally did sue his fellow MacArthur Foundation directors, Rod was represented by other Kirkland & Ellis trial lawyers. Reuben was out of the picture at that point because not long after Rod and I met with him, he had been canned by the firm in what the Chicago Tribune called "an act of back-stabbing plotted while Reuben was on a European vacation."

Copyright and Trademark Mastery

The marketing of collector's plates involved a good deal of intellectual property law. The plate designs were mostly protected by copyright laws that prevented the artistic work from being copied. Bradford had created a magazine concerned with the hobby. Its content needed copyright protection, too.

These were done with filings in the Copyright Office of the Library of Congress. Then there were the names of the many subsidiary companies that sold the various collector plates. "Bradford" and the names of these businesses had to be trademarked. This was accomplished with filings in the Patent and Trademark Office of the U.S. Department of Commerce and with various state government offices.

This concentration and hands-on training helped guide my career as an intellectual property lawyer when I later served as General Counsel with United Press International, Inc., and Encyclopaedia Britannica, Inc. During my tenure, Bradford had substantial litigation over copyright and trademark issues of the day. This marked the real beginning of my learning to manage complex intellectual property disputes. At Bradford, these disputes usually involved lawsuits either asserting copyright or trademark infringement or defending against these kinds of claims. In the landmark copyright case, *Gracen v. Bradford Exchange*, 698 F.2d 300 (7th Cir. 1983), Judge Richard Posner's opinion for the 7th Circuit Federal Court of Appeals upheld Bradford's defense of a copyright infringement claim against it. The lawsuit involved a painting of actress Judy Garland in MGM's famous

movie *The Wizard of Oz*. Posner's opinion was memorable both for its erudition and its setting of an important legal precedent.

Hammacher Schlemmer

As I began work for Bradford in 1979, Rod MacArthur was directly engaged in the management of the company, but he was increasingly spending his nine-to-five hours doing other things, including working on his growing dispute with his fellow directors of the Foundation. By the time I left the company, he was spending less and less of his time on Bradford matters and turning up less and less at the company's offices in the Chicago suburb of Niles. Nonetheless, during this period he had acquired the well-known, New York City-based retail and catalog business of Hammacher Schlemmer & Co. from Gulf + Western.

At the time of Rod's acquisition, Gulf + Western was one of America's largest conglomerate companies. As we entered its building at the foot of Central Park, we passed through a group of nuns protesting outside. They were apparently unhappy with Gulf + Western's policies in the West Indies. The company owned thousands of acres in the Dominican Republic replete with sugar plantation and cattle. When Bradford had won the auction for Hammacher, Gulf + Western's president, David (Jim) Judelson, asked the two of us to join him for lunch in his private dining room at the top of the building. As the elevator arrived at the executive suite, two armed security guards with weapons drawn were there to greet us. If the nuns downstairs weren't the threat, Gulf + Western certainly thought it had bigger unseen enemies lurking about.

The small dining room had large windows offering spectacular views of Manhattan. At the time, Gulf + Western was only a tenant in the building, not its owner. Its owner, oddly enough, was Bankers Life & Casualty Co., the massive insurance corporation established by John D. MacArthur. It was the primary asset willed to the MacArthur Foundation upon his death. Knowing that Rod was MacArthur's son

and a director of the Foundation, Judelson joked that if the window blinds needed to be repaired, he now knew who to call.

Not long after Bradford closed the purchase of Hammacher, the Foundation, under a legal requirement to divest its operating businesses, sold the Gulf + Western Building and 18 other New York properties for over \$400 million. In time, Gulf + Western fell apart, and in 1994, architect Philip Johnson oversaw the renovation of the building, and it was reopened as the Trump International Hotel and Tower.

Bradford Then and Now

Rod MacArthur had primarily bought Hammacher to expand its mail order catalog business. Founded in 1848, Hammacher remains America's oldest-running catalog. Before long, he had added to Hammacher's sole retail operation in New York City stores on Chicago's "Magnificent Mile" on Michigan Avenue and on tony Rodeo Drive in Beverly Hills, California. Today, only the Manhattan retail store on 57th Street survives. Bradford's original collector-plate, mail-order business has been vastly expanded to a whole range of other collectibles. The product line now includes décor, jewelry and watches, apparel, bags, shoes, miniature villages and trains, music boxes, die cast cars, Christmas ornaments, dolls, coins, \$2 bills, personal checks, and stationery, not to mention Disney, Star Wars, NFL, and Harry Potter collectibles. Along the way, the company has also changed hands, from Rod MacArthur's heirs to its employees. A Bradford history written in 2006 explained the company's origins this way:

Contrary to popular opinion, J. Roderick MacArthur, the entrepreneur and marketing genius who founded the Bradford Exchange more than three decades ago, did not invent collector plates. When, in a characteristically bold move, he launched what would become his Bradford Exchange by liberating his merchandise from his insurance-mogul father's locked warehouse, what Rod MacArthur did was to understand the plate market in a new way. When the Bradford Exchange issued its first

“Current Quotations” in 1973, listing the current market prices of all the most traded Bradford Exchange collector’s plates, it re-defined plates as a unique art commodity that is actively traded, with uniform buy/sell transactions, on an organized market. The original mission of the Bradford Exchange was simply to monitor the plate market. The ideal, however, was to create an electronic bid-ask marketplace, operating much like a securities market, where transactions could be made instantaneously. In 1983, such a computerized marketplace became a reality. However, with the new ease and increased volume of trading, the emphasis at the Bradford Exchange gradually shifted from monitoring the secondary market to creating and marketing an ever-growing variety of collectibles.

Of course, this version of the company’s history sugarcoats the reality of what was really going on in the late 1970s and early 1980s. Bradford’s marketing targets in selling collector plates were people with modest incomes who now could not only buy art like a real collector but then sit back and watch their wise plate investment go up in value.

Furthering the idea of plate scarcity, collector plates were primarily sold at the time as “limited editions,” never to be made again. The marketing of the collector plates before I arrived had been sufficiently aggressive to cause the federal Securities Exchange Commission to launch an investigation into whether Bradford was failing to comply with the securities laws.

The idea was that by implying the value of collector plates would likely increase in value without any effort on the part of the buyer, the plate might meet the definition of a security. Bradford had dialed back its advertising and avoided formal SEC action. In fact, it found an unexpected marketing upside to the SEC threat. Its promotional material could now proudly announce that collector plates were “not securities!”

However, the 2006 company history slid over the reasons Bradford had to diversify its product line beyond plates after 1983. The truth was that the plate market went south because the rampant inflation in the country that hit a high of 14.6 percent a year briefly in

Jimmy Carter's one-term presidency was plummeting by 1983 under his successor, Ronald Reagan. Inflation fell to 3.2 percent in 1983. The attendant recession of Reagan's first term, coupled with inflation being tamed, simply killed the marketing theme that limited edition collector plates were likely to rise in value over time.

The collector plate runs were typically called "limited editions" because they were limited by number of "firing days." Left unmentioned was that the industrial-scale kilns used in the transformation of clay blanks into decorative plates could produce in the specified firing days tens if not hundreds of thousands of plates.

Bradford sold collector plates in the 1970s and '80s that were largely decorated with artwork in the public domain. This was to save the expense of having to pay commissions to an artist to create fresh works. Also, you could sell more plates if you put on plates preexisting pieces of art that were already known to the public. Fortunately for Bradford, it could use many of the illustrations executed by the well-known American master Norman Rockwell.

Earlier in the century, Rockwell had drawn covers for the Saturday Evening Post that had fallen out of the 28-year protection of the copyright law. Thinking there was no value in old magazines, their copyrights had not been renewed.

To sell its Rockwell collector plates, MacArthur decided to create a company other than Bradford to market them under a different name. Thus, he resurrected the name of a long-defunct West Virginia-based dinnerware maker. Soon the Edwin M. Knowles China Co. was selling the Norman Rockwell plates from the "Oldest Name in North American Fine China." This was true enough even though the plates were actually fired in China.

The downside was that lots of other collectible companies were selling Rockwell-adorned merchandise as well. To distinguish itself from the crowd and elevate its Rockwell plates above the hurly-burly competition, Rod struck a deal with Rockwell heirs through The Norman Rockwell Family Trust to endorse the Knowles commercial effort.

Though the images remained in the public domain, paying a royalty for this Rockwell-related endorsement paid off handsomely for all concerned. With Rockwell recently deceased, and his work more popular than ever, selling the “Authenticated” Rockwell plates with the new Knowles trademark was wildly successful.

By 1983, Rod MacArthur was spending less and less time on Bradford business as his attention had continued to focus more and more on Foundation affairs. Responsibilities for the day-to-day management of the company increasingly fell to his young steward Kevin McEneely, by then 35 years old. Their relationship had been forged when McEneely had abandoned the Bankers Life mother ship with Rod and helped him spirit away the Bradford inventory from Rod’s father a decade before. While McEneely had had no specialized business training, he was personable, and with Rod calling the shots on the direction of the company, it was smooth sailing. With a financially astute President with an accounting background in place, McEneely had proven up to the job of being Rod’s second banana. However, when Rod abruptly fired Bradford’s current President, it quickly became clear that McEneely was not remotely capable of filling the gap. The concern began to drift, and problems built up.

As General Counsel, I reported directly to Rod, not McEneely. I increasingly thought that I had a duty to alert Rod to the gap I saw because it was one that was already beginning to have negative consequences. Initially, Rod was very concerned about the message I had conveyed to him and had arranged for a third party to take a deeper look at the state of the senior management. When interviewed as to what I thought the solution was, I said that besides the obvious option of an outside hire, the company had recently hired an executive to manage Hammacher, and I thought he had the skill set and breadth of experience to serve as the company’s chief operating officer under Rod.

When Rod did circle back to me on the subject, he made it clear that he was not going to replace his stalwart, at least not at that time. That meant that I was going to be hitting the road. Not wanting to wait for the ax, I quickly told him that it appeared he had lost confidence in my advice, and that I was offering my resignation. He

seemed as relieved as I was that the conversation had been as brief and trouble-free as that.

As fate would have it, shortly after I left, Rod was diagnosed with pancreatic cancer and died after a brief illness. My own diagnosis of the serious management issues the company faced just months before was confirmed when the first thing his family did after his death was remove McEneely from the business and install the person I had pointed to as the only sensible internal candidate to replace him. While not right for Bradford at the time, McNeely went on to have an otherwise normal career with several other Chicago area companies.

After leaving Bradford, I briefly went back to private practice in the Loop. I had by that time dropped my affiliation with Roan & Grossman as Of Counsel and became Of Counsel to a firm recently started by two of my former partners there, Bill Cowan and Charles Biggam. I wasn't there long, as I soon moved to Nashville with Cathy and Andy when I took on the job of organizing United Press International's first internal law department as UPI's Assistant General Counsel.

At the time, I was unhappy to have my work as Bradford's General Counsel short-circuited in the way that it was. My brief return to private practice gave me time to rethink what my professional goals should be at that point. I almost immediately decided to pursue another position as an in-house counsel.

As it turned out, the Bradford experience led to a wild and demanding time helping guide UPI's legal course as the company collapsed into bankruptcy.



Robert Grossman and Frank Roan opening the Chicago law firm's Sarasota, Florida office in 1977.

Our worldwide headquarters in Niles, Illinois



Bradford's "A Young Girl's Dream" collector's plate.

My first general counsel job was at the Bradford Exchange, a collectible plate company based in the Chicago suburb of Niles.



Seals and certifications on bottom of "A Young Girl's Dream" collector's plate.



MGM Wizard of Oz plate that was the subject of a major copyright infringement lawsuit.



Hammacher Schlemmer's landmark store at 147 East 57th Street, in New York City.



Typical Hammacher Schlemmer mail order catalog.



*John and Catherine MacArthur.
(John D. and Catherine T.
MacArthur Foundation)*



Rod, John's son, and me at my wedding.



Cathy and Bill Bove travelling on their honeymoon in 1979.

Chapter 3

Jane Byrne Burned—Chicago Politics in the 1970s

Jane Byrne's vs. The Chicago Tribune

In June 1980, as Jane Byrne was starting her second year as Chicago's first woman mayor, a strange media brouhaha briefly transfixed the city. She had become enraged at a *Chicago Tribune* story and in a fit of anger had banned the paper's City Hall reporter from occupying space in the building's press room.

The article that triggered her wrath disclosed the details of a transition report she herself had commissioned after she had beaten the remnants of the late Mayor Richard J. Daley's fabled political machine and secured the nomination of the Democratic Party for mayor in the February 1979 Democratic primary election.

While she had received the transition report shortly after she had won the general election the following April, she and her staff had subsequently kept a lid on it.

The front-page story reporting on the details of the transition report that appeared in the *Chicago Tribune*, Sunday, June 22, 1980, revealed me to be an author of part of the previously secret report, as well as the immediate source of its startling revelations.

How the report came to light, and my part in it, was a combination of highly unlikely circumstances. However, for all the ensuing media Sturm und Drang of the day, any telling of the story will always seem akin to some like Shakespeare's *Macbeth*, just a tale "full of sound and

fury, signifying nothing.” In retrospect, perhaps its only lasting effect was to reinforce the public perception of Jane Byrne as trouble prone, often due to her own devices.

I would never have ended up in the middle of this to-do without the political engagements I had earlier in the 1970s. My involvement in the media train wreck relating to release of the report naturally grew out of my work with two reform politicians on Chicago’s north side, Dick Simpson, and Bill Singer.

Daley was in a race for a sixth four-year term in 1975. Fortunately for him, Singer was not the only candidate running against him.

Helping split the anti-machine vote was the first African American ever on a Chicago mayoral ballot, State Sen. Richard Newhouse. Also in the race was former State’s Attorney Edward Hanrahan. Hanrahan was attempting a political comeback following the killing of Black Panther leader Fred Hampton by police under his control and Hanrahan’s consequent failure to be reelected.

The Machine Weakens after Daley’s Death

With the anti-Daley vote thus split, Daley was reelected in the Democratic primary election in February 1975 with 58 percent of the vote. Singer came in second with 29 percent, Newhouse with 8 percent, and Hanrahan 5 percent. In a striking change to the usual playing field, Daley’s share of the vote was much smaller than in his earlier races for mayor. And this time, he also won less than half of the African American vote. This portended the fundamental shift that finally occurred when Harold Washington spoiled Jane Byrne’s shot at a second mayoral term and was elected Chicago’s first African American mayor in 1983.

Shortly following Daley’s death in 1976, mourners had an opportunity to pay their respects by passing his casket as it lay in state at the Nativity of Our Lord Catholic Church in Daley’s home ward. An estimated 100,000 came to this church in Daley’s Bridgeport neighborhood. The mourners included political figures such as Vice

President Nelson Rockefeller, President-elect Jimmy Carter, and U.S. Senators Edward Kennedy and George McGovern. Those paying their respects also included political opponents. Both myself and my then-brother-in-law Bill Singer stood in the cold in the long line waiting access to the church that day.

Daley's death was followed by a six-month interregnum during which a number of City Council aldermen jockeyed for supremacy. The upshot was that Michael Bilandic, the 11th Ward Alderman of Daley's home ward, was elected later in 1977 to fill out the remainder of Daley's term of office.

Although Bilandic had inherited Jane Byrne from Daley as the city's Commissioner of Consumer Affairs, she didn't last long. When Bilandic supported an increase in taxi fares, Byrne not only refused to say it was a needed adjustment, but she also denounced it as a harmful "backroom deal" that Bilandic had "greased."

That was it for Jane Byrne, who was promptly fired from her job by Bilandic in November 1977. When Byrne announced four months later that she would run for mayor against Bilandic, almost no one took her as a serious threat to his upcoming reelection bid in the February 1979 Democratic primary.

The transition report had been undertaken at Byrne's request shortly after she defeated sitting Mayor Michael Bilandic in the Democratic primary election in early 1979. A prominent member of her transition team was longtime independent City Council Alderman Dick Simpson. Simpson had graduated from the University of Texas in 1963 and then pursued a doctorate degree with research in Africa. He started a teaching career as a political science professor at the University of Illinois Chicago in 1967, the same year I graduated from the University of Chicago's Law School.

Off the teaching clock, Simpson became a co-founder of Chicago's Independent Precinct Organization (IPO) and served as its executive director. The IPO was a body of lakefront liberals focused on good government. In its case, this almost always meant serving as a not-very-heavy counterweight to the dominant machine politics of Mayor Richard J. Daley, head of the Regular Democratic Organization

in Chicago's Cook County. I had gotten to know Simpson from my political work with Singer.

Health had been a minor issue in Daley's 1975 mayoral campaign and, the year after his reelection as mayor, the 74-year-old suffered a heart attack in his doctor's office and died on December 20, 1976.

My work on the Singer mayoral campaign had permitted me to get to know Dick Simpson better and, just before Daley died, Simpson told me he was interested in promoting the idea of greater citizen involvement in ward zoning decisions.

He explained how he envisioned community zoning boards might work and asked me to draft an ordinance that would detail their creation, structure, and operation. While I had written plenty of speeches and press releases by that time, I had never taken on the task of drafting a piece of legislation of this complexity. It struck me as an interesting technical challenge, and I told Simpson I'd give it a shot.

This was notwithstanding my own serious doubts about the wisdom of such a radical decentralization of land-use regulation in the city. Then and now, the existing primacy of aldermanic prerogatives in zoning gave aldermen what amounted to a practical veto over many zoning decisions and had engendered widespread aldermanic corruption.

However, it wasn't clear whether Simpson's idea was likely to fix that problem or make it worse by encouraging more parochial NIMBY (Not In My Back Yard) decisions that shorted the best interests of the city as a whole.

Simpson was pleased with my handiwork and introduced my draft of his ordinance for consideration by the full City Council in early 1977. As was usual with any initiative of one of the independent Democratic aldermen, it was never seriously considered.

I first met Singer in the summer of 1966 after my second year of law school. I was serving then as a summer clerk at the Ross, Hardies, O'Keefe, Babcock, McDugald & Parsons law firm in Chicago. He had already started there as a new associate lawyer recently graduated from Columbia Law School. After my law school graduation in June 1967,

I passed the bar exam and joined Singer as a full-time associate attorney at the firm until I entered the Army in May 1968.

Then in late 1968, when Bill learned I was going to be stationed at the Pentagon in Washington, he suggested I look up his wife Connie's sister, Judy Arndt, then working on one of the Congressional staffs. I took him up on his suggestion. As fate would have it, a few years later Bill and I were briefly conjoined as brothers-in-law. This temporary state soon ended as the two sisters were divorced from the two Bills.

During my time in the Army from 1968 to 1971, Bill had started a successful political career while continuing to practice law. In 1969, as I was settling into my Army work dealing with its newly created civil disturbance mission, Dick Simpson was managing Bill's winning campaign to be elected an independent Democratic alderman of the 44th Ward in Chicago's Lincoln Park neighborhood.

Later in the decade of the 1970s, the Regular Democratic Organization under Daley had the ward maps redrawn in hopes of squelching Singer's independent political movement. Nonetheless, Singer was elected in the newly redrawn 43rd Ward and Dick Simpson became 44th Ward Alderman. Both men were constant and articulate critics of the Daley era's centralized control over the politics of both the City and Cook County. They were up against powerful headwinds, as Daley's wildly successful patronage-based political organization wasn't called the "machine" for nothing.

Before I left the Army in 1971, another Ross, Hardies associate, Jared Kaplan, had called me from Chicago to say he was coming to Washington on business and would like to have lunch. I invited him to join me for a sandwich in the Pentagon's central courtyard, then open to civilian visitors. During lunch, he told me that he, Bill Singer, and some other Ross, Hardies lawyers would shortly be leaving the firm to start a new smaller law firm. He wanted me to join them.

At the time, I was turning 28 and felt that my time in the Army had put me behind my law school contemporaries in pursuing my legal career. Almost all of them had been able to pursue their legal careers without a three-year interruption for military service. At the

time, I was having a hard time remembering what if anything I had actually learned in law school. I thought that, though it would be riskier to turn down my standing offer to rejoin Ross, Hardies, joining a startup firm would likely give me more experience and responsibility sooner in the practice of law.

My thinking was that this would also let me catch up to my peers sooner than if I were to go back to a larger, more structured law firm. With the die cast, I left the Army in spring 1971 to practice at the newly established law firm of Roan, Grossman, Singer, Mauck & Kaplan (later Roan & Grossman). Not returning to Ross, Hardies turned out to be fortuitous for me as the firm shortly thereafter was forced to lay off most younger lawyers after its largest client, Peoples Gas Co., decided to fire the firm and create its own in-house law department.

Bill Singer, while 43rd Ward Alderman and a partner at the new Roan & Grossman law firm, had joined with Jesse Jackson and other liberal anti-machine forces to successfully challenge the seating of Richard J. Daley's delegation of regular Democrats at the 1972 Democratic Convention in Miami. This success and attendant publicity led Singer to give thought to challenging Daley in the mayoral Democratic primary race to take place in February 1975. Singer announced his candidacy on October 15, 1973, leaving himself a full 18 months to raise funds and campaign throughout the city.

During this period, Singer asked me to become Secretary of his 43rd Ward organization, and later, as his campaign picked up steam, to join the campaign full time. Being eager to take on the challenge of what I thought was a worthy battle, I took a leave of absence from Roan & Grossman and became General Counsel and Director of Research of the Singer mayoral campaign. As the campaign grew more frantic and Singer's time got stretched thinner, I also began writing occasional speeches, campaign statements and press releases, as well as position papers on various issues of the day.

During the Singer campaign in 1974-1975, I had met Don Rose, a longtime anti-machine and civil rights activist. Later, in 1979, I briefly sought his advice as I launched an unsuccessful effort to defeat

the current machine Democratic Committeeman for the 43rd Ward. I don't remember the advice Don Rose gave me, but it wouldn't have mattered one way or the other.

As it turned out, I was tossed off the ballot for having insufficient signatures on my nominating petitions. I successfully appealed this decision of the Cook County Board of Election Commissioners, and the Illinois Appellate Court ordered my name back on the ballot. However, when the dust finally settled, I could tell people I'd lost the election by only seven votes. Unfortunately, these were the votes of the seven Illinois Supreme Court justices who reversed the Appeals court. Thus, was short-circuited my ill-fated political career.

Though usually working behind the scenes, over the years Rose had a number of important roles in the city's electoral contests and political spectacles. In 1966, Rose had served as Martin Luther King Jr.'s press secretary when King moved into a Chicago slum to bring attention to poverty and racial injustice in the North as part of his Chicago Freedom Campaign. Apart from handling the local press in this effort, Rose served as a King speechwriter and one of his local strategists. He later looked back on this effort as probably the most important thing he ever did.

Two years later in fall 1968, Rose had a major role in the circus around the Democratic National Convention in Chicago. The resultant street battles with police immediately preceded the opening of the Democratic National Convention. The following year, my law school classmate Bernardine Dohrn and her fellow radical, Bill Ayers, were busy organizing the Days of Rage riots of the Weather Underground. I was watching all this unfold with more than casual interest given my role at the Pentagon at the time in assessing whether civil disturbances might grow.

Coincident with the Convention unpleasantness, the "Yippies" had also arrived in Chicago for the Convention with their political theater of nominating a pig for president. However, SDS and the Yippies were just the opening act in 1968. The bulk of the anti-war demonstrators had come to town by the thousands under the aegis of the coalition of groups known as the National Mobilization to End

the War in Vietnam; the MOBE for short. And Don Rose, building on his recent successful effort for Dr. King, became the press spokesman for the MOBE and was credited with creating the slogan of the anti-war demonstrations, "The Whole World is Watching."

A committed man of the left all his life, Rose could manage to work for a Republican if the times called for it. He took particular pride in his management of the campaign of Republican Bernard Carey in 1972 against the sitting Cook County State's Attorney, Edward Hanrahan. Hanrahan had been vastly weakened with the public as a result of his deadly raid on Black Panther leader Fred Hampton's house in late 1969. Most people thought the raid was a botched one at best and a murderous one at worst.

I personally felt so strongly about it that I and Ross, Hardies lawyer Phillip Ginsberg had earlier called upon the Chicago Bar Association to initiate a breach of legal ethics investigation against Hanrahan.

Notwithstanding the Hampton scandal, when Hanrahan came up for reelection, he was still the machine candidate and widely presumed to be a winner. That's when Don Rose arrived and helped Carey win what would normally have been a losing matchup.

Chicago Tribune contributing Sunday editor Dennis L. Breo captured a profile of Rose in a 1987 portrait. When I recently reread the article, I was struck by the fact that I had a relationship of one sort or another with all of those he quoted talking about Rose. Basil Talbott, political editor of the *Chicago Sun-Times*, was a friend I knew from politics and Lincoln Park, Mike Royko of the *Chicago Tribune* had written a column about my uncle, Judge Augustine Bowe, when he died. Also, as a widower Royko had later married my first wife, Judy Arndt. Ron Dorfman was a friend and the journalist who founded the *Chicago Journalism Review* in 1968. At the end of his life, he beat it to death's door by becoming half of the first gay couple to marry when Illinois law changed in 2014. The last to be quoted was my former law colleague and brother-in-law, Bill Singer. While I was only casually acquainted with Rose, we had many other friends in common.

With a long history of civil rights and anti-Daley, anti-machine credentials, Rose again was available for a battle against the machine in 1979 when Jane Byrne looked to all like a quixotic loser up against Daley's successor Bilandic.

Mayor Byrne's 90-Day Report Card

In the 1975 Democratic primary election for mayor, the Chicago Tribune had taken a pass on the endorsement of any of the candidates, saying it was a question of, "whether to stay aboard the rudderless galleon with rotting timbers or to take to the raging seas in a 17-foot outboard." By the time Don Rose joined Byrne to manage her campaign, the "rotting timbers" of the Democratic machine had more completely eroded. And the former Commissioner of Consumer Affairs, Jane Byrne, not only had the temerity to run against the machine's choice for mayor, but she also had a tough, down-to-earth, scrappy personality that sharply contrasted with her reserved and bland opponent.

The longtime liberal lakefront constituency in the city's 5th Ward in the University of Chicago's Hyde Park neighborhood, and more recent independent north side lakefront wards represented by Simpson and Singer, solidly backed her. She also benefited from the growing opposition to the machine in the Black community.

But what really put her over the top was the 35 inches of snow that fell in the two weeks before the February 27, 1979, primary election. It had been met with a perceived collapse of the city's usually more efficient snow removal efforts. The primary ended with Byrne garnering 51 percent of the vote and Bilandic 49 percent.

Mike Royko's *Chicago Sun-Times* column immediately declared that, amazingly enough, ordinary Chicagoans had decided to finally defeat the machine. He thanked those who voted for her and said, "today I feel prouder to be a Chicagoan than I ever have before in my life."

Not long after Jane Byrne was elected mayor in the April 1979 general election, I wrote an article for the August 1979 issue of *Chicagoland Magazine* assessing her first three months in office.

In the course of my review of her early performance in office, I first took a look at the broader context of the changing politics of Chicago from which she had emerged. For Richard J. Daley, the 1970s had been the most difficult period of his decades-long domination of the city's politics, and the grand patronage machine he had fine-tuned was substantially weakened by the time he died in 1976. Throughout the 1970s, the growth of independent opposition continued, as did disaffection in the Black electorate.

As my article below reminds me, the beginning of Jane Byrne's mayoralty exposed the very seeds that would grow in the succeeding years and deny her reelection in 1983:

It cuts, it chops, it whirls like a dervish. It spins, it dices, it reverses direction as fast as A. Robert Abboud. It makes mincemeat out of dips with a mere flick of the tongue. It likes to really mix it up. A revolutionary new food processor you ask. Not at all. It's La Machine—
By Byrne.

If Daley was the Machine's Christopher Wren, Bilandic was its Cleveland Wrecking Company. Through the sheer force of his impersonality, he systematically and devastatingly eroded the public perception that somebody was in charge and in control of a very large, very rough and tumble city.

And, in fact, he wasn't in charge, having delegated the politics of the job to Daley's unelected former patronage functionary, Tom Donovan. As Chicago Byrned, Bilandic fiddled: jogging, raising cab fares and cooking on Channel 11. Or so it seemed.

It was all too much for the neighborhoods, no matter what the precinct captains said, the one thing most folks out there realized was that if they didn't take charge of the operation for once and put a tougher person in that office on the 5th Floor, they'd be snowed-under, potholed, garbaged, and maybe even thieved to death. Irony of ironies that the City of the Big Shoulders put a diminutive politician in high heels in charge of the store

and relegated the male incumbent to the relative quietude of a law practice on LaSalle Street. The fabled “Man on Five” became transmogrified into the “Women on Five” and in Chicago no less!

*Clearly Byrne had one of the fastest mouths east of Cicero. But would her kind of instinctive, politically combative, hip shooting translate well once the substantive issues came along? A bit of evidence is now in and the answer to that question is something of a mixed bag. She hasn’t proved it yet, but at least it appears Chicago has a mayor again. Take three issues that emerged early on: appointments, condos and the Crosstown
....*

Mayor Jane Byrne’s Secret Transition Report

Because Byrne had run as a reform candidate, after the primary election she quickly sought advice from a panel of knowledgeable experts pulled together for a transition team headed by a Northwestern University professor, Louis Masotti.

Masotti had taken a leave of absence from the University’s Center for Urban Affairs and in an interview with the *Chicago Tribune*, said that the team’s transition report for the new mayor was designed “to assist a fledgling administration to hit the floor running.”

Masotti went on to say of his 26-member transition committee:

What we did was not budgeted; nobody got paid. We had no staff. These were citizens who at the request of the mayor volunteered to spend a hell of a lot of time and energy and put their reputations on the line to provide information to help guide the mayor.

The fact that she chose to dismiss it, apparently without reading it or judging it on its merits, was not well received by anyone on the committee. Nor did anyone get any appreciation in any way, shape, or form, including me.

Dick Simpson was the principal author of the report, New Programs and Department Evaluations. The document was reported to be 1,000 pages long, 700 of which were made available to the

Tribune. Other transition team members besides Simpson included Bill Singer, Leon Despres from the 5th Ward in Hyde Park, and other well-known opponents of the Regular Democratic Organization. When the Chicago Tribune story on the transition report broke, it had a sidebar by George de Lama and Storer Rowley noting that I had written a section of the report.

Years later, I don't recall what part it was, but it may well have dealt with the Chicago Public Schools. I had spent a good deal of my time on CPS matters in my Director of Research role in the Singer mayoral campaign. Singer had made improving the public schools the centerpiece of his mayoral campaign, and I had ended up writing most of the lengthy policy study the campaign released. When Jane Byrne went on to win the general election in April 1979, she corralled 82 percent of the vote in defeating Republican Wallace Johnson. Shortly thereafter, she and her staff received Masotti's transition report. The decision was quickly made to keep it under wraps.

Rob Warden

I had met journalist Rob Warden both through my law practice, and separately knew him from frequenting Riccardo's bar after working hours.

Warden was a former foreign correspondent in the Middle East for the *Chicago Daily News* and had become editor of the *Chicago Lawyer* after the *Daily News* folded in 1978.

The magazine had been started by lawyers unhappy with the media coverage of the profession, and they wanted the available Warden to improve press coverage of the judicial selection process. Warden being Warden, *Chicago Lawyer* had quickly moved on to subjects of broader public interest, including prominent lapses in legal ethics, non-legal governmental processes, and police misconduct. Warden in later years would document with James Tuohy Chicago's Greylord scandal of widespread judicial bribery and end his career in 2015 as Executive Director Emeritus of Northwestern University

Pritzker School of Law's Bluhm Legal Clinic Center on Wrongful Convictions.

Warden and I liked and respected each other and, as editor of *Chicago Lawyer*, he had commissioned recent articles I had written for him on the proliferation of foreign bank offices in the city and the messy transition leading to banker A. Robert Abboud heading up the First National Bank of Chicago.

Unhappy with the transition report being bottled up by Byrne, Warden had brought suit against the city for its release. In December 1979, Cook County Circuit Court Judge James Murray ordered that the six-volume report see the light of day.

However, with the city appealing the order, the report was still out of sight a year after Byrne's election. That was when, on June 6, 1980, Warden and Dick Simpson arranged for a copy of the report to be offered to the Chicago Sun-Times in a manner that would enable it to gain a major competitive scoop over its great rival, the *Chicago Tribune*.

Simpson's goal in taking the still-secret report to the Sun-Times was primarily to bring to light the report's many recommendations to reduce government waste. Along the way he also hoped to generate some publicity for a forthcoming book he had edited that contained a long essay developed from the report. Because the *Chicago Lawyer* had been responsible for successfully suing the city to release the transition report, Simpson wanted to let Warden and the magazine publish its own account of the transition report coincident with the *Sun-Times*. Apparently, the Sun-Times was agreeable to this general arrangement.

An article in the *Chicago Reader* later described the press brouhaha attending the revelation of the transition report as a "tale of life on Media Row—a tale of misspent passions, split-second decisions, and late-night cloak-and-dagger."

When Simpson gave Warden a copy of the 700 pages in his custody, Warden passed it on to me and asked me to digest the tome in an article appropriate for *Chicago Lawyer* readers.

I had read the entire report in my Lincoln Park home by Friday, June 20, and had just begun to write my article. Some time on Friday, Warden heard that the *Sun-Times* was at that moment putting together a three-part version of its story and planned to publish it in final form beginning in that Sunday's paper.

Warden promptly called the *Sun-Times* Editor, Ralph Otwell, to see if he could delay the *Sun-Times's* publication long enough for me to finish my article and have it ready for publication in *Chicago Lanyer* at roughly the same time as the *Sun-Times* would publish. According to the later *Chicago Reader* article, Otwell said the story was already in the paper, but he'd see if he could delay it. In fact, Otwell was able to delay it and the first edition of that Sunday's *Sun-Times* had nothing about the transition report.

About 11 that Friday evening, Warden was at Riccardo's, a favorite media watering hole, when a *Sun-Times* editor, unaware of Otwell's success in delaying publication of the article, told Warden the article had been set for publication in Sunday's paper.

At the time, I was newly married and my wife, Cathy, was pregnant with our first son, Andy. We were living in a townhome on Larrabee Street in the Lincoln Park neighborhood when I shortly got an unexpected telephone call from Warden.

He said the *Sun-Times* had jumped the gun on its article, and with the timeliness of the *Chicago Lanyer's* article now undercut, he wanted to give the *Chicago Tribune* immediate access to my copy of the report. He asked me to also lead the reporters who would write the front-page story for the *Tribune's* Sunday paper through the lengthy document.

This would be necessary for such a complicated story given the tight deadline, but achievable given the fact that I had already carefully analyzed it for its newsworthy elements and had already formed my own idea of how the article might be structured.

Warden told me I was to stay awake and await the arrival of two reporters.

At precisely 1 a.m. Saturday, my doorbell rang, and George de Lama and Lynn Emmerman from the *Tribune* arrived, ready to jump into their task with both feet. As they entered, de Lama handed me a handwritten note Warden had given them testifying to their bona fides. It read:

The Tribune reporter who has this note has my blessing. The Sun-Times is screwing us on the release of the transition Report. I'd like to read it in the Tribune first. Help them.—Rob

I led de Lama and Emmerman through the hundreds of pages, explaining the structure of the report and pointing out for them what I thought to be the more important and interesting critiques of the various City Departments. I also reviewed with them the pertinent recommendations that had been made to the incoming mayor. It was 5 a.m. before we had gotten through it all, at which point my visitors left. Their next task was to quickly write up their lengthy story and accompanying sidebars and meet the Saturday deadline for the early edition of Sunday's paper.

“Innuendo, Lies, Smears, Character Assassinations and Male Chauvinist”

The upshot of this frantic deadline mission was that the early editions of the Sunday *Tribune* that hit the streets Saturday evening had the story blasted over its front page and spilling into multiple inside pages, and the *Sun-Times* didn't. The *Tribune*'s headline screamed, “Secret City Report Cites Waste, Incompetence.” The lead (or “lede” for nostalgic romanticists of the linotype era) of the story on page one was a classic:

Exclusive report: A SECRET evaluation of the City of Chicago prepared for Mayor Byrne last spring at her request by a hand-picked team of advisers and later shelved by her administration found widespread waste and incompetence in the city government she inherited. The secret report, obtained Saturday by the Tribune, was apparently ignored, however, as the mayor and top officials of her administration deemed its

recommendations for a general overhaul of the city's governmental structure and the dismissal of several clout-heavy department heads politically inexpedient.

When the *Sun-Times's* Otwell saw that his paper's exclusive had gone out the window, with the story already written in house, he was able to promptly recover and feature it on the front page of the later Sunday edition of the *Sun-Times*. Proving the adage that when it rains, it pours, both the *Tribune* and the *Sun-Times* had been gifted a new story element by Mayor Byrne. Splattered across the top of its later Sunday edition, the *Tribune* headline read, "Tribune barred from City Hall: Byrne." The story lead explained:

Within hours of a published report critical of the way the city was run prior to her administration, Mayor Byrne called The Tribune city desk Saturday evening and said she would throw the paper's reporters out of City Hall Monday morning. "Today's paper was the last straw," she said. "Your paper will not have privileges at the City Hall press room. Never again will I respond to reports in the Chicago Tribune."

The shocking new story line immediately seized the attention of all Chicago's media as the television news departments now jumped into the mix with fevered stories and speculation on the imminent death of the First Amendment and the Mayor's ongoing predicament of how to walk back her untenable promise.

The late edition of the Sunday *Sun-Times* also prominently featured the *Tribune's* ouster and reported that a statement released by Byrne's press secretary and husband, Jay McMullen, to the City News Bureau said, "The Chicago Tribune has engaged in innuendo, lies, smears, character assassinations and male chauvinist tactics since Jane Byrne became mayor."

Byrne added in an interview with the *Sun-Times* that the *Tribune* articles were but the latest in a long series of unfair attacks on her administration.

She called the task force's findings "ridiculous," the *Tribune's* reporting, "yellow journalism," and said that the newspaper "only printed 85 percent of the story." The *Sun-Times* story went on: The

mayor said she would refuse to answer any questions posed by Tribune reporters and would refuse to comment to other reporters on stories carried by the newspaper. She also repeated directly to the *Sun-Times*, “I will never, ever talk to them [the *Tribune*] again.” She also dismissed the advisory study itself as “unbelievable, naïve and superficial.”

Rally ‘Round the First Amendment

Sunday morning, husband Jay McMullen spoke to Bob Crawford, longtime City Hall correspondent, on WBBM radio. When Crawford raised the question of the mayor being sued and losing, McMullen opined, “At least we will have made our point.”

McMullen also went on offense by telling the United Press International wire service, “Let them sue; we’ll take it all the way up to the Supreme Court.” (Though I wasn’t General Counsel of United Press International for another five years, I can’t help but think I would have been filing a friend of the court brief siding with the *Tribune* if such a lawsuit had come to pass in later years.)

The American Civil Liberties Union, which then enjoyed a reputation for defending free speech, found the Byrne action “outrageous” and predicted her Tribune ban would not be upheld even if taken to the Supreme Court.

Stuart Loory, president-elect of the Chicago Headline Club and managing editor for news of the *Sun-Times*, found a “clear violation” of the First Amendment.

The Chicago Newspaper Guild union was equally aghast, “We vigorously and unanimously condemn the mayor’s action.”

Sun-Times publisher James Hoge chimed in, calling the ban “indefensible.”

Will She or Won't She?

At first, this was all taken very seriously. *Tribune* Managing Editor William Jones said in Monday's *Tribune*:

There is no vendetta and the mayor knows it. The Tribune will continue to publish the news without first seeking approval from the city administration. Mayor Byrne is saying in effect that when she disagrees with what is published in the Chicago Tribune, she will take action to impede the free flow of information from City Hall to the people of Chicago. That's a frightening point of view on the part of any public official. It's particularly chilling when it becomes the publicly stated policy of the Mayor of the City of Chicago. The issue is not a free desk at City Hall. The issue is freedom of the press.

At the *Sun-Times*, Byrne's attack on the *Tribune* carried over to its own front page on Monday, when the paper's headline read, "Byrne blames 'vendetta' on failure to OK land deal." The related article by *Sun-Times* reporter Michael Zielenziger reported that Mayor Byrne believed that the *Chicago Tribune's* "vendetta" against her administration stemmed partly from her failure to quickly approve a 54-acre real estate development along the Chicago River east of Tribune Tower.

The land being referred to was owned in part by the Chicago Tribune and the Chicago Dock and Canal Co. The latter concern was a 123-year-old company started by Chicago's first mayor, William B. Ogden. Byrne said she was offended because detailed plans for the proposed development had been presented to her by an officer of the Dock and Canal Co. the preceding Thursday, without first being presented to the city Planning Commissioner.

Left unreported was the fact that the mayor's occasional spokesman and husband, Jay McMullen, was currently on leave from his job as a *Sun-Times* reporter on the real estate beat.

With Byrne having thrown down the gauntlet by repeatedly saying the *Tribune* would be banned from City Hall, the question on everyone's mind was whether the mayor would actually carry through

by kicking the *Tribune's* City Hall correspondent out of the building and keep her promise to "never again respond to reports in the Chicago Tribune."

At the time Roger Simon was making his chops as a reporter at the *Sun-Times*. He would later move on to be the *Tribune's* White House correspondent, and in time the chief political correspondent for both *Bloomberg News* and *Politico*. Simon was given the assignment to freely ponder the seeming seriousness of the whole Byrne ban on the paper's front page. In a series of straight-faced pinpricks, he successfully punctured the dirigible of hot air hanging over the city that morning.

The headline of Simon's story read, "Trib-ulations make the mayor erupt." The lead that followed gave more than a hint that everyone should relax and take a deep breath:

Mt. St. Byrne erupted over the weekend, spewing forth steam, hot air and volcanic anger. Mt. St. Byrne, otherwise known as Jane Byrne, mayor of Chicago, was angered when the Chicago Tribune printed a year old report stating that past mayors often were influenced by politics in running the city The real question, however, was why Byrne was so mad at the printing of the report, since the report did not attack her, but her predecessor, Michael Bilandic, a man the mayor has often compared unfavorably to a sea bass....

The mayor's husband, press secretary and chief enforcer, Jay McMullen, immediately sought to calm the situation by announcing that the Tribune would also be barred from speaking to City Hall officials and examining public records. When persons pointed out this might violate the Bill of Rights, Jay was momentarily silenced as he tried to find out if City Hall owned a copy.

Simon concluded his observations with suggestions on how the *Tribune* might better have responded to the mayor's attacks and expressed the depressing thought that the city would remain captive to the chaos for the foreseeable future:

But the Tribune is being really dumb about this whole thing. Instead of issuing swell sounding statements about a free press, here's what I would

do: I'd get my five fattest reporters and have them sit on the desk in City Hall. I'd force McMullen to cart it out with a forklift. Then I'd sell the picture to Life Magazine for \$10,000. Or I'd get all my editors and have them sit down on the floor of the City Hall press room and go limp. Then when the mayor ordered the cops to move in with cattle prods, I'd have all the editors sing "We Shall Overcome" and sell the soundtrack to "Deadline U.S.A."

I think the whole affair has been terrific. It's the most fun the press has had since the Democratic Convention of 1968. During most June days, other newspapers around the country have to write stories about kids frying eggs on sidewalks and flying saucers landing in swamps. But not in Chicago.

We have daily eruptions to keep us busy. I say: "Keep it up, Mayor!" Who cares if those drab little men on Wall Street keep getting upset with all the crises on this city and keep lowering our bond ratings? Those guys have no sense of fun.

As for the rest of you citizens, I realize it sometimes depresses you that Jane Byrne has created all this chaos in just over 14 months.

But what can you do about it? That's the way it is, on the 434th day of captivity for the hostages in Chicago.

The Aftermath—Harold Washington Defeats Jane Byrne

On Saturday, June 27, just one week after the *Tribune* laid out the details of the previously shielded transition report, it was left to the Hot Type section of the *Chicago Reader* to try to pick up the pieces. The very last word, if not the last laugh, was had the next day by the *Near North News*, one of the Lerner Newspapers.

In the *Reader's* analysis, Warden was a former *Daily News* man with no love lost for Field Enterprises, the owner of the *Sun-Times*. As a result, he had no trouble believing it when a *Sun-Times* editor told him of seeing page proofs of the Sunday story and also concluded that

Ralph Otwell had failed to pull the story and was going back on its arrangement with Dick Simpson. *The Reader* reviewed the bidding:

So, to retaliate, Warden decided to turn the Sun-Times's "exclusive" into no exclusive at all. By midnight, Warden was in the Tribune city room; by 1 AM Saturday, a couple of Tribune reporters had awakened William Bowe, who was analyzing the transition report for Chicago Lawyer, and who (at Warden's suggestion) led the reporters through its 700 available pages over the next three hours. By 5 AM, the Tribune was assembling an unexpected front page for Sunday's paper and remaking its "Perspective" section to accommodate a lengthy scorecard of the report's findings.

The Reader article concluded by quoting Otwell as saying under normal circumstances, the story wouldn't have been played up as big as it was under a Sunday banner headline. Otwell observed, "After all, it's a recycled story that wouldn't seem to justify the space and fanfare that either of us gave it, quite frankly." When Warden was asked by the Reader if he would have run my story on the front page of *Chicago Lawyer*, he answered, "Hell no!" *The Reader* summed it up this way:

At any rate, consider the real meaning of the whole ridiculous episode: (which has probably set back any serious scrutiny of the transition report by months) a year-old story becomes a three-day, three-ring media circus, thanks to one overprotective magazine editor, two contentious dailies, and the city's dizzy first family. And for a few moments, all of Chicago was fooled into thinking something important had happened.

The truly last word came the day after the Reader's story and appeared in a regional edition of the Lerner Newspapers, the *Near North News*. True to its traditional concentration on its local circulation, it focused on the north side addresses of Rob Warden and me before turning to the fact that the Lerner papers had long before run a detailed story on the transition report in November 1979:

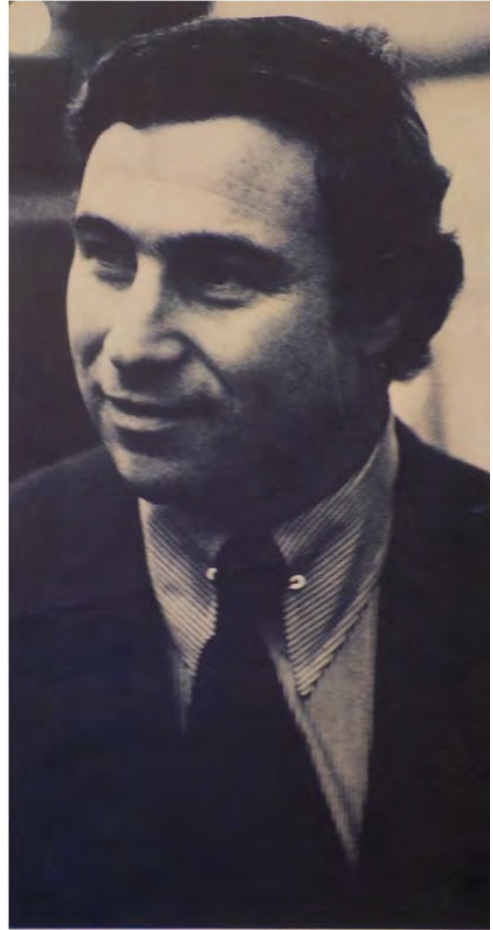
Near north siders were heavily involved in the Chicago Tribune story that so miffed Mayor Jane Byrne that she announced the paper was going to be thrown out of City Hall. The mayor's transition report was obtained by the Chicago Lawyer, edited by Rob Warden, 1324 N. Sandburg. Warden turned it over to Atty. William J. Bowe, 2044 N. Larrabee

for analysis. Bowe turned it over to the Tribune. Ironically, the report was printed in great detail last Nov. 18 by the Lerner newspapers, without unduly irritating the mayor.

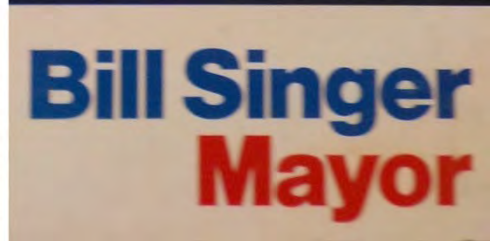
My own view is that what went on was more than a tale almost about nothing, and that there is at least one solid truth to be unraveled from the affair. This particular media circus added to an already growing view that Jane Byrne, for lots of reasons, was not well suited to serve a second term as Chicago's mayor. The strange media flap over the transition report and the coverage of her temporary sojourn in the Cabrini-Green housing project conveyed a sense of her instinct for the capillary instead of the jugular. Her firing of officials throughout the city government seemed too disruptive and haphazard to be treated as fair political retribution. Having campaigned as a reformer against the "evil cabal" in the City Council, she had also alienated Rose and other independent-minded supporters when she cozied up to heavyweight machine aldermen like Edward Vrdolyak and Edward Burke. Finally, Chicago was in any event getting ready to move on to the next new thing, the election of Harold Washington, the city's first African American mayor. While there was much to admire about Jane Byrne personally and her one term as mayor, on balance she added, instead of subtracted, to the city's ongoing sense of unease after Daley's long rule, and voters punished her for this at the next election.



Dick Simpson led the 1970s political reform movement in Chicago in his role as a north side lakefront alderman.

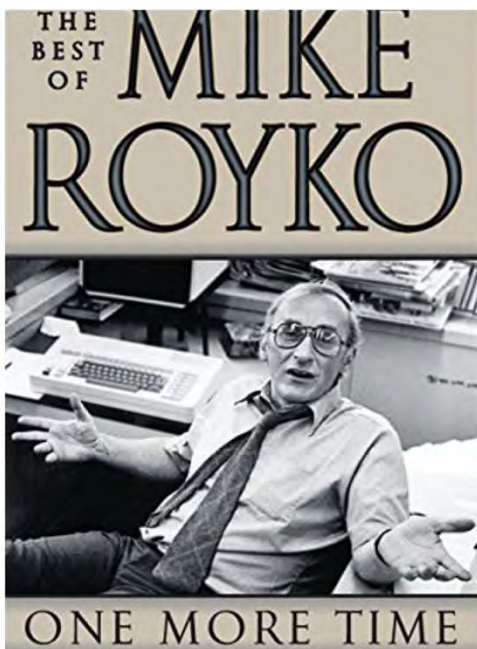


Alderman and mayoral candidate Bill Singer directly took on the patronage-based political machine of Mayor Richard J. Daley.





Don Rose, longtime independent political operative, headed up Jane Byrne's successful mayoral campaign.



Noted Chicago columnist Mike Royko, left his normal disdain for politicians behind when he wrote a celebratory column on Byrne's election victory.



Jane Byrne was elected Chicago's first woman mayor in 1979. (Carl Hugare, Chicago Tribune)



Riccardo's Restaurant 1983: Ron Dorfman (Chicago Journalism Review), Bill & Cathy Bowe, Nick Farina (Chicago Sun-Times), Jane Jedlicka and Carol Teuscher.

OTHER VOICES

Personal Commentary by William J. Bowe

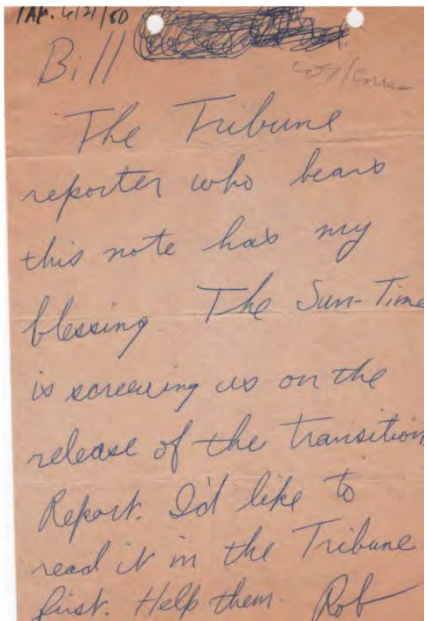
Jane Byrne's 90-Day Report Card

"Byrne hasn't proven herself yet, but at least it appears the city has a mayor again."



Rob Warden was the editor of Chicago Lawyer magazine. (William Hinkle, Chicago Tribune)

Rob Warden's assignment put me in the middle of a Page One story involving a secret study, a mayor's overreaction, and feuding newspapers.



Tribune barred from City Hall: Byrne

WATKINS BRIDGE of a political event, the Tribune was barred from City Hall today by Mayor Jane Byrne. The Tribune's front page scoop on Mayor Byrne's secret transition report was the cause of the ban.

The Tribune's report, which was the first to disclose the existence of the report, was published in the Tribune's front page on June 21. The report was a surprise to many, as it was not expected to be published until after the election.

The Tribune's report was a surprise to many, as it was not expected to be published until after the election.

The Chicago Tribune's front page scoop on Mayor Byrne's secret transition report.

Secret city study cites waste

THE MEDIA
Lerner, Sun-Times

Byrne repo-
crisis in con.

By George de Lame
and Lynn Ehrenman



The background

The Tribune's report, which was the first to disclose the existence of the report, was published in the Tribune's front page on June 21. The report was a surprise to many, as it was not expected to be published until after the election.

Sunday Sun-Times

Fine

Byrne ignores secret study attacking waste

The Chicago Sun-Times immediately follows with breaking news of the Tribune's ouster from City Hall.

Mayor orders ouster of Tribune

Eviction from City Hall is set because of 'smear tactics'. Page



Jane Byrne looks askance as her successor, Harold Washington, Chicago's first African American mayor, takes the oath of office. (Chicago Tribune)

Chapter 4

Before the Deluge—United Press International

Transitioning to United Press International

After I left The Bradford Exchange in 1983, I briefly settled back into the private practice of law. Joining several of my former Roan & Grossman partners as Of Counsel, I worked in a La Salle Street office across from architect Helmut Jahn's nearly completed State of Illinois Center building. This iconic structure housed the State's offices in Chicago for the next three decades before the State abandoned it as a white elephant too costly to maintain. Inefficient in a city with real winters, it sat empty for most of another decade until Google rescued it from the wrecker's ball and bought it in 2022 as a second Chicago headquarters. My strongest memory of this short period is not the legal work I did but rather being at eye level with the glass dome under construction atop the building's dramatic 17-story atrium. It was impossible not to frequently stare out the window at the steel workers clambering along the yet-to-be-glazed skylight structure above the atrium. Their ballet-like, death-defying, angled tightrope walks were so gripping that anyone watching it for long could fairly be accused of having the morbid curiosity worthy of a Formula One fan.

Notwithstanding this distraction, I continued to do some carryover corporate work for Bradford and general legal matters for other clients. One matter in particular I remember working on was an odd problem that cropped up in the administration of an estate. My friend Arthur Cushman had recently started a long-planned vacation

trip across the Canadian Rockies. He was headed westbound to Vancouver from Toronto on a Via Rail Canada train. He never made it. A contemporaneous police report said that not long after leaving Toronto he had been eating dinner in the dining car when he suddenly stood up, grabbed his chest, collapsed, and died. Though only in his early 50s, I knew he had had heart troubles in the past, but the report of his sudden death had come as a shock to me and all those who knew him.

The executor of his estate retained me to track down several missing items known to be on his person when he died. Strangely, they had not been on him when his remains were claimed by next of kin. One item was a money belt that he always wore travelling. It was said to have \$200 of mad money in it. The other missing item was of more sentimental value, a gold bolo sheep's head tie clasp that was always a part of his informal string tie attire.

The train crew had promptly passed on news of the development to Via Rail's faraway dispatcher, who in turn contacted authorities in the first available stopping place along the route. Cushman was tall and very heavy and, when I later talked to the local sheriff, I learned that his corpse had been offloaded from the train with some difficulty. The body was put in an ambulance in a sparsely populated location and driven to the nearest mortuary.

The sheriff took my report of the missing items seriously and, amazingly enough to me, he mostly solved the mystery of the missing items. It turned out the ambulance driver and his assistant couldn't resist temptation. It had been a dark night when they picked up the body after all, and the only other person around them as they drove to the undertakers would never be able to tell the tale of their filching.

Confronted by the law, they had given up the gold bolo tie clasp without ado, disclaiming any knowledge of what might have happened to the cold, hard cash. Although I never found out, my guess is that in return for giving up the clasp, the high sheriff let the matter ride.

My priority in this period was to find another corporate law position. In pursuit of this goal, I began to talk to friends and family and other lawyers I knew for advice and pointers to possible

opportunities. One of those I talked with was a classmate of mine at the University of Chicago Law School, Linda Neal (then Linda Thoren).

One of the few women in the class besides Bernardine Dohrn that graduated with me in 1967, Linda had first worked in the development office of the University and later at the Art Institute of Chicago. At this time, she was an associate in private practice with the large Chicago law firm of Hopkins & Sutter. There she was doing legal work for clients of Cordell Overgaard, a partner later representing the United Press International wire service.

UPI—Second Banana to the Associated Press

United Press had been founded in 1907 by E.W. Scripps, the owner of newspapers in Cincinnati, Cleveland, Columbus, and Toledo. The papers covered local news in these cities adequately but were at a disadvantage in covering non-local news. The competitors of Scripps had inexpensive access to news stories outside their local markets because they had access to the Associated Press wire service and Scripps did not. AP was a standalone cooperative news-gathering organization created and funded at the time by its members, most of the country's largest newspapers. With these newspapers as members of the cooperative, AP was able to telegraph these local stories to them in an economical way.

The cooperative newspapers that owned AP had solidified their monopoly on this kind of economic news reporting by making it against AP policy for it to sell to more than one newspaper in each market. This had forced Scripps into the uneconomic step of beginning to put its own reporters in cities in which it had no newspaper or way to offset the cost.

The answer to this problem that Scripps arrived at was to create a competitor to AP. After some years, his United Press had a small number of correspondents in cities that were transmitting about 12,000 words of Morse code over leased telegraph lines to 369

newspapers. In later years, UP grew to be a worthy competitor to the AP but throughout the decades always remained second in size and scope to the AP. What it lacked in AP's deeper resources, it tried to make up for with a colorful focus on people and succinct lively reporting.

In the late 1920s, UP's head briefly met with William Randolph Hearst to discuss merging with the Hearst newspaper chain's competing International News Service. INS was having its own difficulties competing with the AP behemoth at the time. According to the history of UPI in the book *Down to the Wire*, written by Gregory Gordon and Ronald Cohen, Hearst is said to have replied, "You know a mother is always fondest of her sickest child. So, I guess I will just keep the INS." However, in 1954, three years after Hearst's death, the mother of INS was no longer in the picture. The merger went forward, and the United Press became United Press International.

In the next two decades, UPI thrived. By 1975, it counted 6,911 customers. Its main revenue producers then were 1,146 newspapers and 3,680 broadcasters. Technology advances in computerization had brought teletype machine advances, but cost-saving satellite technology was still in the future.

After 1975, the continuing movement of advertising dollars from newspapers to television began to sharply reduce the number of surviving afternoon newspapers in the country. This had an increasingly negative effect on UPI's finances. In the late 1970s, UPI merger talks with CBS, National Public Radio, and other possible buyers went nowhere, and Scripps' executives went public with news that they were interested in a sale or other divestiture of UPI. By 1980, a quadrennial year with extra news expenses for both the presidential election and the Olympics, the Scripps chain was forced to underwrite a \$12 million annual operating loss at its UPI subsidiary.

With no responsible parties in the news business stepping up to the plate with an offer to take UPI off its hands, the E.W. Scripps Family Trust, which owned the newspaper chain, began pressing for a sale of UPI on any basis.

Beneficiaries of the Trust were Scripps family heirs. Trustees of the Trust, owing a fiduciary duty to the heirs, were increasingly concerned that if the Trust continued to own UPI, at some time in the future the trustees might be subject to up to \$50 million in unfunded pension liabilities.

They were also worried that lawsuits could be brought by the heirs against the trustees for wasting the Trust's assets by continuing to fund the losses of a wire service that no longer was essential for the Scripps newspapers to own.

Enter at this propitious moment, Douglas Ruhe and William Geissler. They bought UPI from Scripps for \$1 in June 1982.

UPI's new owners, Douglas Ruhe and William Geissler, were young Nashville entrepreneurs. Though they had started out with little business experience or capital, their small Nashville company, Focus Communications Co., had been issued one low-powered television license in Illinois and had several others pending.

Ruhe had grown up in an unusual family. His father, Dr. David Ruhe, was appointed the first professor of Medical Communications at the University of Kansas Medical School in 1954. Dr. Ruhe was a medical educator who made more than 100 training films. A member of the Baha'i Faith, he was later elected Secretary of the National Spiritual Assembly of the Baha'is of the United States. As the Baha'i Faith has no clergy, it is governed by elected spiritual assemblies. Then from 1968 to 1993, the senior Ruhe served as one of the nine members of the representative body of the global Baha'i community, the Universal House of Justice of the Baha'i Faith resident in Haifa, Israel. Dr. Ruhe had also long been active in civil rights, working in Atlanta in the 1940s to increase the hiring of African American police officers and in Kansas City in the 1960s in protesting segregation.

His son Doug had followed his father in the Baha'i Faith. He had met Bill Geissler when both attended graduate school at the University of Massachusetts in Amherst. They later worked together in the 1970s at the Baha'i National Center in Wilmette, Illinois, near where Dr. Ruhe lived. In 1977, with a loan from Ruhe's mother-in-law, the two joined with a Korean-born graphics designer and started

a small public relations firm in the attic of Ruhe's home in nearby Evanston.

In 1980, under President Jimmy Carter, the Federal Communications Commission had launched a program to "let the little guy" get into commercial television broadcasting. The idea was to ease licensing requirements and financial hurdles for low-power TV stations that would have a small range of 15 miles, rather than the average 50 miles for full-power stations. The thinking was that these stations would be cheaper to build, enabling minorities and more owners to get broadcast licenses. Applicants for low-power stations also would no longer have to prove they had the financial wherewithal to actually make a go of it.

By 1985, many of the 40,000 applications received were for overlapping geographic areas. In these cases, licenses had been awarded in over 300 lotteries. To steer more applications to minority applicants and increase their chances of beating out non-minority applicants, minority applicants were given more lottery numbers. With Doug Ruhe married to a Black, and their Korean-born partner married to a Native American, enough boxes were checked for several low-power licenses to be pending or issued to their Focus Communications enterprise. The issued license at the time was for Channel 66 in Joliet, Illinois, near Chicago. The then-chief of the FCC's low-power TV branch, Barbara Kreisman, estimated that minorities, given extra numbers to play with in the lottery, had won about two-thirds of the lotteries they had participated in.

In the early days, their scrambled signal gave low-power television stations wide programming latitude to attract a paying, subscription audience. At *fandom.com*, the self-described "world's largest fan wiki platform," I found a brief history of Ruhe and Geissler's Joliet station WFBN:

Independent station WFBN. Originally owned by Nashville-based Focus Broadcasting, initially ran local public-access programs during the daytime hours and the subscription television service Spectrum during the nighttime. By 1982, WFBN ran Spectrum programming almost 24 hours a day; however, by the fall of 1983, Spectrum shared the same

schedule with that service's Chicago subscription rival ONTV. The station as well as ONTV parent National Subscription Television faced legal scrutiny because of its lack of news or public affairs programming and was faced with class action lawsuits because of the pornographic films aired by ONTV during late-night timeslots, with some of these legal challenges continuing even after ONTV was discontinued; however, a ruling by the Federal Communications Commission (FCC) permitted broadcast television stations to air content normally considered indecent through an amendment to its definition of what constituted "public airwaves." It declared that "broadcasts which could not be seen and heard in the clear by an ordinary viewer with an ordinary television were exempt," as long as the signal was encrypted.

Having vaulted into the ownership of several active and pending television station licenses, Ruhe happened to see a *Wall Street Journal* article in 1982 that E.W. Scripps, Co., having failed to sell UPI to other buyers, was considering selling the company to National Public Radio, a private and publicly funded not-for-profit company. Ruhe immediately focused on his next goal, buying UPI.

Knowing that they lacked experience in the news business, the pair contacted the lawyer for their earlier public relations firm, Cordell Overgaard, a partner in Linda Neal's law firm of Hopkins & Sutter. Overgaard put them in touch with Rob Small, another client of his and a publisher of several small Illinois newspapers. Ruhe and Geissler thought Rob Small would be a good partner and agreed he would be Chairman of UPI after the sale.

This choice lent a needed patina of credibility to their bid to buy UPI. Also joining their effort to buy UPI was a fresh Baha'i graduate of Harvard Business School, Bill Alhauser.

He became UPI Treasurer. Ruhe and Geissler initially had a 60 percent interest in UPI, Rob Small and Overgaard got 15 percent each, and Alhauser and another financial adviser, Tom Haughney, 5 percent.

Scripps had diligently been trying to sell UPI for five years at this point and was ready to throw in the towel. To finally get rid of it to

Ruhe and Geissler, Scripps provided UPI \$5 million in working capital and put another \$2 million-plus into its pension funds.

For their part, Ruhe and Geissler put up the proverbial \$1. On June 3, 1982, UPI was theirs.

What they had bought was the second-largest generator of news on the planet, with more than 200 bureaus around the world and over 1,500 employees writing, editing, and distributing over 12 million words of news daily.

The purchase by Ruhe and Geissler got a rough reception once its customer base of newspaper publishers heard of the sale. Their unease was accentuated when *The Tennessean* newspaper in Nashville reported that both men had previously been arrested, Ruhe in a civil rights demonstration and Geissler for draft evasion. Geissler had even served a year in federal prison as a result.

Following their purchase of UPI, operational chaos was quickly the order of the day in upper management. UPI's carryover President was shown the door and a former news executive with NBC and CBS, Bill Small (no relation to Rob Small), arrived as an expensive replacement.

Small had no experience in the wholesale news business, but he at least gave Ruhe and Geissler a known figure in the news business to be the public face of UPI.

In the fall of 1982, Alhauser had directed UPI's Controller to stop sending Overgaard and Rob Small monthly financial statements.

Then, in early 1983, both Rob Small and Overgaard resigned their management roles when it became apparent that Ruhe and Geissler were not inclined to listen to them.

Gordon and Cohen's *Down to the Wire* reports on Rob Small's and Overgaard's reaction to what had happened in the short time that had elapsed since the purchase of UPI:

Ruhe and Geissler, they felt, were lost in dreamy idealism that distorted their business judgement. If their partners were going

to run UPI into the ground, Small and Overgaard wanted no part of it.

Other major changes in management followed. In 1983, Australian Maxwell McCrohon, the *Chicago Tribune's* Vice President for News, came in as UPI's Editor-in-Chief and Luis Nogales, a Vice President in Gene Autry's Golden West Broadcasting, later arrived as Executive Vice President.

Moving to Nashville as UPI Assistant General Counsel

Ruhe and Geissler had made Linda Neal UPI's General Counsel after their purchase of UPI. They also had decided to save money by moving UPI's news headquarters from Manhattan to Washington, D.C., and the company's corporate headquarters from Scripps's offices in Cincinnati to Nashville, where both Ruhe and Geissler then lived.

With UPI having moved out from under the Scripps administrative umbrella, the company needed to create a standalone internal law department for the first time. Linda had a varied practice at Hopkins & Sutter and had no desire to fill this role by moving to Nashville. She remembered that I was looking for a corporate law position and that I had already created one law department from scratch at The Bradford Exchange. She asked me to think about starting UPI's law department in Nashville and serving there as the company's Assistant General Counsel.

On the plus side, this sounded like a good opportunity, though on the negative side it would entail moving with Cathy and our three-year-old son, Andy, to Nashville. It was certainly worthy of a serious look on my part, so I travelled to Nashville to meet with Ruhe, Geissler, and Alhauser to learn more about UPI's plans and finances.

I first met with Ruhe in the pie-shaped Focus Communication office in the Union Bank of Commerce in downtown Nashville. Ruhe was a whirlwind of upbeat blather, who presented himself as a know-it-all, "I see the future!" business wunderkind. He explained to me

more than once that owning a television station was like having “a license to make money.”

My dinner meeting with Geissler was, in a Pythonesque way, something entirely different. Geissler had been born in Venezuela and was fluent in Spanish as well as English. During dinner, he strangely had little to say in either language about anything.

For whatever reason, he remained largely catatonic throughout our meal. Since Linda Neal had little direct knowledge of the company’s current financial condition, she had steered me to UPI Treasurer Bill Alhauser for the straight dope. I was entirely focused on the state of UPI’s finances when we met, and my questions to the reserved and mild-mannered Alhauser about the company’s financial position were very direct.

As I later found out, I was not the only one he regularly misled. As a result, while I had met the three principal operating managers of UPI, and was generally aware of its turnaround posture, I hadn’t a clue the company would crater in the next 18 months and that I would get the post-graduate education in bankruptcy law that I never got in law school.

Contrary to the rosy picture painted by both Ruhe and Alhauser, UPI actually ended 1983 with a loss of \$14 million and was facing debts of \$15 million. Peanuts today perhaps, but a lot of money in 1983.

Though I didn’t know it at the time I was meeting with Ruhe, Geissler and Alhauser, UPI was regularly having a hard time meeting payroll. Fortunately for UPI, Tom Haughney found that Los Angeles-based high-risk lender Foothill Capital Corporation was willing to lend UPI \$4 million. The loan would cover payrolls for a period of time and would help deal with arrearages due AT&T and RCA. Unfortunately for UPI, the loan carried an interest rate of 14.25 percent, three points above prime in that period of still high inflation.

With this background that I knew nothing about, in early 1984, Cathy, Andy and I settled into our new home in the Nashville suburb of Brentwood, not far from UPI’s new business headquarters there.

UPI Begins Its Descent into Bankruptcy

In scrambling for cash to meet payrolls, UPI at this time was awash with highly paid consultants. Disadvantaging its growing legion of creditors, Baha'i friends and acquaintances of Ruhe and Geissler increasingly began to propose and execute purchases of UPI assets on extremely favorable terms. Major staff cuts and salary reductions and sweetheart asset divestitures were the order of the day. Ruhe and Geissler also continued to siphon cash from the company through payments to their Focus holdings. Under pressure to deliver a life-saving loan to the company, Alhauser later revealed Focus had been receiving \$150,000 to \$200,000 a month from UPI, though it was not seen in financial statements. This was far in excess of Ruhe and Geissler's salaries. According to the book *Down to the Wire* in 1984:

UPI was sinking in debt, swamped by its staggering communications burden, by the costs of the moves, by fees to a proliferation of highly paid consultants, and by costly joint-venture deals. Compounding the problem was the owners' secret transfer of cash from UPI to Focus. During 1983, it would total \$1.434 million.

The dire straits the company was in could be seen in the explosion of trade creditor debt. AT&T and RCA Service Co. were several of UPI's largest trade creditors. UPI was getting way behind in paying the monthly cost of leasing the telephone lines and teletype machines that were essential to running its offices and carrying news stories to its customers.

The Richard Harnett and Billy Ferguson book, *Unipress: United Press International Covering the 20th Century*, reports that the UPI Controller in this period couldn't convince Ruhe that UPI was running out of money and was regularly disparaged by Ruhe as a "bean counter" for his efforts. The Treasurer Alhauser was said to be either oblivious to the problem or not willing to confront Ruhe and Geissler about money. The exceptional rise in accounts payable produced a bizarre administrative fiasco.

To ensure a smooth transition, Scripps had agreed to handle UPI's payments to vendors for a period of time after the sale to Ruhe and Geissler. At a later point, UPI's finance department needed to manage the task of sending checks to its suppliers of goods and services. When the cutover came, UPI's computer was duly programmed to print out these checks as soon as the invoices for these expenses were approved. However, UPI's Controller was in no position to mail checks if the funds in the company's checking account wouldn't cover them.

Payroll, rent, telephone and teletype service were all top priorities, but even here arrearages began building up. When a lower-priority check would produce an overdraft if cashed by the payee, it would be held back. In a sign of impending disaster, at one point nearly \$1 million in checks had piled up this way in the Controller's desk.

These financial problems continued to be ignored, and Ruhe and Geissler shortly threw a lavish party to celebrate the opening of its new Washington, D.C., news headquarters. For a company headed down the tubes, an inexpensive press release announcement might have been a more sensible alternative than an over-the-top, costly blowout. In the 9th floor executive suite of a newly constructed 12-story building above the subway station at 14th and I Streets NW, a large crowd from Capitol Hill and media organizations milled about the new space feasting on hors d'oeuvres and drinking case after case of spirits and champagne. Gordon and Cohen in *Down to the Wire* succinctly said of the party, "Ruhe and Geissler spent money as if they had it."

The main newsroom had been successfully moved from Manhattan to the new building but moving the New York radio studios for UPI's news reports on the hour and half-hour proved to be a major problem and caused a massive cost overrun in the budget for the move. It turned out no one had thought about recreating the necessary soundproofing for the Washington studios. Part of the new offices had simply been partitioned off with glass walls and fitted with desks and microphones. Immediately the many radio stations across the country dependent on retransmitting these reports complained that the voices of UPI's commentators were hard to hear. The

problem was low-frequency background noise from the heating and air conditioning fans in the ceiling ventilation ducts. Fixing this was a complicated task that both disrupted the broadcast part of the business and cost an arm and a leg as well.

By spring 1984, UPI was again running out of cash. Desperate to stave off the loss of control that would come with bankruptcy of UPI, Ruhe had decided to sell off UPI's crown jewel, its newpicture service. This was an international enterprise that sold breaking news photos from around the world to all UPI's newspaper clients. Mike Hughes, UPI's head of the picture service, feared that if Ruhe went ahead, the estimated cost to recreate the asset would be about \$25 million. Ruhe began secret sale negotiations in Brentwood with Peter Holland, an executive of London-based Reuters.

Holland must have seemed certain he would shortly strike a deal with Ruhe. Reuters was about to go public in a stock offering and in a June 4, 1984, sale prospectus stated that it would soon enter into a five-year joint venture agreement that would obtain UPI's overseas picture business for \$7.5 million. This was even before Holland got on an airplane to Nashville to firm up the details of the deal. Not long after he arrived, Ruhe called me into his Brentwood office and told me to draft a memo spelling out terms of the agreement they had just struck. UPI was to get an immediate infusion of \$3.3 million in cash, with another \$2.4 million paid out in installments over five years. This was much less than what Holland had earlier anticipated. In return, Reuters would acquire UPI's foreign photo staff and send Reuters pictures of American news events. UPI would receive the non-U.S. pictures of the expanded Reuters service but would have to let Reuters gain a foothold in the U.S. by permitting its output to be sold to such large papers as the *Washington Post*, *Baltimore Sun*, and *New York Times*.

Shortly after news of the deal leaked, Linda Neal and Bill Alhauser met Ruhe for breakfast. When both raised questions about the deal, *Down to the Wire* reports Ruhe shut them down, saying, "Look, the deal is done! Just get the thing signed!" At that point, I got on the next plane to London to negotiate the formal terms and legal details of the agreement that both parties would sign. Not surprisingly, this turned out to be a very one-sided affair.

Normally in a contract negotiation there is always some back and forth as the secondary business terms are put to paper. Holland was quite smart and knew that there was little leverage on the UPI side to negotiate even minor points. Nonetheless, Holland and I closeted ourselves in the Board of Directors room of the Reuters headquarters at 85 Fleet Street in London and started our discussions. Watching over our negotiation across the large boardroom table was a portrait of founder Paul Reuter. We had made some progress during the daylight hours when the unexpected occurred. After a knock on the door, we were served with papers issued by a New York court stating that signing the agreement and going ahead with the transaction was prohibited.

Once the shock wore off, we began assessing this development. We ultimately decided to ignore the court development and proceeded to finalize the agreement. This took hours and had us spending the night in the boardroom. Then, we not only had to wait for the papers to be typed up in final form, but we had to wait for Ruhe to fly in from Nashville to sign them. Holland relieved the boredom of our boardroom siege in the early morning hours by breaking out a bottle of Scotch from a hidden Reuters liquor stash. He proved to be a delightful and convivial business opponent as we took a break waiting for the typing to finish, still on the opposite sides of the table.

Back in Nashville Jack Kenny, the newly hired financial operating officer brought in at Foothill's insistence to cover for the inexperience and befuddlement of Alhauser, was beginning to clear some of the most pressing vendor invoices. He was being helped by a new Controller, Peggy Self, who had also been brought on as his assistant. They had been hired after Foothill, worried about UPI defaulting on its \$4 million loan, had assessed Alhauser as inadequate for the task of managing the company's finances.

When Kenny and Self arrived in spring 1984, they were immediately confronted with a host of angry creditors and little cash to pay them. Both were quickly appalled by Ruhe's instructions to pay his consulting friends and cronies ahead of critical UPI suppliers.

With the \$3 million cash immediately in hand from the Reuters closing, Kenny quickly covered the immediate payroll due, followed by checks to the creditors that were by that time threatening lawsuits for nonpayment. By the time Ruhe had returned to Nashville from signing the Reuters agreement in London, the Reuters cash was completely gone.

Ruhe and Geissler Lose Sway as UPI Implodes

As summer 1984 wore on, another Baha'i friend of Ruhe continued to chase payment for enormous consulting fees for an automated accounting system he promised UPI but never delivered. When I joined Kenny and Self urging Ruhe to further postpone payment to this non-critical vendor, Ruhe was adamant in ordering immediate payment. For Self, it was the last straw. She shortly departed for the more pacific world of the Baptist Sunday School Board.

Luis Nogales in his role as UPI's Executive Vice President in New York increasingly became aware of the company's dire financial straits. I had no sooner returned to Nashville from completing the sale of UPI's photographic business in London then Nogales had concluded employee layoffs and salary cuts must be immediately negotiated with the Wire Service Guild, the editorial employees' union, if UPI was to avoid going under.

Gordon and Cohen in *Down to the Wire* report that Geissler was blind to this reality and wrote an angry letter to Nogales ordering him out of the negotiations with the wire service union, saying along the way, "All you MBAs think the only way to solve problems is pay cuts and layoffs. The way to do it is sales and marketing and increasing revenues."

By early August 1984, Ruhe and Geissler could no longer keep the company's imminent collapse from the union. Wire Service Guild President William Morrissey was astounded when informed of the peril facing the union's entire membership. UPI owed creditors \$20 million

and was losing \$1.5 million each and every month. Initially, all concerned believed that UPI should do everything it could to avoid bankruptcy, since such news would have an immediate adverse effect on UPI's customers, and many newspapers would no doubt not renew their subscriptions. Ruhe and Geissler in particular understood that, while not a certainty, UPI filing for bankruptcy could wash them out of any continuing management role and render their ownership interest in the company worthless.

Notwithstanding the fact that UPI President Bill Small continued to turn up in UPI's New York office every day, as a practical matter in the emerging crisis Luis Nogales was the person running the operations of the company day to day. Luis Nogales was then and throughout his later career a person of integrity and substance.

Coming from humble immigrant origins, Nogales grew up in the agricultural valleys of California near Calexico working as a farm worker. His intellect permitted him to attend college at San Diego State University. In 1969, he graduated from Stanford University Law School. After serving as CEO of UPI, he became president of Univision and served on the board of directors of Levi Strauss & Co., The Bank of California, and other prominent for-profit and not-for-profit corporations.

Not surprisingly, as the company's financial condition deteriorated, I worked increasingly with Luis both before and after I became UPI's General Counsel. As his dispute with Ruhe and Geissler came to a head as to who should be managing the company, it wasn't hard to see what the better outcome for the company would be. With Ruhe and Geissler, you had would-be boy wonders who had briefly gamed the minority lottery set-aside program of the FCC to transitory wealth. Though poor in cash, good sense, and management experience, they were possessed with a high-energy impetuosity and good luck. This had permitted them to leverage their position beyond anyone's wildest expectations into the ownership and control of UPI. However, having won a prize they were ill-equipped to deal with, they had in short order run UPI into the muck with a speed fast enough to make your head spin.

With the fate of UPI now hanging in the balance, you didn't have to be a seer at this point to recognize that the company would be better off having its debt and management reorganized under the federal bankruptcy laws. In contrast to Ruhe and Geissler, you had in Nogales the exact opposite choice for someone to carry the company forward in trying times. Trained as a lawyer, and possessed of exceptional leadership and political skills, early in his career he was already an accomplished businessperson with the experience and intelligence to manage a large, global media company in trouble. My sympathies naturally lay on his side as the management conflict with Ruhe and Geissler came to a head. While the lawyer-client relationship between myself and Nogales unfolded in this period, we became good friends as well.

When I later became General Counsel of Encyclopaedia Britannica, former General Counsel of Britannica Newton Minow was one of the company's directors. Minow was a helpful mentor to me during my tenure in that position, partly I think because he knew and had a high regard for my father's brother Augustine Bowe, a former President of the Chicago Bar Association. Since I held both Nogales and Minow in great esteem, I couldn't pass up the opportunity to introduce them to each other. Both had served in the federal government. Luis had been a White House Fellow and Minow had been appointed Chairman of the Federal Communications Commission by President John F. Kennedy. Minow was forever famous for his speech calling the television of the 1950s and early 1960s a "vast wasteland."

Besides federal service, both had in common being deeply immersed in the television industry, Minow as an attorney and director and Nogales as a manager. The three of us had an engaging visit when Luis came through Chicago, and I had the chance to get the three of us together. I was delighted when Nogales and Minow immediately hit it off, as I suspected they would.

As the UPI saga continued towards the inevitable, after some effort, and with the grudging consent of Ruhe and Geissler, Nogales was able to open the books of UPI to the union and made sure there was transparency as to the company's ownership structure and

finances. Pursuant to his direction, Linda Neal and I spent a long day with the union negotiators in UPI's Brentwood office unveiling the strange corporate structure of companies Ruhe and Geissler had erected to serve their interests, if not UPI's. Morrissey and the others were both shocked and angry at what they learned.

With bankruptcy still a real possibility in the short term, the union agreed to job cuts and wage givebacks. The final agreement with the Wire Service Guild called for the wage cuts to expire before the end of 1984.

UPI wasn't the only thing going south for Ruhe and Geissler at the end of 1984. The use of minority set-asides had indeed brought them success in the early 1980s in winning multiple FCC low-power TV licenses. If the stations were built, the business model at the time was to acquire paying viewers through subscriptions. This early form of pay TV got Channel 66 off the ground in Joliet, Illinois, and Ruhe and Geissler's Focus Broadcasting Co. drew capital from outside investors for several other small markets. What Ruhe and Geissler hadn't counted on was the nascent growth of cable television. It ate into what they thought would be a long-term income stream for low-power channels. As 1984 unfolded, the program provider for Channel 66 pulled out, and the channel began to fill its airways with soft-core porn content and music videos. Ruhe and Geissler began trying to switch the channel to a regular commercial station format and sell it to another operator. If a sale couldn't be accomplished, Ruhe and Geissler's entire world might crumble around them.

Down to the Wire describes the period this way:

Nogales's own illusions about the TV sale were short-lived. Not long after he had delivered to employees the owners' pledge of a cash injection, he recalled later, he was chatting with Ruhe when the subject of the owners' investing money from Channel 66 came up. "I wouldn't risk a dollar in UPI," Ruhe said firmly. Nogales couldn't believe what he was hearing. He had just put his reputation on the line for the owners. "Doug," he said, bristling, "I went down and told the staff after clearing it with you that you would put \$10 million or \$12 million from the proceeds of the [TV] sale into UPI." Ruhe stiffened. "No, I'm not going to put in a

dime," he declared. On many occasions Nogales had gone out of his way to excuse the shortcomings of the owners, who had hired and promoted him. But now he thought, Ruhe had betrayed him. And betrayed UPI.

With operating cash non-existent, Ruhe decided to borrow from Uncle Sam by not paying the Internal Revenue Service \$3 million in employee payroll taxes owed for 1984's fourth quarter.

I had been careful to make sure Ruhe and all the senior executives were aware of the enormous personal exposure this could bring them. Shorting the IRS is one of the great no-nos of running any business, because the owners or executives responsible for making this decision can end up assuming personal liability for the shortfall if the company itself can't make good on the debt.

This properly scared the bejesus out of Nogales, Kenny, and others. So, when Ruhe and Geissler still hadn't been able to sell Channel 66 in early 1985, the proverbial excrement began to hit the fan when it became apparent UPI would be unable to pay the now past-due taxes.

Kenny's proper response was to promptly inform UPI's lender, Foothill. Foothill executives were not amused, since in a bankruptcy the IRS's lien would get top priority, even higher than a secured lender like Foothill.

The Los Angeles Blow Up

For some time, it had been the view of Nogales and Kenny that the time had come for Ruhe and Geissler to either sell UPI or send it into bankruptcy court for a restructuring. Now Nogales was making the argument directly to both owners. Recognizing that in either event, they would likely not only lose operational control, but would also walk away with nothing further to gain financially, this was the last thing Ruhe and Geissler wanted to hear. Ruhe had concluded now that he had to get rid of Nogales. In parallel, Nogales had concluded Ruhe and Geissler had to be removed from operational control of the company if it was ever going to recover from the current crisis.

With the owners now at loggerheads with the top managers of UPI, the two factions agreed to meet at the Los Angeles airport on Sunday, February 24, 1985. Foothill had summoned Nogales to be briefed on UPI's financial status and recovery plan the next day. With primary lender Foothill, UPI's senior management, creditors, and newspaper subscribers all having lost faith in the reign of Ruhe and Geissler, Nogales hoped that they would come around in their thinking given the inability to meet the next payroll. Not to be. Ruhe and Geissler still thought they would somehow muddle through.

When Nogales and UPI's outside financial adviser, Ray Wechsler, met with Foothill the next day, things didn't go well. Foothill executive John Nickoll told them:

You'd better get the owners back out here. We're at a crucial point. You guys don't own the company. You're managers not owners. Owners need to make the decisions.

Ruhe and Geissler might ignore Nogales, Wechsler, or Kenny, but they couldn't have UPI's prime lender going wobbly on them. When Ruhe and Geissler turned up on Wednesday, they got the following blast from Foothill executives:

We don't have confidence you can turn it around. We're not going to fund the company with its present ownership. Often, in situations like these, management takes over. If you want to work out an agreement where management takes over, we'll work with you.

For Ruhe and Geissler that meant giving up any further dismemberment of UPI and swapping their UPI stock in return for creditors forgiving their debts. After dickering Thursday with Nogales and Wechsler, Ruhe and Geissler agreed to the basic outlines of a plan and shook hands on it.

While all this had been going on, I had been in Brentwood and was unaware of the details of what had occurred in Los Angeles. However, as they flew back to Nashville from Los Angeles, Ruhe and Geissler were already cooking up a new Plan B for Nogales.

Down to the Wire records the next chapter in the Los Angeles blow up:

As Ruhe and Geissler headed home, Wechsler phoned Kenny in Nashville and told him to hop a plane to Los Angeles. Kenny, in turn, called new General Counsel Bill Bowe and excitedly broke the news. "I've made reservations for you to fly to Los Angeles," he told Bowe. "An agreement has been reached that will result in a change of control, a sale of the company, and a working out of the creditor problem." Bowe's assignment was to put into ironclad writing, for presentation to Foothill Sunday night, the agreement removing the owners from control of the company. Nogales should have known it wouldn't have been that easy. Although they had shaken hands on the deal, Ruhe and Geissler were bitter that the men they had hired had just dictated the terms of their surrender. Flying back to Nashville, they craftily plotted strategy.

Back in Nashville Saturday, March 2, Ruhe had decided to welch on the deal and fire Nogales.

I had immediately flown to Los Angeles and hired local lawyer Lisa Greer and her law firm Lawlor, Felix to provide legal assistance and office support for me all Saturday and Sunday. I was trying to understand and document the agreement for the change in control of the company. Usually this wouldn't be any different than documenting any other arrangement between parties. The parties on both sides of an agreement are usually represented by separate counsel.

With Linda Neal recently leaving her role as UPI's General Counsel as she prepared to marry our former law school dean, Phil Neal, I had succeeded her as General Counsel. This happened to occur at a time when ownership and management were no longer aligned. In fact, they were at each other's throats. With management of UPI about to shift from Ruhe and Geissler to Nogales, I was still reporting to the former, but about to follow directions from the latter. This was a very uncomfortable position for a lawyer because of the expectation on both sides that they may have some leverage to push aspects of the agreement in their favor.

As I increasingly recognized being caught in the vise of these conflicting pressures, I began to ask myself who my client really was. My sympathies were completely with Nogales. I had seen Ruhe and

Geissler were rank amateurs recklessly pursuing their own self-interests as they sluiced cash and assets out of UPI. Nogales on the other hand was smart, professional, and a born leader. He was likely to have success in leading UPI into and out of an inevitable bankruptcy proceeding.

Although you don't normally have to think about who your client is as a corporate lawyer, in this case I had to. And the answer was simple. I was now General Counsel of UPI, and UPI was my only client. My client was not one or the other of the feuding parties, my client was UPI. My loyalty and duty were to the enterprise, and my obligation was to further its current and future welfare. My role was to simply assist the enterprise in any way I could to help it survive a crisis.

The earlier verbal agreement between Ruhe and Geissler and Nogales had been short on substance, and I spent a fair amount of time Saturday trying to understand what Nogales thought the agreement was. On Sunday, I called Ruhe back in Nashville to make sure his understanding matched up with what I'd learned from Nogales. Ruhe abruptly told me there was no agreement, and he wouldn't be signing anything.

With everything coming to a head, I would be leaving from the Century Plaza Hotel with Nogales that Sunday night to meet Foothill officials for a briefing at Foothill executive John Nickoll's Beverly Hills home. The stage was set. Foothill would learn Ruhe and Geissler would not be stepping aside, Foothill would pull the plug on its now-defaulted loan to UPI, and shortly the payroll checks going out to its 1,000-plus employees, including me, would bounce.

Nogales, Wechsler, UPI financial advisers from Bear Stearns, myself, and Lisa Greer of the Lawlor, Felix law firm represented UPI that evening in the home of Nickoll. Besides Nickoll, several other Foothill executives were present. When the news of Ruhe and Geissler's about-face was discussed, there really wasn't much anyone could say. Everyone knew UPI would now go down the tubes. It was now merely a question of how and when.

Then the phone rang. Nickoll's wife, Ann, answered the call in a bedroom and said it was for Nogales. When Nogales got to the phone, it was Doug Ruhe. The conversation was a short one on Ruhe's side, "Luis, you're fired!" He then told Nogales he wanted to speak with Ray Wechsler. Nogales returned to the group and reported on his conversation with Ruhe. Wechsler said, "Luis, just tell Doug I'm too busy, I'm in a meeting right now. What do I want to talk to him for and get fired?"

Everybody had a good laugh except me. I did my unwelcome duty as General Counsel and went into the bedroom and picked up the phone. Ruhe immediately shouted, "Go in there and fire Wechsler, fire Lawlor, Felix, fire Bear Stearns, fire Levine!" Levine was Boston bankruptcy attorney Rick Levine. Though not present, he had been advising me on the finer points of a possible bankruptcy proceeding.

John Nickoll and the others sat quietly as I returned from the bedroom. Though I took a stab at it, it's hard to publicly fire half the people in a large room with any degree of dignity. Based on accounts of those present, the reporting in *Down to the Wire* records the scene this way:

Watching Bove uncomfortably playing the role of angel of death, John Nickoll feared for both his company's substantial investment and the fate of UPI. Nogales's leadership had inspired confidence among the very employees and clients Ruhe had so badly alienated.... Nickoll was simply not going to stand still while Foothill's investment was in jeopardy. He went to the bedroom and picked up the phone. Ruhe was still on the line. "Doug, you've got to be crazy! UPI has no management. Foothill has nobody to deal with. You'd better get out here immediately and talk to Nogales and come to some sort of agreement."

UPI's Bankruptcy Unfolds with a Shock

It has never sounded quite right when I tell people that as a result of my legal advice, UPI declared bankruptcy. But that's what shortly

happened. Kenny and other UPI senior executives followed Nogales's abrupt departure and resigned.

As predicted, after many previous close calls, paychecks around the world finally began to bounce. Correspondents in Asia and Europe lit up the internal UPI wire with queries as to how they would get back to their homes in the U.S. if the company could no longer afford to buy their tickets home. UPI bureau rent parties were organized in some bureaus. In late March 1985, the dust had settled sufficiently so that *Time* magazine reported recent developments this way:

In the nearly three years since Nashville investors Douglas Rube and William Geissler acquired ailing United Press International from E.W. Scripps for \$1, they have slashed costs, reduced staff and cut wages 25 percent. For a time, the medicine seemed to work. When U.P.I. announced a \$1.1 million profit in the fourth quarter of 1984, its first gain in 23 years, the owners predicted profits of \$6 million in 1985. That view was overly optimistic. Last week, with payroll checks bouncing and losses again mounting, Rube and Geissler agreed to step aside as part of a deal to save the firm. Under the new plan, they would retain some 15 percent of the stock but relinquish all control of the news service. U.P.I. President Luis Nogales, who was fired by Rube just four days before the agreement, will return to run the company. The terms also call for U.P.I.'s trade creditors to forgive the bulk of its \$23 million debt in exchange for a 30 percent to 40 percent interest in the firm; most of the remaining shares will be divided among the staff. The creditors, however, may not accept the deal. And even if they do, further cost-cutting moves will be needed if U.P.I. is to survive in the lengthening shadow of the Associated Press.

I had my own personal concerns. Five years before our son Andy had been born prematurely and his medical bills had topped \$100,000. Fortunately, most of this amount had been covered in the ordinary course by my employer's health insurance policy. Cathy was pregnant again, and again at risk of giving birth early. As feared, our second son, Patrick, was born prematurely in mid-April 1985, and by the end of the month UPI filed a bankruptcy petition in the federal district court in Washington, D.C. With Pat in Vanderbilt University Medical

Center's intensive neonatal care unit, Cathy and I were again watching enormous medical expenses pile up daily.

When I learned that UPI had stopped paying its health insurance premiums and that the insurance carrier had cancelled its policy coverage, it was a blow. I had thought for some time that the company might go belly up, but I had never thought it might take me with it.

We were not the only ones potentially out of a safety net. Among the hundreds of UPI employees caught short by the bankruptcy filing, some were in the midst of cancer radiation treatments, and others were facing necessary surgical procedures. The trade creditors of the company really took a bath. Thankfully, not all humanity was lost in this commercial debacle. U.S. Bankruptcy Judge George Bason stepped up to the occasion with the creditors later, and sufficient funds were set aside so that the health insurance of all the employees was retroactively reinstated. God bless them!

The bankruptcy proceeding unfolded in the E. Barrett Prettyman Federal Courthouse in Washington, D.C., where former President Donald J. Trump 38 years later pleaded innocent of charges related to his alleged role in the January 6, 2021, attack on the US Capitol.

I began flying every Monday from Nashville to the Courthouse and to UPI's new offices at 14th and U Streets, NW. Saturday and Sunday would be a welcome family weekend back in Brentwood, notwithstanding the fact that for many weeks much of this time would be spent in Pat's neonatal intensive care unit.

This travel went on during the summer as the Bankruptcy Court looked into the many questionable dealings of Ruhe and Geissler. By September, a Mexican newspaper owner named Mario Vazquez Rana, with a Texan junior partner named Joe Russo, emerged to buy UPI out of bankruptcy.

In November 1985, *Time Magazine* quoted me on the sale of UPI and UPI's future:

Said UPI's Vice President William J. Bowe, "It will be a recapitalized news organization and will be able to get back to being scrappy and competitive."

I don't think I'd made such a bad prognostication since May 1970 when I told the Under Secretary of the Army's military aide that the student demonstrations after the Kent State shootings would be relatively short-lived. As it turned out, before long UPI made a roundtrip through bankruptcy court.

With the seemingly successful reorganization of UPI just completed, I got a call out of the blue from a Chicago headhunter who was looking for a lawyer with publishing experience to head up Encyclopaedia Britannica's law department in Chicago.

I pursued the job for the great opportunity it was and ended up being chosen for the General Counsel opening. I later learned that over many months there were more than 20 other candidates considered for the position before Britannica's long time President settled on me as the final choice. As 1986 began, I was flying from Nashville into Chicago during the week instead of to Washington, D.C. Until my family joined me, I lived in a one-bedroom apartment not far from Britannica's offices near the Art Institute of Chicago. That spring we bought a house in Northbrook, a suburb north of Chicago. It was well located to take advantage of the special-needs schooling Andy was about to embark on and that son Pat never required.

With the family settled, I was ready to dig in my heels and take on the much bigger challenge of serving as General Counsel of Encyclopaedia Britannica.



COMMUNICATIONS

Mexican Connection for U.P.I.

After a Mexican newspaper magnate bought the financially troubled United Press International last week, U.P.I. staffers in London joked about brushing up their Spanish for a simple, direct question: "Can I have a raise?" The 2,000 employees of the 78-year-old news service took a 25% pay cut last year and have suffered bouncing pay checks in recent months as U.P.I. struggled to survive. This spring the news service filed for bankruptcy reorganization and put itself up for sale.

U.P.I.'s management, employees and creditors accepted a bid of \$41.6 million from Mario Vázquez Raña and Houston Real Estate Developer Joseph E. Russo. The once rival bidders began striking up a partnership last Tuesday in the elevator of U.P.I.'s headquarters in Washington, D.C. Vázquez Raña, who is expected to control about 90% of the company, owns the largest chain of newspapers in Mexico. He told American reporters through an interpreter that he plans to restore U.P.I.'s financial stability and improve its performance. Said U.P.I. Vice President William J. Bowe: "It will be a recapitalized news organization and will be able to get back to being scrappy and competitive."



Mario Vázquez Raña



My distracting law office view across from the then under construction State of Illinois Center, now owned by Google. (Google Earth)

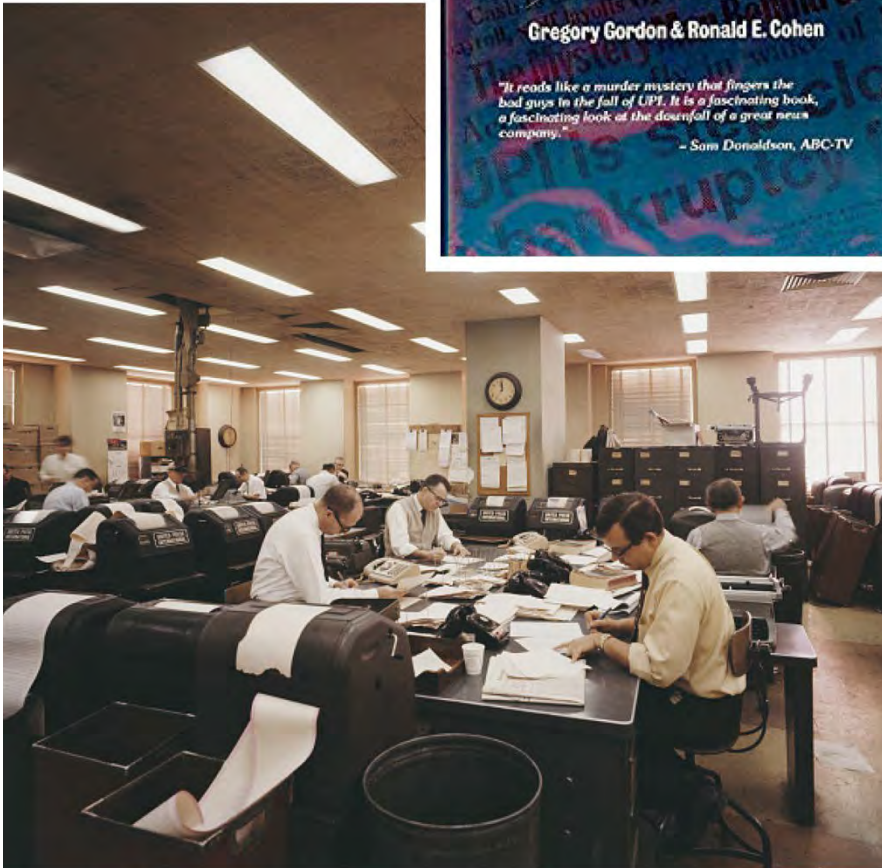
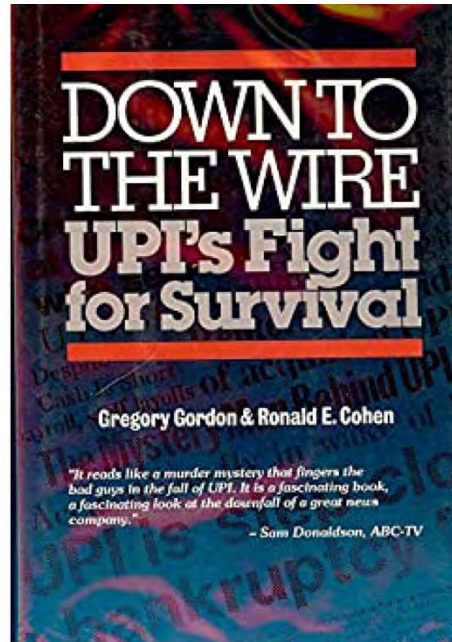


Solving the mystery of Arthur Cushman's missing gold bolo tie clasp before joining United Press International.

*My predecessor as United Press International's General Counsel,
Linda Thoren Neal*



*The award-winning account of UPI's
demise by Gregory Gordon and
Ronald E. Cohen.*



Journalists at work in the New York newsroom of United Press International in 1970. (Rolls Press/Popperfoto via Getty Images).

*UPI's new headquarters
in Washington, D.C. at
1400 I Street, NW.*



*The Reuters London
headquarters at 85 Fleet
Street, where United Press
sold its crown jewel, the UPI
News Picture Service.*



*The Century Plaza Hotel in Los Angeles where Luis Nogales and his loyalists
strategized over taking control of United Press International.*

UPI employees were forced to throw rent parties when their paychecks bounced.

RENT PARTY FOR UPI STAFFERS

Hosted By Austin SPJ-SDX

SUNDAY, MAY 5

12:30 - 4 P.M.

3006 WASHINGTON SQ.

(RICK & JANE FISH)

HOT DOGS, OPEN BAR, BEER,
CHIPS, CROQUET

RAIN OR SHINE

\$10 / PERSON

ALL PROCEEDS TO HELP AUSTIN
UPI STAFFERS OVERCOME THE
ULTIMATE DOWNHOLD.



UPI owner and President Douglas Ruhe before being ousted from management. (Denver Post, via Getty Images)



New UPI President and Chairman Luis Nogales at a news conference announcing UPI's change in control. (C-SPAN)

Chapter 5

Inventing the Future—Encyclopaedia Britannica

A Milestone in the Evolution of the Human/Machine Interface

Who would have guessed that at the end of the 20th century it would be a company founded in Scotland in 1768 that would invent a key part of the mechanics that would let people intuitively navigate the electronic flood of text, sound, and images soon to drench the planet from the internet?

In 1989, 221 years after the company's founding in Edinburgh during the Scottish Enlightenment, Chicago-based Encyclopaedia Britannica, Inc., publisher of its eponymous Encyclopædia Britannica reference work, had not only solved this puzzle for the first time, but it was also issued a patent for it. While it may be incongruous that a legacy reference print publisher would be the party to make the discovery, this is exactly what happened.

Normal patents on inventions today have a revenue-producing life of 20 years. The patents Britannica filed for in 1989 were issued

by the U.S. Patent and Trademark Office in 1993 and immediately controversial. Software industry opposition caused the Commissioner of Patents to promptly order a reexamination by the Patent Office. Following the Commissioner's invitation, the Office cancelled the patent a year after it issued. After more years of litigation by Britannica, another court finally reversed the Patent Office and in 2002, the patent was reissued. Then it was finally up to Britannica to enforce the patent against infringers. The family of Britannica's Compton's patents were unusual both in their long and controversial history, but also in that they never earned a nickel. In 2011, the U.S. Court of Appeals for the Federal Circuit found the patent to have been improperly issued due to a purely technical and procedural error in the original filing papers.

The technical defects meant that this court never got to a detailed ruling on whether then-commonplace GPS navigation systems infringed the patents covering Britannica's invention. When Britannica later sued its outside patent law firm for legal malpractice for committing the technical error, another court in 2015 denied this claim saying that, if the patent shouldn't have been issued by the Patent Office in the first place, Britannica couldn't have been hurt by the law firm's mistake.

Even though Encyclopaedia Britannica never benefited financially from the extraordinary human/machine interface it had been the first to build, it had reason to be proud of its fundamental achievement. The public filing of its patent application had provided the roadmap for others to follow in quickly developing many other complex software applications besides encyclopedias. The Britannica human/machine interface provided for the first time seamless navigational paths into and through complex databases of mixed media including text, graphics, maps, videos, and audio elements. When developed, the goal had been to have even a nine-year old master the navigation. Of course, today some four-year-old children are playing with computers in a way unthinkable in 1989 when the Compton's patent application was first filed.

Britannica's landmark invention had partly to do with the evolution of the personal computer in the mid-1980s. But it also had

to do with a small group of encyclopedists who had been struggling for many years before to define what an electronic encyclopedia would look like. The culmination of their work happened to coincide with the coming of age of the personal computer in the nascent consumer market. This was the secret sauce that made the breakthrough in the human/machine interface possible.

This fortuitous combination produced a remarkable cultural result. It meant that for the first time, children, as well as adults, could easily and quickly access and navigate complex and media-rich stores of digital information. It also created a plumbing roadmap for the software design that in later years would prove essential in making user friendly such diverse applications as automobile GPS navigation systems and websites on the internet.

Britannica built on decades of work by computer innovators such as Vannevar Bush, Ted Nelson, Douglas Engelbart, and Alan Kay. These visionaries began to imagine hyperlinks as early as 1945, went on to pioneer the mouse and graphical user interface, and even applied their thinking to the problem of building an electronic encyclopedia.

The Proper Study of Mankind

Although a print publisher throughout its long life, Encyclopaedia Britannica had been keeping abreast of computer developments closely. When the first CD-ROM (for Compact Disc-Read Only Memory) storage discs came out in 1985, Britannica had just put the finishing touches on its multi-decade, massive rewriting of its 1929 14th Edition. The 15th Edition had originally been published in 1974 in a 30-volume set. The 15th Edition was structurally rounded out in 1985 with the addition of a separate, two-volume index to the 15th Edition.

This redesign of the *Encyclopædia Britannica* in the several decades before the CD-ROM-based Compton's Encyclopedia launch was a critical precursor to EB's invention.

The Britannica multimedia search system patent would not have been possible without the specialized learning that grew out of the computer-assisted design of the 15th Edition print set. When the Compton's patent was reissued by the Patent Office in 2002 after a lengthy reexamination, the stage was set for Britannica to exploit its achievement monetarily.

English poet Alexander Pope began the second epistle of his 1732 work *An Essay on Man* with this couplet: "Know then thyself, presume not God to scan; The proper study of Mankind is Man."

His reference to our genome-embedded drive to understand ourselves and catalog our knowledge is symbolized and given tangible shape by the encyclopedic form.

The long, continuous history of the encyclopedia in our civilization is evidence that our collective need for self-examination is hard-wired into our brains.

Thus, the presence of a reference publisher at the center of a critical human/machine interface development in the 1980s was not entirely an accident. It stemmed in part from the very nature of encyclopedias in modern society.

The word "encyclopedia" comes from the Greek words *enkyklios*, meaning general, and *paideia*, meaning education.

The effort to create a system of knowledge or circle of learning in the form of an "encyclopedia" spanning humankind's knowledge has been with us for over 2,000 years, although it hasn't always been called this. Speusippus, who died in 339 B.C., recorded his uncle Plato's thinking on natural history, mathematics, and philosophy. Speusippus also apparently attempted to record detailed descriptions of different species of plants and animals.

However, it was Denis Diderot's *Encyclopedie, ou Dictionnaire Raisonne des Sciences, des Arts et des Metiers*, published in 1751 in Paris, that first popularized the use of the term encyclopedia to describe works containing a broad compendium of knowledge.

Shortly thereafter, in 1768, the first edition of the *Encyclopædia Britannica*, the oldest and most comprehensive English-language encyclopedia, was published in Edinburgh, Scotland.

The Encyclopædia Britannica First Edition

The three-volume First Edition of the *Encyclopædia Britannica* paid homage to its classical roots in two conspicuous ways. One was a departure from the conventional spelling of encyclopedia.

The use of the æ ligature preserved an ancient bequest of Greek and Roman scribes used to denote diphthongal pronunciation. Even by 1768, this device had fallen out of use except in the most rarefied of contexts.

The other nod to antiquity was the Latinate title itself. It could easily have been called the British Encyclopedia, since Latin had long ceased to be the lingua franca of the educated. In the more than two and a half centuries since that First Edition, Britannica's stewards have continually changed everything else about the work, but they have always left its unusual title untouched.

The current 15th Edition was first published in 1974. The last print set bore the 2010 year on its copyright, and the permanent cessation of printing the *Encyclopædia Britannica* was announced in 2012.

Although there were regular revisions of print editions published since the 1930s, readers typically kept their sets up to date by annually buying yearbooks that reviewed recent developments.

Today, the *Encyclopædia Britannica* is available to a global audience never dreamed of in the history of the print set. In the current era, the online version of Encyclopædia Britannica receives over 7 billion annual page views in more than 150 countries, with in excess of 150 million students using it in more than 20 languages.

The Encyclopedist's Art

In the twentieth century, encyclopedists were not the only people to worry about how to facilitate access to an ever-growing sum of knowledge. The problem arising from the information explosion of modern times was also noticed by those who helped create it. In particular, the scientists and mathematicians who had created whole new disciplines of knowledge, such as atomic physics and computing machines, had also begun to think about how to increase efficient access by their colleagues and lay people to growing domains of information.

Since the mission of an encyclopedia is to encompass in an abbreviated and accessible form all of our knowledge about everything, the editorial investments needed to create encyclopedias have always been substantial. As a result, the number of encyclopedias has always been relatively few. Also, while there are more than 4,000 distinguished outside contributors commissioned to write articles for an encyclopedia such as the Britannica, there is a much smaller number of career encyclopedists charged with the actual design and creation of the work and its ongoing revision.

In the modern era, professional encyclopedists around the world working continuously in the English language have mostly numbered in the hundreds rather than the thousands. And for over two centuries, the encyclopedists at Britannica have remained the most skilled and respected of their breed. The task of an encyclopedist is an odd one. There are not many of these folks around, and the few around tend to spend their days in single-minded thought on how best to organize a brief, narrative summary of our cumulative understandings of history, art, literature, science, religion, philosophy, and culture.

The encyclopedist's art has traditionally been more of what to leave out, rather than what to put in.

During my 28-year tenure at Britannica, I had the privilege of working frequently with EB's Editor for much of that time, Phillip W. ("Tom") Goetz, and later his successor, Robert ("Bob") McHenry.

Goetz had been promoted to Editor well before the day I arrived in 1986. He had been the second-in-command Executive Editor during the long development of the 15th Edition. When I once asked him about what that period was like, he said it was the toughest job he ever had to slog through.

The complete rewriting of the 14th Edition had begun in the 1950s and the 15th Edition wasn't published until 1974.

During that time, Goetz said that, to insure the entire corpus had editorial consistency and "spoke with one voice," he was detailed to be the one and only person to read and give final approval to all of the 44 million words in the 65,000 articles. The set as a whole was comprised of 32 volumes, each having more than 1,000 pages.

Goetz was possessed of an exceptional intellect and engaging manner, and he never forgot a lot of what he had read, either.

Once, when we had a problem with the development of an Italian translation of *Encyclopædia Britannica*, I travelled with him to Milan. Arriving on a weekend, we decided to check the common tourist box of visiting the Milan Cathedral.

I was particularly anxious to see it as my mother had taken a snapshot of the church on her honeymoon in 1928. Begun in 1386, it had been added to and refined over the next six centuries.

To take in the exceptional view of Milan from the top of the Cathedral, we climbed the 250 steps to the Duomo roof. As we strolled amongst the marble forest of statues and gargoyles, Tom had been filling me in on aspects of the Cathedral's construction.

When I asked him what had been going on in the Catholic Church at the time of construction and the years immediately following, my casual question did not elicit a casual answer.

It was all in his head, and he poured it out to me in excruciating detail for the next hour, formulated in perfect paragraph-like sections.

It was an amazing and thorough education for me. While it had been completely casual for him to speak off the cuff as he did, he spoke with the command of a specialist university professor who

might have spent an entire career studying and lecturing on the Middle Ages.

William Benton, EB Owner and Publisher

Paralleling this whole development of the computer, encyclopedists at Encyclopaedia Britannica had been thinking long and hard about the proper structure of a modern encyclopedia and how it might be conjoined with an appropriate human/machine interface adapted to the electronic age.

The 14th Edition of the *Encyclopædia Britannica* had been published in 1929, when the company was owned by Sears, Roebuck. That same year, William Benton founded the Benton and Bowles advertising agency in New York City.

The agency prospered with the growth of network radio and its own innovations in the development of national advertising. Among other things, Benton & Bowles is credited with inventing the radio soap opera, which it used as a vehicle to sell its clients' products.

Benton, later a vice president at the University of Chicago, used the proceeds from his sale of Benton & Bowles to acquire Britannica in 1943, after Sears failed at gifting the company to the University.

Robert Hutchins, University of Chicago President

Benton had been recruited to the University of Chicago in 1937 by his fellow student in the Yale College Class of 1924, then Chicago's president, Robert Maynard Hutchins. Hutchins was one of the 20th century's most prominent intellectuals and educators.

A true prodigy, Hutchins had been named dean of the Yale Law School at the age of 28. He was only 30 at the time of his appointment as Chicago's president in 1929.

The University's trustees said notably as they turned down the Sears offer to gift Encyclopaedia Britannica to the school that the University was in the business of education, not the business of business.

Bill Benton knew a good commercial opportunity when he saw it, however, and he seized both the moment and the company.

When Benton purchased Britannica, he agreed to pay the University a 3% royalty on U.S. encyclopedia sales in return for the editorial advice of its faculty. Not long thereafter, Benton appointed Hutchins Chairman of Britannica's Board of Editors.

The University of Chicago's connection to Encyclopaedia Britannica lasted more than five decades. Thanks to the simpatico relationship of Benton and Hutchins, it brought the University's endowment more than \$200 million in that time.

In 1974, after an investment of more than \$33 million, the 30-volume, 44-million-word 15th Edition of *Encyclopædia Britannica* was finally published.

The event made the front page of *The New York Times*. The standalone two-volume index was added to the set as part of a major revision published in 1985 partly because of complaints from librarians.

Mortimer Adler, Philosopher

Mortimer J. Adler, a precocious student (and later critic) of philosopher John Dewey at Columbia University, had also been attracted to the University of Chicago in the 1930s. Hutchins had found appointments for him in philosophy and psychology and at the University of Chicago Law School.

Adler was an evangelist for a broad, liberal education and a strident critic of the disciplinary specialization just then coming to fruition at American universities.

His and Hutchins's impassioned arguments for an undergraduate curriculum based on the classic texts of Western civilization touched off years of stimulating, though acrimonious, debate at the University in the 1930s.

Adler's belief in exposing undergraduates to the classics fell in with Hutchins' view that, "What the nation needs is more educated BAs and fewer ignorant PhDs."

Wags on the Midway soon were quoted reciting, "There is no God but Adler, and Hutchins is his Prophet." Students also were heard singing an old New Year's standard with a new refrain, "Should auld Aquinas be forgot."

Adler later helped Hutchins complete editorial work on Britannica's unique 54-volume canon of Western intellectual history, *Great Books of the Western World*. The set was published in 1952, the same year Adler left the University of Chicago.

Notwithstanding its intellectual gravitas covering the centuries (from Homer, Aristotle, and Aquinas to Freud), Britannica sold "Benton's Folly" to ordinary Americans with great success.

By the 1950s, the 14th Edition of *Encyclopædia Britannica* was showing its age. Benton, by this time, had also been an Assistant Secretary of State (he thought up the Voice of America), and a United States Senator (a Democrat from Connecticut and the first to denounce Sen. Joe McCarthy).

After Hutchins left the University of Chicago, he headed the Fund for the Republic think tank, established with help from the Ford Foundation. The Fund had helped finance Adler's Institute for Philosophical Research in San Francisco.

When Benton was assembling his editorial team to prepare the groundwork for the 15th Edition, he found Adler in San Francisco, where he was finishing his two-volume work, *The Idea of Freedom* (1958-61).

In December 1962, as Adler celebrated his 60th birthday, his Institute was going nowhere, his marriage had failed, and he was in debt.

Thus, he was in a receptive mood when William Benton reached out:

Come back to Chicago, Mortimer, and help me make a new and greater Encyclopædia Britannica. I'll not only pay you a princely salary and fund the Institute, but I also support a series of Benton Lectures at The University of Chicago that can be the first step towards a new career for you—and an education for them.

Accepting Benton's offer to pay him \$100,000 a year for life was the smartest thing Mortimer ever did, particularly given the fact that he lived to be 98. Initially when Mortimer returned to Chicago, he set up his own separate office and began to produce standalone books for Britannica. To help, he hired Charles Van Doren, then a former academic very much in need of a job. Robert McHenry, a young EB editor, was seconded to Mortimer's operation by Britannica and worked there for Van Doren for a number of years.

McHenry would later serve as EB's Editor-in-Chief in the 1990s. When I recently wrote him asking about Mortimer's later role in the development of *Encyclopaedia Britannica's* 15th Edition, his critique of Adler was a sharp one:

The design and planning of the 15th Edition were in the hands of Mortimer. As Benton's Charon it could not have been otherwise. It is doubtful whether Benton or any of the managerial class at EB had ever seriously considered what an encyclopedia is or ought to be. Mortimer had one quite definite idea: it should be a tool for educating the user, not simply informing him. For Mortimer, information — what is the atomic weight of carbon? or the capital of South Dakota? — was mostly trivial stuff, no quantity of which amounted to knowledge, to say nothing of wisdom. He imagined the ideal encyclopedia as a synopsis of what the most knowledgeable persons in the traditional academic fields believe they know of the world. And it should be so organized as to lead the user

systematically from narrower to broader matters, from simpler to more complex ideas. The goal should be to enable the user to approach an understanding of what Matthew Arnold called “the best that has been thought or said.”

Mortimer once surprised a meeting of the editors of EB by declaring “I do not consider myself a well-informed person, and I do not wish to be one.” Once the shock passed, he explained “I strive to be an educated person,” and it was his firm belief that such should be every person’s goal. As the Great Books of the Western World was a primary means to that end, so the Britannica should be.

The problem in McHenry’s view was that almost no one used an encyclopedia in that way, “Most everyone looked up atomic weights or capitals. Some might be led on to investigate the history of how atomic weight came to be conceived of and measured or who was “Pierre”? The resultant disaster in McHenry’s thinking was that when the 30-volume, 15th Edition was published in 1974, it was wrongly structured. Short articles were in the *Micropaedia* volumes, with the articles in this section containing cross references to the long articles in the encyclopedia’s *Macropaedia* section. A one-volume *Propaedia* served as an outline of the knowledge in the whole set. It didn’t take long internally at EB for the lack of a standalone index to be seen as a fundamental error of design, and a great impediment to sales in the important educational market. The necessary cure was a major and expensive restructuring of the 15th Edition into 32 volumes, two of which were the long-missing A to Z index volumes. The makeover took over a decade and was not published until 1985, the year I interviewed for the job of General Counsel of EB.

Charles Van Doren, EB Editorial Vice President

In 1962, Adler’s young friend and acolyte Charles Van Doren had received a suspended sentence following his conviction in New York

State for perjury in the investigation into the fixed television game shows of the late 1950s.

As a sign that he was looking to the future, Van Doren published a scholarly article, "The Idea of an Encyclopedia," in the *American Behavioral Scientist* that same year. In the article, Van Doren argued that American encyclopedias should no longer be mere compilations of facts (a criticism of the 14th Edition). He said they should educate, as well as inform. He also argued against encyclopedias that classified information in artificial pigeonholes reflecting university politics, and spoke in favor of celebrating the natural interrelatedness of man's knowledge:

It takes a brave man to master more than one discipline nowadays; bravery is not totally absent from our society, and so heroes can be found. But the man who attempts to find the principles which underlie two or more disciplines is considered not brave, but mad or subversive. Those whom graduate schools have put asunder, let no man join together!

Van Doren's article on encyclopedic form was influential enough to be selected for inclusion along with Vannevar Bush's 1945 Atlantic essay in the 1967 compilation, *The Growth of Knowledge: Readings on Organization and Retrieval of Information*. This book also took note of the theoretical work being done in automated text retrieval by Gerald Salton of the Department of Computer Science at Cornell.

When Adler moved back to Chicago to join Britannica, it is not surprising that he quickly found a place for Van Doren. Van Doren was a son of Adler's old Columbia University teaching colleague and friend, poet Mark Van Doren, and Adler had known him since birth. As Charles Van Doren put it when he spoke at a 2001 memorial service following Adler's death at age 98:

And then there came the time when I fell down, face down in the mud, and he picked me up, brushed me off and gave me a job. It was the best kind of job: As he described it, one you would do anyway if you did not need the money. First, we worked together making books for Encyclopaedia Britannica. Then I, and many others, helped him to design and edit the greatest encyclopedia the world has ever seen.

The source of Van Doren's infamy permeated the rest of his life, including his career as an editor at Britannica. At the same time I joined Britannica as General Counsel in 1986, Peter Norton succeeded Charles Swanson as President of the company. When I once asked Norton about Van Doren's time at EB, he said a few times he had heard a mean-spirited person hum under their breath Dum, Dum, DUM! Dum, Dum, DUM! when Van Doren entered a room. This was the sound of the drums heard on the crooked *Twenty-One* television show when Van Doren had been feigning to struggle with an answer he'd been given in advance.

The appearance of Van Doren at his mentor Adler's memorial service in 2001 was a rare public outing. In the years since his 1957 crowning as the new champion of the rigged TV game show, and his hiring shortly thereafter as a "cultural correspondent" on the popular nationwide *NBC Today* show, Van Doren had mostly avoided the limelight. The big exception to his falling out of public view of course, was his 1959 Congressional testimony before the House Subcommittee on Legislative Oversight. This abruptly made him a pariah for television and also foreclosed a return to the academy. His later career writing books with Adler and as Editorial Vice President of Britannica was notably out of the public eye. He had left EB in 1982, four years before I arrived.

As Executive Vice President of Britannica as well as General Counsel, from time to time I managed a number of relationships with the partners around the world who were publishing translations of the *Encyclopædia Britannica* into different languages. Usually this was when something in the relationship was going terribly wrong. So, when I began dealing with a copyright infringement of the *Encyclopædia Britannica* in Greek, I dove into the files to read the correspondence and contractual underpinnings of EB's relationship with our Greek licensee. What I found was that I was walking in Van Doren's footsteps. In the 1970s he had negotiated and concluded a very complicated agreement that had substantially benefitted both EB and its licensee over the intervening years.

With this background in mind, after Adler's funeral service I had a chance to chat with Van Doren. As I had also worked with Adler

over the years, I told him I thought he had captured the man nicely in his remarks. When I told him that the Greek language version of the *Britannica* he had nurtured was still going strong, his eyes lit up as he briefly and enthusiastically spoke about his EB career.

Apart from his comments at Adler's memorial service, he was rarely heard from in all the years following his humiliating confession before Congress. One other exception was in 1999 when Columbia University's Class of 1959 invited its former teacher back to speak at its 40th Reunion. At that time, Van Doren told them:

Some of you read with me forty years ago a portion of Aristotle's Ethics, a selection of passages that describe his idea of happiness. You may not remember too well. I remember better, because, despite the abrupt caesura in my academic career that occurred in 1959, I have gone on teaching the humanities almost continually to students of all kinds and ages.

In case you don't remember, then, I remind you that according to Aristotle happiness is not a feeling or sensation but instead is the quality of a whole life. The emphasis is on "whole," a life from beginning to end. Especially the end. The last part, the part you're now approaching, was for Aristotle the most important for happiness. It makes sense, doesn't it?

When Robert McHenry's began his career as an EB editor working for Van Doren, he came to have a much more positive view of Van Doren than he held for Adler

Charles Van Doren was acknowledged by those who knew him to be perhaps the most naturally charming man of their acquaintance. Many were doubtless surprised to discover that he could be quite jovial and kindly. It was understood that one did not ask about or allude to the quiz-show affair.

Some 40 years after McHenry and Van Doren first met, when both were retired, McHenry stopped by Van Doren's Connecticut home for a last visit with his longtime friend and mentor. The visit revealed another side of the man who was known around *Britannica* as "CVD." McHenry recalls, "Quite unexpectedly, Van Doren made a point of apologizing to me for having insisted that his name appear

also as co-editor of the first three books I had produced while working for him.”

Reinventing the Encyclopedia in Electronic Form

In 1981, Tom Goetz’s retired predecessor Warren Preece published “Notes Towards a New Encyclopedia.” In this article, Preece described the coming electronic encyclopedia.

As one of the architects of the 15th Edition, Preece was intimately familiar with the dense tapestry of cross references that connected related pieces of information spread throughout the *Micropaedia*, *Macropaedia*, and *Propaedia*, the three parts of the encyclopedia. He, more than most, was in a position to ponder the way in which the electronic publishing future might affect a corpus of this nature, and he explored the contours of these possibilities in his article.

Not only did Preece write that his newly envisaged encyclopedia would have an electronic version, but he also saw what Vannevar Bush had not been in a position to see: optical laser-disc technology could be the likely storage medium for encyclopedic data.

Preece also noted that with over 300,000 home computers then in private use in the U.S., online query privileges for up-to-date encyclopedic information was another possible direction for the encyclopedia of the future to take. He also was attuned to the competitive advantages an electronic encyclopedia would have over the book: it could hold more, be searched faster, and be updated more easily.

At Britannica at this time, Van Doren was already leading the charge into Preece’s Brave New World. In May 1980, he had circulated to his colleagues a new agreement between Britannica and Mead Data Central. The four-year agreement called for the full text of the *Encyclopaedia Britannica* to be put online as part of the Lexis-Nexis service.

Mead was to pay Britannica up to 25 percent of Mead's revenues from encyclopedia subscriptions. While being careful to discourage copyright infringement by not permitting subscribers to print articles from the encyclopedia, Britannica had now committed itself to an electronic future in more than a symbolic way.

Solving the PC Data Storage Problem

Britannica editor Warren Preece had been able to foresee the possibility of an optical disc encyclopedia because of breakthrough engineering developments that had taken place in Europe and Japan. Klass Compaan, a physicist with Philips research based in Netherlands, had conceived of the compact disc in 1969 and, with Piet Kramer, had produced the first color videodisc prototype in 1972. Philips then worked with Sony to develop a smaller compact disc standard for just storing audio signals.

The audio compact disc that emerged was made with a polycarbonate substrate, molded with pits that permitted a laser beam to read timing and tracking data. The so-called Red Book format of the compact disc was released in Japan and Europe in 1982, and in the U.S. the following year. A derivative format, designed to hold multimedia information and be played back on a computer, was given the unwieldy name Compact Disc-Read Only Memory, CD-ROM for short. This was launched into the nascent personal computer market in 1985, several years after the first prototypes had been shown.

Grolier Publishing quickly put a text-only encyclopedia on a videodisc and also a CD-ROM in 1985. Most early CD-ROMs published were specialized compendia designed for commercial, not consumer, use. Navigation was accomplished through rules-based Boolean text string searches. Discs with sound, pictures, video and animation, although supported by the CD-ROM format, were not available.

Microsoft believed that for sales of its operating system to grow at an exponential rate, software developers needed to be encouraged to use the new CD-ROM storage media to create compelling software for consumers. The assumption was that this would drive consumers

to regard PCs in the home not just as gaming facilitators, but as a requirement for their children's education. To this end, Microsoft showed off a CD-ROM multi-media encyclopedia demonstration disc at a CD-ROM developer's conference it held in 1986. The dozen five-page articles on the demonstration disc contained text, graphics, sound, a motion sequence, and animation.

There were several prime movers of *Compton's Multimedia Encyclopedia*.

Patricia Wier, EB, Marvin Minsky, MIT, and Alan Kay

Britannica had first acquired a large mainframe computer in the 1960s. It had primarily been used to manage the company's direct mail and installment sales activities, though it also did the usual accounting applications and managed the payroll and accounts receivable functions. In 1971, Britannica hired Patricia A. Wier to help manage computer systems and programming operations. Wier had been lured away from a computer management position at Playboy magazine's Chicago headquarters. A quick study, Wier was promoted to head Britannica's computer operations within the same year.

Wier was determined to broaden the use of computers within the company, and before long Wier helped graft the in-house editorial system onto Britannica's existing mainframe computer. This system was used to help produce the massive 15th Edition. It was not until the early 1980s, however, that Britannica moved to a stand-alone mainframe computer completely dedicated to editorial operations. At that time, all editorial and production work was put online, including page-makeup and indexing.

It was at this juncture that Wier was promoted to vice president of corporate planning and development. She was charged with developing or acquiring new products that would see Britannica into the future, particularly bearing in mind the new computer technologies that were coming to the fore. Soon she and editorial vice president Charles Van Doren began calling on various leading lights

in the field of computer development to get ideas about the directions Britannica electronic products might take. Because Wier wanted to explore at a sophisticated level how the computer developments of the future might be put to use by a reference publisher such as Britannica, she traveled to the Massachusetts Institute of Technology.

MIT was then, as it is today, at the cutting edge of important computer developments. The people that she engaged at MIT included “artificial intelligence” guru Marvin Minsky at the MIT Media Lab. Minsky introduced her to a former student of his, Danny Hillis, by then at the supercomputer manufacturing startup Thinking Machines. Both were intrigued with how computer technology might be applied to such an enormous and fascinating database as the Encyclopædia Britannica. Of particular interest to everyone Wier met was the dense indexing within the set that already existed, interconnecting as it did all parts of the database.

Wier recalls that when she met with Minsky at his home in Brookline, Massachusetts, and entered the large casual room where their meeting was to take place, three grand pianos scattered around the room sounded the opening chords of Beethoven’s Fifth Symphony as the door opened.

Minsky had other gadgets like this in his home, all reflecting his never-ending fascination with technology and its uses, both playful and serious. Grand pianos seemed the order of the day among these leading East Coast technologists.

When Minsky and Wier visited the home of Sheryl Handler, a co-founder with Hillis of Thinking Machines, Minsky sat down at her new Bösendorfer grand piano and expertly indulged his passion for magnificent music machines.

Though all Wier’s Boston-based interlocutors were singular, none could fully compete with one of Handler’s achievements. She had appeared in a Dewar’s Scotch whisky advertising profile next to the quote, “My feminine instinct to shelter and nurture contributes to my professional perspectives.”

Wier also met briefly at this time with Nicholas Negroponte, director of the Lab. Wier and others were curious about how to use what was then called artificial intelligence to permit the recovery of pertinent electronic data in a more sophisticated manner than through keyword searching alone.

During this period, Wier and then Britannica USA president Peter Norton also met with computer pioneer Alan Kay to discuss how rapidly developing computer technology might impact an electronic encyclopedia. At the time, Kay was working with Atari to produce electronic games, but Wier recollects that he was fascinated with the content of *Encyclopædia Britannica* and came to Chicago to visit Britannica's corporate headquarters to learn more.

His sneakers and jeans, while standard mode of attire for Silicon Valley, caused heads to turn and eyebrows to raise at the then-straitlaced Britannica Centre. The requirements for more formal business garb at Britannica and other offices in downtown Chicago didn't disappear until well into the '90s. Wier and Kay, who had his own associations with the MIT Media Lab, also brainstormed about someday using encyclopedic information in voice-controlled graphics on walls in the home.

In 1983, with her research complete, Wier proposed to Britannica's board of directors that it embark on the creation of an interactive electronic encyclopedia. Wier, who retired in 1993 as president of Britannica USA, got an answer akin to the one given by the University of Chicago's directors when they turned down Sears' Britannica gift. Wier remembers she was told in no uncertain terms, "We sell books!"

At Atari's Sunnyvale Research Laboratory, Kay consulted the next year on an encyclopedia research project sponsored by Atari, the National Science Foundation, and Hewlett-Packard. Joining Kay as a consultant on the prototype Encyclopedia Project was Charles Van Doren, recently retired from Encyclopaedia Britannica.

Peter Norton Takes Britannica into the Software Business

Although not willing to follow Wier's advice in 1983, Britannica's board of directors did believe the company needed to get closer to the emerging personal computer market. That year, Encyclopædia Britannica Educational Corporation, which I later served as president, published a dozen floppy disk educational titles that it had acquired for the Apple II platform. Soon Britannica decided to directly acquire its own software development capability. In 1985, it purchased Design Wear, EduWear, and Blue Chip, three small San Francisco-based software publishers also selling 5¼ inch floppy magnetic disk products.

With the introduction that year of the CD-ROM format, Britannica also began to think about how it might exploit this new medium. The question was not a simple one. The Encyclopædia Britannica itself was thought to be too massive to be put on a CD-ROM, even with minimal indexing and a text-only format.

Also, the entire business model of the company was still built on selling its flagship, multi-volume print work at a purchase price of \$1,200 and up, depending on the binding. The direct selling sales culture that prevailed at Britannica was no more receptive to the idea of an inexpensive, electronic alternative to the print set than it had been when Patricia Wier first made her recommendation.

In 1987, Britannica's management, led by former Englishman, now American citizen, Peter Norton, hit on a solution.

This time the plan was not seen as a threat to the sales force, and it was endorsed by the board of directors. Instead of putting the *Encyclopædia Britannica* on a CD-ROM, Britannica would become a leader in the newly developing software publishing industry by building a multi-media CD-ROM version of its student-oriented *Compton's Encyclopedia*. At the time, the Compton's print set was given away free as a premium to purchasers of the more expensive Encyclopædia Britannica print set.

Harold Kester, SmarTrieve, and Compton's Encyclopedia

After further analyzing the potential market for such a work, Stanley Frank, in charge of development by then, decided in 1988 to partner in its development with Education Systems Corporation of San Diego, California. ESC had expertise in software development through building networked educational products for the school market. ESC chose as its text search engine subcontractor the Del Mar Group. Del Mar was a Solana Beach, California, venture capital startup, with funding from Japanese computer maker Fujitsu.

Del Mar's chief scientist, Harold Kester, had already been building CD-ROM reference publications, though not for the consumer market. Importantly, Kester was also a student of the work of Gerald Salton at Cornell University. Salton had been doing pioneering research into the mathematical principles underlying automatic text retrieval. As Greg Bestik, ESC's head of development, Kester, and Britannica's editors and software engineers got together to plan the design of what became *Compton's Multimedia Encyclopedia*, they had one clear instruction from Britannica's management: Britannica was ready to invest millions of dollars in the product's development, but it must publish a revolutionary offering that would be a clear breakthrough in simplifying a user's interaction with computers.

This would not be a text-only product like Grolier's. The depth of Britannica's vast holdings of reference media in film, pictures, animations, maps, and sound would all be made available for close integration with the Compton's encyclopedic text. Kester's great contribution to this enterprise was to produce a natural language search engine that would help permit the prototypical nine-year-old to easily search the entire database for articles of interest.

Instead of expecting a nine-year-old to master the intricacies of Boolean logic in constructing search queries ("Sky" AND "Blue"), Britannica's nine-year-old needed only to type in the search box "Why is the sky blue?" That would be enough for Del Mar's SmarTrieve search engine to take the user to the answer.

Shortly after Del Mar's organization in 1984, it became one of the first CD-ROM publishers the next year. It published the fifth CD-ROM in the United States in 1985. It was a prototype of a product intended for bookstores that would permit consumers to interact with a database and be guided to titles of interest. Its SmarTrieve search system was licensed to other CD-ROM developers, and, in 1986, Del Mar briefly had the largest installed base of CD-ROMs in the country.

Informed by Gerald Salton's earlier work, SmarTrieve's natural language search and retrieval system went far beyond the usual database search engines of its day.

Duly impressed, Britannica purchased SmarTrieve and hired Kester and his team as soon as the networked version of Compton's product was complete. When Britannica and ESC signed their co-development agreement in April 1988, the Del Mar Group dived in to help with the preparation of the design document. This was completed in July 1988. It set forth in elaborate detail the architecture of the *Compton's Multimedia Encyclopedia* that would be published in the new CD-ROM format in the fall of the following year.

The design document was very much a collaborative one. ESC had talented computer programmers and educational experts in San Diego and Austin, Texas sites. Harold Kester and his search engine group worked from Solana Beach, California, and the Britannica editors and software experts were in Chicago and San Francisco. Over the years, when I visited the brilliant group in Solana Beach and later La Jolla, California, I had a chance to observe at close hand the intellectual leadership and creative genius with which Harold led his team. He was truly the right person at the right time for this breakthrough.

During development, between 40 and 80 individuals were active at any given time in working to bring the design document to life as a fully functioning product. This would be no prototype or demonstration vehicle for show and tell at a futurists' conference. They were about inventing and building the real thing. If they succeeded, it would be proven that Ted Nelson's dream of creating hyperlinks—called Project Xanadu—could come true. Something

along the lines of what Ted Nelson had surmised could actually be reduced to practice and change the world forever.

Those on the design team with a background in educational psychology were particularly sensitive to the fact that children learned in different ways.

They pressed home the desirability of having different ways, both textual and graphical, for users to access the same information.

Dr. Stanley Frank, Vice President, Development

Thus, from the beginning, the novel idea of developing an architecture based upon multiple search paths to related information was central to the product. Also fundamental to the design were reciprocal hyperlinks between related data contained in other search paths. With a product that was easy to use and that could easily facilitate different styles of learning, the group felt it was building a blockbuster, both for the network market within schools, as well as for the stand-alone consumer market.

This combination of ESC's computer networking programing expertise together with Britannica's skilled encyclopedists was a unique combination for the times. And building an electronic database that went beyond text to include sound, animation, video, and maps could never have been accomplished without the millions of dollars that was invested by Britannica both before and during the development of the *Compton's Multimedia Encyclopedia* product. This unusual combination of human resources, coupled with a subset of Britannica's rich editorial content, turned out to be the requirements for building the software needed to bring a highly complex digital work to life.

If anyone doubted the difficulty of pulling this task off, for a parallel they needed only look at the decades-long and costly failure of Ted Nelson's Xanadu effort. It had never been able to actually produce a useful product that actually worked.

In fall 1989, Britannica released a network version of *Compton's Multimedia Encyclopedia* for schools at a press conference at the New York Academy of Science. The news media was out in force, recognizing the product as potentially noteworthy. Dr. Stanley Frank, who had overseen the development process as EB's Vice President, Development, demonstrated the Compton's CD-ROM for a national television audience through a live presentation that reached the nation on ABC's Good Morning America television show.

The consumer version of Compton's CD-ROM was published shortly after, in March 1990 at a price of \$895. *Compton's Multimedia Encyclopedia*, on a single CD-ROM disc, contained an amazing 13 million words, 7,000 images, and numerous movies, animations, and sound clips.

Compton's Multimedia Encyclopedia made a splash when the media took notice. Said Newsweek of the breakthrough computer interface:

Computers aren't just smart typewriters and zippy number crunchers anymore. ... Yet so far hype has outstripped hopes in the growing collection of multimedia programs. Like dazzling Hollywood flops, most have turned out to be long on technology, but short on substance. Until Compton's. ... Just getting that much information on a disc is impressive enough. Yet the beauty of Compton's is in the links—everything is woven together so the user can quickly move between related bits of information. Thanks to ingenious design, the program is so simple that, literally, a child can use it. ... Hit a difficult word? A click will bring up the definition—and if your PC has sound capability, the machine will even pronounce it for you. Whetted appetites: A staff of 80 writers, editors, designers and programmers worked for two years to bring the product to market.

The effect on people experiencing Compton's for the first time could be stunning. Former Vice President Walter Mondale, like his political patron saint Hubert Humphrey before him, served on the Encyclopaedia Britannica board of directors.

Shortly after the Compton's product was released, I escorted Mondale to see the newly developed product with other directors at the Oakbrook Center Mall outside Chicago. He read with interest his

own biographical entry reflecting his service as Vice President. After looking with less interest at the text of the entry on Richard Nixon, he got up from the keyboard and turned to leave.

Seeing he had ignored the sound button on the entry, I quickly clicked on the audio icon in the Nixon article. When the computer speakers boomed Nixon's disembodied voice ("Well, I'm not a crook!"), Mondale turned around, frozen in amazement. He was obviously not prepared for this Nixon redux and was stunned by the product coming to life this way.

Computer hardware manufacturers quickly saw Compton's could help sell their boxes to consumers. Tandy Corporation immediately struck a deal with Britannica to sell its new multimedia PC for \$4,500, with the \$895 Compton's disc thrown in for free. IBM, not wishing to be left behind, quickly gave Britannica a million dollars towards EB's continued development of the product, making sure it was adapted to IBM's newly planned multimedia computer entry.

Compton's Patent R.I.P.—An Afterthought

When the Patent Office reversed course in 1994 and withdrew the patent it had issued just the year before, Britannica challenged the action and brought suit. Years later, a federal district court in Washington, D.C., found the Patent Office in error and confirmed that no invalidating prior art had preceded the Britannica invention. The result was that in 2002, the Patent Office again issued the Compton's patent. Finally, 13 years after filing its original patent application, Britannica could begin to try to monetize its invention.

By this time though, the technology associated with the patent had rapidly evolved. When Britannica approached non-encyclopedia companies asking them to license the patent, they declined to acknowledge the patent's validity, notwithstanding its prior validation after two lengthy investigations by the Patent Office. In response, Britannica brought another lawsuit asserting its rights against some of the infringers. In this subsequent litigation, again no dispositive prior

art was ever presented showing that the invention had been made by anyone else before the Compton's patent application was filed in 1989.

As could be expected, attorneys for one of these parties being sued for infringement began wading through the already complex patent history. Lo and behold, they found a useful needle in the haystack. They discovered years after the mistake could have been cured that the Washington, D.C., law firm Britannica had hired to draft and file the patent application in the Patent Office had dropped the first page of one of the Xerox copies of the patent application it had filed. It had also made a scrivener's error by dropping a routine boilerplate phrase required to be recited in the application.

Dropping the page in a copying error and failing to put in the usual technical language required by the patent statute was bad news for Britannica. The result was that the Compton's patent was ruled invalid for technical reasons having nothing to do with the substance, novelty, or importance of the invention itself.

But for the law firm's lapse, it appeared that the invention would have otherwise gone on to produce substantial royalties. By making public the details of the invention in its 1989 patent application, it had been possible for other companies to quickly digest the nature of the invention and incorporate it into their own products. The application's detailed drawings and the textual descriptions of the innards of the invention gave rise to the immediate and wide dissemination of exactly how to structure and write the complex software needed to permit simultaneous access to multiple and disparate databases of text, sound, images, and videos.

The only good news in this case's outcome for Britannica was that it had inadvertently cemented a perfectly good legal malpractice claim against the law firm that had negligently botched its job.

In the course of proving a case of legal malpractice involving a patent, the party alleging malpractice must show that a lawyer's mistake actually damaged it. If you're defending against such a claim of malpractice, you can get yourself off the hook if you can show that the patent in question was invalid and never should have been issued.

Therefore, when Britannica sued the law firm for legal malpractice, there was what's known as "the case within the case." This meant that the outcome of Britannica's malpractice case would also finally bring a ruling on the underlying merits of its patent. If this turned out to be good news for EB, it would be bad news for the Washington law firm. If the damages it was ordered to pay exceeded its malpractice insurance, it might bankrupt the law firm and perhaps some of its partners.

However undesirable it was for Britannica to have to sue a Washington, D.C., law firm in a District of Columbia court, it was unavoidable. When the dust finally settled in 2015 on this final dispute involving the Compton's patent, the federal district court hearing the case ruled that the invention was not patentable. This meant that while legal malpractice may have occurred, Britannica couldn't have been damaged.

In arriving at this conclusion, the court took a fresh look at the basic requirements for a patent to issue. It set aside the fact that in two separate instances the Patent Office had never found or ever seriously considered whether the software patent in question constituted what's called "patentable subject matter." Everyone before had always thought that it was, as the U.S. Supreme Court had long before ruled that software inventions could be patented.

Under the U.S. Patent Act, for a patent to be valid, it must have the attributes of utility, novelty, nonobviousness, enablement, and it must cover patentable subject matter. There was no fresh evidence presented to the court in the malpractice case that the Compton's patent didn't meet the tests of being useful, novel, and nonobvious. It also had clearly enabled others ordinarily skilled in the art to replicate the invention. However, the court decided that Britannica's patent failed the remaining requirement for a valid patent because the patent did not meet the court's definition of "patentable subject matter."

The court said that "abstract ideas" were not patentable under the longstanding rule that an idea itself is not patentable. It said that the Compton's patent claims were drawn to the abstract idea of collecting, recognizing, and storing data to be easily found and retrieved, and that

this was an abstract concept and therefore not patent-eligible. In its ruling, the court put it this way:

A “database” is nothing more than an organized collection of information. Humans have been collecting and organizing information and storing it in printed form for thousands of years. Indeed, encyclopedias—described as a type of “database” in the specification—have existed for thousands of years. For just as long, humans have organized information so that it could be searched for and retrieved by users: For example, encyclopedias typically are organized in alphabetical order and are searchable using indexes, and articles generally contain cross-references to other articles on similar topics. These activities long predate the advent of computers. Such fundamental human activities are “abstract ideas.”

Thus, it was that a quarter century after the Compton’s Patent application was filed in 1989, the last hope of Britannica profiting from its investment in the invention was extinguished.

Having hired the law firm that drafted the Compton’s patent application in 1989, I was present at the creation, as it were. I had subsequently spent 15 years directing and supervising the torturous regulatory and judicial quagmire that ensued. As it turned out, I missed the third act of the Compton’s patent drama when Britannica’s malpractice claims finally died in 2015. My absence from the finale was a function of my 2014 retirement at the age 72 after 28 years as Encyclopaedia Britannica’s General Counsel.

Engaged in the chasing of the Compton’s patent holy grail for all those years, I have a few simple afterthoughts as to how it all went down.

I think the patent would never have gotten in trouble in the first place had Britannica’s Stanley Frank not overreached in pursuing his dreams of a quick payoff. In the 2005 book *Intellectual Property Rights in Frontier Industries—Software and Biotechnology* edited by Robert W. Hahn, authors Stuart J. H. Graham and David C. Mowery write that shortly after the Patent’s issuance by the Patent Office in 1993:

Compton's president, Stanley Frank, suggested that the firm did not want to slow growth in the multimedia industry, but he did "want the public to recognize Compton's NewMedia as the pioneer in this industry, promote a standard that can be used by every developer, and be compensated for the investments we have made." Armed with this patent, Compton's traveled to Comdex, the computer industry trade show, to detail its licensing terms to competitors, which involved payment of a 1 percent royalty for a nonexclusive license. Compton's appearance at Comdex launched a political controversy that culminated in an unusual event—the U.S. Patent and Trademark Office reconsidered and invalidated the Compton's patent. On December 17, 1993, the USPTO ordered an internal reexamination of Compton's patent because, in the words of Commissioner Lehman, "this patent caused a great deal of angst in the industry." On March 28, 1994, the USPTO released a preliminary statement declaring that "[a]ll claims in Compton's multimedia patent issued in August 1993 have been rejected on the grounds that they lack 'novelty' or are obvious in view of prior art."

In the July 1994 issue of *Wired* magazine, the article "Patently Absurd" threw further light on how the Compton's patent issuance created an almost instant political bonfire:

The Compton's Patent contained 41 claims that broadly covered any multimedia database allowing users to simultaneously search for text, graphics, and sounds—basic features found in virtually every multimedia product on the market. The Patent Office granted the patent on August 31, 1993, but it went unnoticed until mid-November, when Compton's made the unusual move of announcing its patent at the computer industry's largest trade show, Comdex, along with a veiled threat to sue any multimedia publisher that wouldn't either sell its products through Compton's or pay Compton's royalties for a license to the patent. Compton's president, Stanley Frank, stated it smugly for the press: "We invented multimedia."

The denizens of the multimedia industry thought otherwise. In dozens of newspapers around the country, experts asserted that Compton's Patent was clearly invalid, because the techniques that it described were widely used before the patent's October 26, 1989, filing date. Rob Lippincott, the president of the Multimedia Industry

Association, called the patent “a 41-count snow job.” Even Commissioner Lehman thought that something was wrong.

“They went to a trade show and told everybody about it. They said they were going to sue everyone,” says Lehman, who first learned of the Compton’s Patent from reading an article in the *San Jose Mercury News*. “I try not to be a bureaucrat,” he adds. “The traditional bureaucratic response would be to stick your head in the mud and not pay attention to what anybody thinks.” Instead, Lehman called up Gerald Goldberg, director of Group 2300 [in the Patent Office], to find out what had happened.

Like Lehman, Goldberg had learned about the Compton’s Patent from reading the article in the *Mercury News*. “We pulled the patent file and I took a look at it,” recalls Goldberg. “I spoke with the examiner. We felt the examiner had done an adequate job.” In this particular patent application, says Goldberg, the Compton’s lawyer had included an extensive collection of prior art citations—none of which described exactly what the Compton’s Patent claimed to have invented. Without a piece of paper that proved that the invention on the Compton’s application was not new, the examiner had no choice but to award Compton’s the patent.

To cap things off, Compton’s NewMedia officers had also been quoted as saying offhandedly that the patent covered “anything on a chip.” This clearly added even more fuel to the fire.

So, to me the biggest fly in the ointment was Frank’s hubris. Frank’s announced desire to be paid a 1% royalty on multimedia sales in the middle of the industry’s biggest conference on newly emerging technology was not just a political misstep, or overreaching, it was nuts.

Unfortunately, the consequent delay in enforcing the Compton’s patent brought about by Frank’s misjudgment is what really killed the patent. The political blowup following Frank’s Comdex declaration caused the Patent Office to promptly pull the patent. This caused a nine-year delay in Britannica being able to enforce what the Patent Office would again find to be a perfectly valid patent. At least one academic study has gone into the details of the Patent Office’s

questionable decision to reexamine the patent. Further, the law firm's technical error that might have been caught and cured early on ultimately led to invalidation of the patent in 2009. This gave way to a further six-year delay pending Britannica's malpractice case claims against its law firm being finally assessed and turned down by a court in 2015.

The delay was deadly because by 2015, software technology had dramatically advanced in the quarter century since the Compton's patent application was originally filed. By 2015, everything that was astoundingly novel back in 1989 had not only become commonplace, but it was so old hat that it was not hard for the federal court involved to conclude that the invention was no big deal and merely "an abstract idea." Also, it was easy for people to surmise that a company founded in 1768 like Encyclopaedia Britannica, a stodgy reference publisher of multi-volume printed encyclopedias, was just not in the right company with the emerging technology giants of Silicon Valley. It was hardly a regular player in the high-tech patent field.

I think there was a good chance Compton's patent could have had a normal commercial life had not the political uproar at its birth delayed its day in court to a point in time when a usually correctible technical error could no longer be fixed and the substantive patent law had evolved in the meantime to make software patents generally harder to come by.

To my eye, the malpractice court's conclusion may have saved a local law firm from having to pay for an egregious error, but the way it arrived at this conclusion gave short shrift to the unique contribution Encyclopaedia Britannica had made to the advancement of the human/computer interface.

If Stanley Frank is the fall guy for the story of a fundamental patent that lived and died several times over a quarter century, could there possibly be a hero anywhere in this found-and-lost tale?

Absolutely! Let Harold Kester be given his due. Harold more than any other single person was the true inventor of the breakthrough invention embodied in the *Compton's Multimedia Encyclopedia*. In the long history of the Compton's patent litigation, neither the Patent

Office nor anyone else successfully brought forward prior art that challenged the fact that the invention Harold Kester was central to creating was the very first of its kind. His Del Mar group had been hired by Britannica to provide a search engine for the unusual and novel CD-ROM Britannica was determined to develop, and under Harold Kester's exceptional leadership, his group, with ESC and Britannica's editors, accomplished what it was asked to do.

After first learning of the scope of the computer software undertaking being launched, I travelled many times from Chicago to Solano Beach and La Jolla, California, where Harold Kester led the small team that worked on the search engine at the heart of the project. Having watched Harold at white boards leading his team through the analysis of the software's internal organization, I can personally say Harold was the key genius that could put all the pieces together.

Harold was the mathematical wizard who was able to couple the nascent science of computer search technology with the recent computer hardware advances. Though others were involved on the teams that put his ideas to work, Harold Kester was really the one who can be primarily thanked for the Compton's innovation.

In recalling this part of the development of the human/computer interface early in the Information Age, I was left wondering what the reaction would have been if Ted Nelson had been able to bring his Xanadu Project to fruition in the form of a similarly novel, functional, and valuable end product. Would people really have thought that the novelty and ingenuity of his hyperlinked product was nothing more than a display of a "fundamental human activity"? Would it have been dismissed as a mere "abstract idea" that had already been floating around for thousands of years. Personally, I think not.

Britannica's took its final appeal from the adverse decision of its legal malpractice case to the U.S. Supreme Court in 2016. The Court has the discretion to hear most appeals, but usually takes only cases of the broadest public consequence or when the lower federal circuit courts of appeal disagree on major issues. In the latter case, guidance from the high court is helpful in bringing consistency in decisions of

the lower courts in the future. Although Britannica's case involved such a split in the lower federal courts of appeal, the Supreme Court chose not to put this particular case on its docket.

If you're interested in what a Petition for a Writ of Certiorari looks like or are curious about the underlying legal arguments in the case, take a look at Appendix 1 of this book. There you can read excerpts from Britannica's final and unsuccessful effort to uphold its patent. In an odd result, the twenty-three years of litigation over the patent lasted longer than the normal term a patent remains in effect after issuance.

You may note that Douglas Eveleigh's name and not mine is on the Supreme Court's Petition as Britannica's lawyer. That's because I had chosen Doug to replace me as Britannica's General Counsel when I retired from the company two years before the Petition was filed.

A Look Back from Encyclopaedia Britannica

Looking back on my Encyclopaedia Britannica days, when I departed United Press International after its bankruptcy, UPI was fortunately headed towards a reorganization and not a liquidation. Though I had been with UPI only two years, it had directly prepared me for the much more challenging role as Executive Vice President, General Counsel, and Secretary of Encyclopaedia Britannica, as well as my related work as Secretary of Britannica's owner for much of this time, the William Benton Foundation.

Given that the sole beneficiary of the Foundation for several decades was my alma mater, the University of Chicago, it was particularly gratifying to see that institution enriched in this period by over \$200 million in Britannica largesse.

The fulfilling years I spent at UPI and Britannica would never have come about without my first having left private practice for The Bradford Exchange and my first job as a General Counsel. That opportunity gave me the chance to function in a business role as well

as a legal role. As time went by, this turned out to be a quite satisfying complement to my previous strictly legal role.

At Britannica I was able to take on the role of a business manager more fully while serving as President of Encyclopaedia Britannica Educational Corporation, and when I briefly headed up another Britannica subsidiary, the premier dictionary publisher of American English, Merriam-Webster.

When Britannica's CD-ROM encyclopedias began to be counterfeited in China and elsewhere, I had Britannica join the International Anticounterfeiting Coalition, a Washington, D.C., not-for-profit trade association devoted solely to combating product counterfeiting and piracy. The IACC members included a cross-section of business and industry. Including firms such as Ford, Disney, Levi Straus, and Apple, members were involved in selling cars, apparel, luxury goods, pharmaceuticals, food, and software to name only a few of the industries dealing with counterfeiting challenges. After several years serving on the IACC's board of directors, I was elected its Chairman. In that role, I interacted with law firms, investigative and product security firms, government agencies, and intellectual property associations here and abroad. This function also gave me experience on Capitol Hill lobbying Senators and Members of the House. As IACC Chairman I travelled to Europe, China, Hong Kong before the turnover, and Taiwan urging officials there to strictly enforce their intellectual property laws and to stop the pirating and knockoffs of American products.

In the lobbying and public policy roles that Britannica afforded me, I had a chance to meet at Britannica's offices with U.S. Sen. Dick Durbin. When I later continued public policy discussions with him in his Washington, D.C., Senate office, I found assisting him at the time was J.B. Pritzker, later the Governor of Illinois.

Britannica also had me separately travelling all over the world dealing with issues at its many international operations. EB did significant business in most of the European countries, as well as Turkey, Greece, Israel, Egypt, Australia, China, Taiwan, Philippines, Japan, South Korea, and India.

Travelling with Frank Gibney, Vice Chairman of EB's Board of Editors, stands out among all my trips.

Gibney had learned Japanese while in the Navy in World War II and ended up serving in Japan in Naval Intelligence at the War's end. As a journalist, Gibney had returned to Japan in 1949 as *Time-Life's* bureau chief, travelling from there to report on events in Japan, Korea and Southeast Asia. After later stints with *Newsweek*, and as a speech writer for President Lyndon Johnson, he joined *Britannica* in 1966. In the next several decades he had brought about the publication of local language editions of the *Encyclopaedia Britannica* in Japan, and South Korea.

In 1985, Gibney met with Mao Zedong's successor, Deng Xiaoping, who was putting into practice Mao's opening of China to the West. The meeting coincided with the launch of the *Britannica Concise Encyclopedia* in the Chinese language. The attendant global publicity served to announce that with the publication of China's first non-Marxist encyclopedia, China was opening itself up to the world culturally as well as economically.

It didn't take long for a Taiwan entrepreneur to counterfeit Gibney's mainland encyclopedia by using the Mandarin Chinese language characters more commonly read on the island. As a result, I repeatedly traveled to Taiwan in the late 1980s to initiate police raids to seize inventory of the transliteration print set and prosecute local court actions that included an appeal to Taiwan's Supreme Court. Given the Berne Convention of 1971, Taiwan had clear international treaty obligations to protect EB's copyright in the work. With this problem persisting, and help from the American Institute in Taiwan, the de facto American Embassy in Taipei, *Britannica's* Chief Financial Officer Fred Figge and I secured a meeting with Taiwan's Vice Premier in 1988, Lien Chan. In our formal meeting, Chan immediately disarmed our aggrieved demeanor. Knowing that *Britannica* was owned by a foundation that solely supported the University of Chicago, he quickly mentioned that, having a graduate degree himself from the University, he appreciated our concern.

We ended up solving our counterfeit problem and Chan went on to serve as Taiwan's Premier. Later, he became the first Premier to travel to the mainland in pursuit of better relations. After retiring from

politics, like Gibney's before him, he had his own meeting with China's leader. For Chan, it was a meeting with Xi Jinping in 2013.

Most memorably for me was heading off with Gibney to the Kremlin in December 1990 in a similar exercise. He and I had previously been involved in long negotiations in Moscow to bring about the first non-Marxist encyclopedia in the Russian language.

As had been true in 1985, when Gibney met with Deng Xiaoping as part of China's opening to the West, Mikhail Gorbachev was now engaged with Britannica in 1990 in the U.S.S.R.'s own cultural opening to the West.

The upshot of this was that Gibney and I were travelling to Moscow with EB's Chairman, Bob Gwinn, to celebrate the conclusion of our negotiations with a series of public and private events. As part of the week-long activities, it was agreed that Gibney would write an article for Britannica based on an interview with Alexander Yakovlev, then Gorbachev's senior advisor.

This was not an easy time for either Gorbachev or Yakovlev, as in 1989 most of the Marxist-Leninist regimes in Eastern Europe had collapsed. Indeed, at the very time Gibney was interviewing Yakovlev in the Kremlin, both Yakovlev and Gorbachev were being denounced by Communist Party hardliners in the Soviet Parliament for "losing" Eastern Europe. Gibney's unusual meeting in the Kremlin with the architect of Gorbachev's "glasnost" policy was shortly followed by the hardliners failed coup against Gorbachev, the collapse of the U.S.S.R., the end of the Cold War, and the end of the Russian encyclopedia project.

Apart from the hoopla surrounding the events in Moscow, being doubled up in a scarce hotel room with the endlessly fascinating Gibney was for me in one way memorable in a bad way. As we were leaving Moscow, Gibney complained to EB's Gwinn within my earshot that he was dead tired and sick of having to put up with my loud snoring all week.

At a 2005 Britannica farewell for Gibney at the University of Chicago's Oriental Institute (now the Institute for the Study of Ancient Cultures) Gibney's son James, then at the New York Times, remarked about his father's career problems with authority. A decade later, in 2015, CBS News quoted Gibney's film documentarian son

Alex on his father's career, "They say to succeed you're supposed to suck up and kick down. Well, he was the classic guy who sucked down and kicked up, which is never a good career path! He was at *Time*, then fired. At *Newsweek*, fired. At *Life*, fired."

While I can't speak to those times, I do remember Frank entering into EB's Chairman Bob Gwinn's office at Britannica's Chicago headquarters several times all sweetness and light, only to emerge and immediately disparage Gwinn behind his back to the first person he bumped into. Though Gwinn was to many a ripe subject for criticism, I can well imagine that this may have been an aspect of Frank's earlier career *modus operandi*. Thus, it wouldn't be surprising to me if some of his previous bosses might have noticed this tendency and concluded Frank was less important to their enterprise than they had previously thought.

Looking back with the benefit of hindsight, it's hard not to conclude that my unplanned departure from Bradford was the best thing that ever happened to me in my working life. After all, had I stayed, I would have missed the great fun of a broad legal and business career. Instead, I would have spent decades in a not-so-interesting professional life as general counsel of a one-time plate company that later expanded into other knick-knacks.



Encyclopaedia Britannica's headquarters on the Chicago River.



Robert Hutchins, President of the University of Chicago, with William Benton, EB's owner and Publisher.

The First Edition of the Encyclopaedia Britannica first published in 1768.



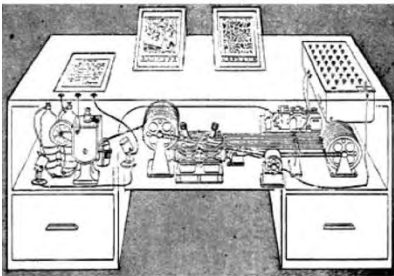
Philosopher Mortimer Adler, Editor of the Great Books of the Western World.



Mortimer Adler (with cane) and wife Caroline (in blue dress), with other EB officers and spouses at Christmas 1989.



Vannevar Bush, during World War II, with his “differential analyzer” mechanical calculator at the Army’s Aberdeen Proving Grounds.



Foreshadowing invention of the personal computer and an electronic version of the Encyclopaedia Britannica, Bush in 1945 writes of his “Memex” machine of the future.



A “Dissection” of Bush’s imaginary “Memex” computer.



A television quiz show scandal ends Columbia professor Charles Van Doren's academic career.



Van Doren confessing error in hearings before Congress.



Van Doren is seen here at his 1981 retirement party with EB librarians Terry Miller and Shanta Uddin.



MIT AI guru Marvin Minsky also played the piano when EB's Patricia Wier consulted him regarding an electronic Encyclopaedia Britannica.



Former EB President Peter Norton is with former EB (USA) President Patricia Wier.

EB's Vice President for
Technology Harold
Kester (left), here with
EB President Jorge
Cauz

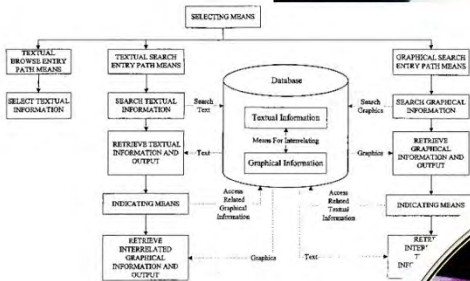
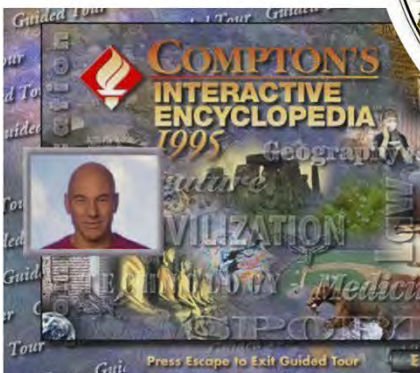


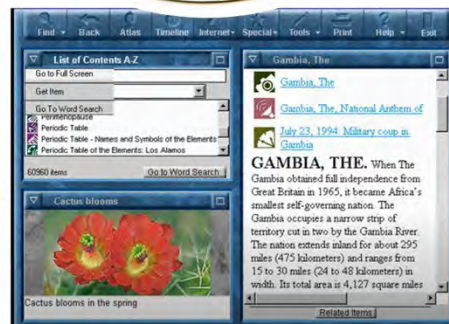
Diagram of Claim 1 of the 1993
patent issued to Britannica

CLAIM 1 OF THE Britannica Patent

A CD-ROM version of Compton's
Interactive Encyclopedia was
first issued in 1989.

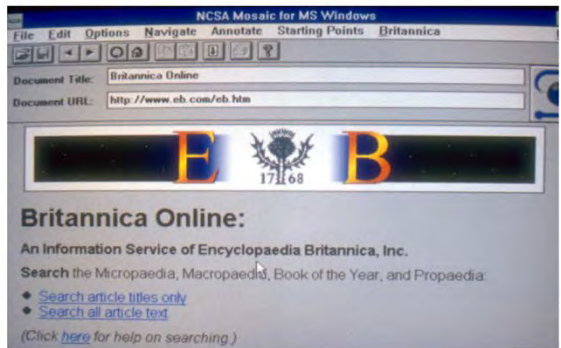


Patrick Stewart appeared in the 1995
Guided Tour video promoting the
Compton's CD-ROM encyclopedia.





EB's Advanced Technology Group with EB Editor Bob McHenry in La Jolla, California c. 1995.



Screen shot of Britannica on the internet for the first time in 1995.



Here I am making an early legal review of Britannica Online running on the Netscape browser in 1995.

Fighting against a Taiwanese counterfeit of the Britannica Concise Encyclopedia, EB Chief Financial Officer Fred Figge had to take it to the top. Here in 1988, we argued EB's copyright treaty enforcement case with Taiwan's Vice Premier Lien Chan. Chan later served as Taiwan's Premier from 1993-97.



Frank Gibney, Vice Chair of EB's Editorial Board, interviewing Politburo member Alexander Yakovlev in the Kremlin in December 1990. Shortly before the failed coup to remove Mikhail Gorbachev, his advisor Yakovlev was accused of "losing" Eastern Europe.



Bill Bowe and Frank Gibney in 1990 travelling from Moscow to Zagorsk in the U.S.S.R.



Meeting with Sen. Dick Durban at Britannica's headquarters.

My life took unexpected turns from analyzing riots and rockets and getting involved in Chicago politics to serving as the chief lawyer for a centuries-old reference publisher as it re-invented itself.



Acknowledgments

This book could not have been written without the help and support of family, friends, and colleagues at The Cliff Dwellers club in Chicago. My wife Cathy without complaint stoically put up with my being glued to a keyboard for the longest and my cousin Tony Bowe continuously encouraged me to tell the different tales collected in this book and prevailed upon his friend John Sargent for helpful professional publishing advice. Along the way, Gregory Gordon, Rob Warden, Robert McHenry, Douglas Eveleigh, Jonathan Laing and Jan Grayson assured me I was on the right track or offered useful feedback on parts of the manuscript. Similarly, my cohorts at The Cliff Dwellers who knew more about book publishing than I did were instrumental in bringing this manuscript to life. These helpmates included master of the English language Bill Drennan, and authors Richard Reeder, Dr. Edward Gordan, and Deirdre Nansen McCloskey. Gary Johnson, former President of the Chicago History Museum, Tom Gradel, and Don Evans have also provided me with useful guidance. I am further indebted to Matthew Nickerson, a former *Chicago Tribune* reporter later turned Private Historian. Matt's skill and good judgement permeates the manuscript. Finally, I must thank website and book designer Laura Fairman for taking select photographs from my overflowing digital shoebox and integrating them into the well-ordered collection you see here.

Appendix 1

Excerpts from Encyclopaedia Britannica Petition for a Writ of Certiorari in the Supreme Court of the United States

IN THE
Supreme Court of the United States

ENCYCLOPAEDIA BRITANNICA, INC.,
Petitioner,

v.

DICKSTEIN SHAPIRO, LLP,
Respondent

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the 1980s, Petitioner Encyclopaedia Britannica (“Britannica”) developed a pioneering multimedia search system that, for the first time, was able to search through vast amounts of multimedia information and display this information in a user-friendly manner. When Britannica sought to enforce patents obtained on this system, it was discovered that certain patent application filing errors committed by Respondent Dickstein Shapiro, LLP (“Dickstein”) rendered these patents invalid. Almost a decade later, Britannica’s malpractice case against Dickstein was dismissed on the pleadings in light of this Court’s precedent in *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347 (2014), despite the presence of a pending motion to conduct discovery and factual disputes regarding whether the patents at issue presented an “abstract idea” or lacked “an inventive concept.”

1. Did the District of Columbia Circuit err in holding, in contrast to the Seventh Circuit, that the “case-within-a-case” portion of a malpractice action is governed by jurisprudence arising after the malpractice injury rather than at the time of the injury?

2. Can a patent be invalidated under 35 U.S.C. § 101 and *Alice* on the pleadings, in the presence of factual disputes and a lack of evidentiary support that the patented invention is an “abstract idea” or that it lacks “an inventive concept?”

STATEMENT OF THE CASE

1. In the 1980s, Britannica’s development of a user- friendly multimedia search system coincided with the coming of age of the personal computer in the consumer market. This fortuitous combination precipitated a remarkable cultural breakthrough. It meant that for the first time, children as well as adults could easily and quickly access and navigate complex and media-rich stores of digital information. The commercial embodiment of Britannica’s patented invention, found in one of its CD-ROM products called “Compton’s Encyclopaedia,” was routinely praised in the industry:

“*Compton’s Multimedia Encyclopedia* is the first successful implementation of a product that combine words, pictures, and sound with an easy-to-use search engine. The product is incredibly adaptive to user’s needs. You can’t help but be impressed by Britannica’s courage and foresight in launching this product.”

Bill Machrone, 7th Annual Awards for technical Excellence, P.C. Magazine, January 15, 1991, 112.

Newsweek also took notice:

“Computers aren’t just smart typewriters and zippy number crunchers anymore. . . Yet, so far hype has outstripped hopes in the growing collection of multimedia programs. Like dazzling Hollywood flops, most have turned out to be long on technology, but short on substance. Until Compton’s. . . Just getting that much information on a disc is impressive enough. Yet the beauty of Compton’s is in the links— everything is woven together so the user can quickly move between related bits of information. Thanks to ingenious design, the program is so simple that, literally, a child can use it. . . Hit a difficult word? A click will bring up the definition—and if your PC has sound capability, the machine will even pronounce it for you.”

John Schwartz, *A Computer Encyclopedia*, Newsweek Magazine, March 19, 1990, 45.

In 1989, just before Encyclopaedia Britannica published the Compton’s Encyclopaedia product, it filed a patent application with the assistance of Respondent Dickstein. This patent covered fundamental new aspects of the software architecture and the pioneering search system attuned to multimedia data. The patent was not limited to an encyclopedic environment or CD-ROMs. Instead, it dealt with the fundamental solution to the search, browse, and presentation issues affiliated with different types of electronic data.

The Patent and Trademark Office spent four years reviewing Britannica’s patent application, making sure that there were no prior inventions covering the claimed invention. When the patent was finally issued to Encyclopædia Britannica in 1993, it was immediately recognized as a highly significant patent by the then nascent

multimedia industry. Thereafter, President Clinton's newly appointed patent commissioner, Bruce Lehman, took the unusual step of ordering a reexamination of the patent. After a further nine-year, painstaking review, with a side trip to Federal court, the Patent Office reinstated the Britannica patent in 2002 and issued several continuation patents thereafter.

1. In 2006, Britannica sued Alpine Electronics of America, Inc. and other defendants in the District Court for the Western District of Texas for infringing two of Encyclopaedia Britannica's most-valuable patents: United States Patents Nos. 7,051,018 ("the '018 Patent") and 7,082,437 ("the '437 Patent"). See W.D. Tex. #1:06-cv-00578-LY, Dkt. 1. Following suit, Alpine and the other defendants moved for summary judgment. The court granted judgment and found the patents to be invalid. *Id.* at Dkt. 82. This finding of invalidity was the direct and proximate result of Dickstein Shapiro's malpractice. The essence of the court's ruling was that due to patent application filing errors committed by Dickstein, an earlier Encyclopaedia Britannica publication was "prior art" sufficient to invalidate the patents in suit. But for Dickstein Shapiro's negligence, that so-called "prior art" would not have been of any significance. *Id.*

More particularly, the '018 and '437 patent applications were filed based on a "priority date" claim of 1989 through a chain of patent applications. Not unlike filing a series of amended pleadings under Rule 15(c) that "relate back" and have the benefit of an original complaint (and, thus, avoid a statute of limitations defense), a series of patent applications can be based on an original application and thus have the benefit (i.e., claim the "priority") of that original patent filing. This continuity is critical in the patent context so that intervening acts, events, or publications do not threaten the validity of those patents that emanate at the end of the chain.

In order to sustain that priority date, certain specific statutory and patent office requirements have to be satisfied. Satisfaction of these requirements is routine for members of the patent bar. However, Dickstein's malpractice caused the priority chain for the applications leading to the '018 and '437 patents to be broken, thus exposing those patents to being invalidated.

REASONS FOR GRANTING THE PETITION

The decision below contradicts not only the law of another circuit, but also a fundamental tenet of malpractice cases: in a “case-within-a-case” context, it is the jurisprudence existing at the time of injury that applies, and not after-developed law. This also is sheer common sense – it is unrealistic to adjudicate a case-within-a-case and attorney malpractice based on decisions that have not yet been handed down.

The decision below also exposes what is becoming a common practice by lower courts dismissing patent cases on Rule 12 motions under 35 U.S.C. §101 and *Alice*, despite the presence of factual issues and a lack of discovery, claim construction and evidence. Guidance is needed by this Court to rein in what has essentially become a judicial end-run around the standards set by this Court under Rule 12.

THIS COURT’S REVIEW IS NEEDED TO RESOLVE A CIRCUIT SPLIT REGARDING THE JURISPRUDENCE TO APPLY IN A “CASE-WITHIN-A-CASE” MALPRACTICE ACTION

Contrary to the decision below, the standard of care by which *Dickstein Shapiro*’s conduct must be judged and the proximate cause determination within the “case-within-a-case” that must be made is controlled by the law that applied in 2009, which is when the *Britannica* patents were invalidated in the Texas District Court. See W.D. Tex. #1:06-cv-00578-LY, Dkt. 82. Indeed, for determining malpractice liability, an attorney’s conduct is to be viewed in the context of events prevailing at the time of the alleged malpractice, not in light of subsequent developments. *Biomet, Inc. v. Finnegan Henderson, LLP*, 967 A.2d 662, 668 (D.C. 2009), *aff’d*. A plaintiff suffers “injury” in the context of legal malpractice when he suffers a “loss or impairment of a right, remedy, or interest.” *Jones v. Lattimer*, No. CV 12-2050 (BAH), 2014 WL 869470 (D.D.C. Mar. 6, 2014) (citing *Hunt v. Bittman*, 482 F. Supp. 1017, 1020 (D.D.C. 1980) *aff’d*, 652 F.2d 196 (D.C. Cir. 1981) (“In determining when a legal malpractice claim ‘accrues,’ the District of Columbia follows the so-

called ‘injury’ rule. Under this rule, a claim for legal malpractice accrues when the plaintiff-client suffers actual injury.”).

Here, the loss or impairment of Encyclopaedia Britannica’s rights occurred no later than 2009 (when the patents were invalidated in the Texas litigation), five years before the Supreme Court’s decision in Alice. That is the relevant law that should be applied to the case-within-a-case analysis here, not Alice. Perhaps the clearest articulation of this bedrock principle is found in the Seventh Circuit’s A.O. Smith Corp. opinion as follows:

Dismissal of the tort action was not appropriate here. The opinion below undertakes an exhaustive but unnecessary tour through recent antitrust case law in the Supreme Court and in this Circuit. The District Court decision, dwelling as it does on a number of cases decided after the 1985 trial, assumes that the relevant question is whether proof of tied market power is required now, not whether it was required at the time of trial. This view cannot be correct. Both Illinois law governing legal malpractice actions and common sense suggest that an attorney’s performance at trial must be evaluated by the state of the jurisprudence at the time of trial.... After all, it would be manifestly unfair to expect lawyers in the midst of trial to predict how the circuit courts and the Supreme Court will shape new legal doctrine. The District Court relied on certain decisions subsequent to the 1985 trial because they were decided “closely on the heels of the antitrust trial” and these precedents might have been taken into account on appeal. The logic behind this reasoning is elusive. Though it might in some sense be easier to predict the near future than the distant future, it is nevertheless quite unrealistic to judge lawyers in a malpractice action by decisions that have not yet been handed down. *A.O. Smith Corporation v. Lewis, Overbeck & Furman*, 979 F.2d 546, 549 (7th Cir. 1992) (emphasis added).

In like manner, the District of Columbia Court of Appeals previously (and correctly) held that it is the state of the law at the time of the lawyer’s action or inaction that controls, and not subsequent legal developments. *Biomet, Inc.*, 967 A.2d at 668 (“Whether [Defendant’s] strategy of challenging only liability in the initial appeal was reasonable requires consideration of the state of the law regarding

constitutional challenges to excessive punitive damages at the time of the appeal.”).

The 2014 “developments in patent law” represented by Alice constituted a sea change in the patentability of computer software. Dickstein should not be able to escape liability by relying on these recent developments. Indeed, if Alice applies retroactively to invalidate Britannica’s patents, then it necessarily means that Dickstein repeatedly deceived its client Britannica and breached its fiduciary duties at least by: (1) pursuing the ’018 and ’437 patents in the first place; and (2) prosecuting these patents before the USPTO. Accordingly, Dickstein’s malpractice must be viewed through the lens of the law that existed at the time of the summary judgment decision in the Texas litigation, not five years later using the after- developed Alice decision. This is the way in which the Seventh Circuit views the issue, which is contrary to the decision below by the D.C. Circuit. Accordingly, this Court’s review is needed to restore certainty surrounding the jurisprudence that applies to malpractice actions.

THIS CASE PRESENTS AN IMPORTANT QUESTION THAT INTERSECTS RULE 12 DISMISSALS AND ALICE, WARRANTING REVIEW BY THIS COURT

The decision below held, in the context of a 12(c) motion to dismiss on the pleadings, that Britannica’s patents were invalid under 35 U.S. C. § 101. This ruling was made despite the fact that the parties had not conducted any discovery on the Section 101 issue and despite the presence of factual issues. The Court’s review is necessary to provide clarification regarding the standards to be used when evaluating a motion to dismiss under Section 101 and the Court’s precedent in Alice. As the Federal Circuit has noted, the analysis under Section 101 is a legal determination rife with underlying factual issues. *In re Comiskey*, 554 F.3d 967, 976 (Fed. Cir. 2009). In addition, the standards surrounding a Rule 12 motion are by now axiomatic: to survive a motion to dismiss under Federal Rule of Civil Procedure 12, a plaintiff need only plead “enough facts to state a claim to relief that is plausible on its face” and to “nudge[] [his or her] claims across the line from conceivable to plausible.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A Rule 12

motion “shall be granted if the moving party demonstrates that no material fact is in dispute and that it is entitled to judgment as a matter of law.” *Stewart v. Evans*, 275 F.3d 1126, 1132, 348 U.S. App. D.C. 382 (D.C. Cir. 2002) (internal quotation marks omitted). In deciding a motion under Rule 12(c), “courts employ the same standard that governs a Rule 12(b)(6) motion to dismiss.” *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 265 (D.D.C. 2011); see also *Brooks v. Clinton*, 841 F. Supp. 2d 287, 297 (D.D.C. 2012). “[T]he Court may not rely on facts outside the pleadings and must construe the complaint in the light most favorable to the non-moving party.” *Id.* (citation omitted); see also *Moore v. United States*, Nos. 99-5197, 99-5198, 213 F.3d 705, 341 U.S. App. D.C. 348, 2000 U.S. App. LEXIS 12038 (D.C. Cir. 2000) (noting that “on Rule 12(c) motions we view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the nonmoving party”) (citations and internal quotation marks omitted); *Schuchart v. La Taberna del Alabardero, Inc.*, 365 F.3d 33, 34, 361 U.S. App. D.C. 121 (D.C. Cir. 2004) (Under Rule 12(c), facts “must be read in the light most favorable to the non-moving parties . . . granting them all reasonable inferences”) (citing *Henthorn v. Dept. of Navy*, 29 F.3d 682, 684, 308 U.S. App. D.C. 36 (D.C. Cir. 1994)). Thus, a motion to dismiss should be denied if plaintiffs have shown “a plausible entitlement to relief.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007).

If, on a motion under Rule 12(c), “matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.” *Fed. R. Civ. P.* 12(d); *Ord v. District of Columbia*, 587 F.3d 1136, 1140, 388 U.S. App. D.C. 378 (D.C. Cir. 2009) (internal citations and quotation marks omitted); see also *Vest v. Dep’t of the Air Force*, 793 F. Supp. 2d 103, 112 (D.D.C. 2011); *Dormu v. District of Columbia*, 795 F. Supp. 2d 7, 17 n.4 (D.D.C. 2011); *Strong-Fischer v. Peters*, 554 F. Supp. 2d 19, 22 (D.D.C. 2008).

Under the strict standard for Rule 12 dismissals, and taking into account the presumption of validity that all patents enjoy under 35 U.S.C. § 282, the district court only should have granted Dickstein’s

motion if the pleadings showed by clear and convincing evidence that the patent is invalid. *Nystrom v. TREX Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005) (“[a] party seeking to establish that particular claims are invalid must overcome the presumption of validity in 35 U.S.C. § 282 by clear and convincing evidence”)(quoting *State Contracting & Eng’g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1067 (Fed. Cir. 2003)). Accordingly, under this Court’s precedent in *Alice*, Respondent’s motion to dismiss below should have been denied if the only plausible reading of the *Britannica* patents showed, by clear and convincing evidence, that they were a mere “abstract idea” and did not contain an “inventive concept.” When the factual allegations in *Britannica*’s complaint and patents are viewed in the light most favorable to *Britannica*, there are, at the very least, material factual disputes that should not have been resolved by the court below on a motion to dismiss. Indeed, the patents state:

- Recently, there has been a rapidly growing interest in using CD-ROM technology as a dynamically interactive way of presenting material contained in books, encyclopaedias, magazines, catalogs, etc. CD-ROMS offer a set of characteristics that are unique for this purpose. First, they have a very high information storage density (approximately 50 times magnetic material), rapid random access of addressable information, low cost mass produced copies, and relatively low cost playback equipment. Second, by interfacing a CD-ROM player and CRT monitor to a computer, stored audio/visual data can be accessed interactively in a variety of user friendly ways. Yet with this explosion in storage capacity and quality, there arises a need for software that readily and easily accesses this full spectra of data in a user friendly manner. (’437 Patent, Column 1. lines. 20-36)

- In view of the foregoing, it should be apparent that a need still exists for a database search system that retrieves multimedia information in a flexible, user friendly system. It is, therefore, a primary object of the invention to provide a search system in which a multimedia database consisting of text, picture, audio and animated data is searched through multiple graphical and textual entry paths. (Id., Column 2, lines 35 to 41).

- It is a further object of the invention to provide a search system wherein both the textual and graphical entry paths are interactive. (Id., Column 2, lines 42 to 44).

- It is yet an additional object of the invention to provide for a search system where the textual and graphical entry paths are interrelated such that textual and graphical entry paths is fully accessible from graphical entry paths and graphical information is fully accessible from textual entry paths. (Id., Column 2, lines 45 to 49).

Further, Britannica plausibly set forth in the court below that the inventions embodied in the patents were not “abstract ideas” and contained an “inventive concept,” which should have been enough to survive a motion to dismiss. As stated in the court below, the inventions were directed to a new system to search a database. (’437 patent, Column 2, lines 35 to 40). Searches, called entry paths, can be based on text or graphical images, including article titles (Id., Column 4, lines 27 to 29), pictures (Id., Column 4, lines 36 to 45), a world atlas (Id., Column 4, lines 53 to 54), and a researcher assistant’s program (Id., Column 4, lines 63 to 64). Entry paths are interactive; use of one can lead to pertinent information in another path. (Id., Column 2, lines 42 to 49). There are other paths, too: idea search, title finder, topic tree, and history timeline. (Id., Column 6, lines 51 to 60). Each is discussed in detail in the patents.

The database includes audio and video sequences. (Id., Column 6, lines 31 to 44). For example, if a user clicks on an underlined word in an article, the invention provides an audio pronunciation of the word. (Id., Column 11, lines 41 to 50). The atlas can be searched by a place name, which displays a map of the place that can be viewed in different levels of detail. (Id., Column 4, lines 55 to 62). The atlas can be rotated to locate a place of interest. (Id., Column 4, lines 55 to 57). A user can click on the place name, which automatically retrieves a related article. (Id., Column 7, lines 27 to 32). The invention also keeps track of searches, and can flag materials that appear to be more relevant. (Id., Column 8, lines 45 to 48 and lines 56-64). It suggests alternate search terms, and can search using phrases, too. (Id., Column 9, lines 21 to 31 and Column 10, lines 15 to 25).

Prior systems and methods lacked the versatility of the invention. The patents state:

Despite the great potential for interactive CD-ROM systems, however, many of the current commercially available versions have important limitations in meeting this need. These limitations include products lacking entry paths into the CD-ROM database to retrieve graphical information, products that cannot flexibly search and retrieve different types of data formats, or products that will not allow the combination of search strategies to uncover graphical and related textual information or vice versa. (Id., Column 1, lines 36 to 44). It is also worthy to note that there were 111 patents and over 400 other publications cited against the Britannica patents. See, e.g., '437 Patent, pages 2-15. In light of this magnitude of references considered by the patent office when granting Britannica's patents, it defies logic that the patents were dismissed by the court below at the pleadings stage for lack of an "inventive concept."

The pioneering nature of Britannica's patents were also routinely touted by Respondent prior to being sued for malpractice. Indeed, Respondent proclaimed that the inventive concept underlying the inventions of the '018 and '437 patents was previously "unimaginable," like most breakthrough inventions. See D.C. 10-CV-00454, Dkt. # 78-17 at 3. Thus, Dickstein Shapiro consistently (and correctly) described Britannica's inventions as comprising a tangible object – i.e., a search system – that had new, "ingenious," "break-through" capabilities and functionalities that could not be found in any prior system. In addition, Respondent made clear that these "ingenious" "break-through inventions" were important and substantive technological advances, not mere ideas or concepts.

To be sure, a proper Section 101 analysis will require discovery and factual determinations regarding the scope and content of the prior art and differences between the prior art and patented methods to determine the "inventive concept" of the patent. In *re Comiskey*, 554 F.3d 967, 976 (Fed. Cir. 2009). In a proper case, a court will support a finding of invalidity with evidence based on a developed factual record, not just unsupported speculation and innuendo. See, e.g., *Alice*, 134 S. Ct. at 2356 (citing an 1896 article to show that

intermediated settlement is “a fundamental economic practice long prevalent in our system of commerce”); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (citing a 1927 law review article on suretyship); *Every Penny Counts, Inc. v. Wells Fargo Bank, N.A.*, No. 8:11-cv- 2826-T-23TBM, 2014 WL 4540319, at *1 (M.D. Fla. Sept. 11, 2014) (citing Blackstone’s Commentaries on the Laws of England and an 1893 book). The decision below, which adopted the district court’s analysis of the claims under 35 U.S.C. § 101, (App. 2a), did so in the context of disputed facts and a lack of a developed factual record. Indeed, at the time of the decision below, Britannica had pending a motion for discovery and the parties were awaiting a ruling on claim construction. In short, the court below should not have granted a motion to dismiss without allowing Britannica the opportunity to take discovery and to develop a factual record as to what allegedly was known, what allegedly is conventional, and what allegedly constitutes an abstract idea and an inventive concept. On a motion to dismiss on the pleadings, the court below should have viewed the facts set forth in the complaint in a light most favorable to Britannica, but failed to do so. Conclusions that the court below made, such as “humans have also engaged in these activities for hundreds, if not thousands of years.” (App. at 20a), are certainly not conclusions that should have been reached on a motion to dismiss. *Kenexa BrassRing, Inc. v. HireAbility.com LLC*, Civil Action No. 12-10943-FDS 2015 U.S. Dist. LEXIS 56156 at *19 (D.Mass Apr. 28, 2015) (noting that whether business practices were “routine” was a factual matter that could not be resolved at the pleading stage). Moreover, such statements necessarily mean that the court below was looking at facts outside the pleadings, which means the motion should have been treated as one for summary judgment under Rule 56. *Ord v. District of Columbia*, 587 F.3d 1136, 1140, 388 U.S. App. D.C. 378 (D.C. Cir. 2009).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix 2

The Building of Britannica Online

The Building of Britannica Online

By Robert McHenry
Former Editor-in-Chief, Encyclopaedia Britannica

Introduction

Had someone back about 1985 phrased his question, wittingly or not, “Has the Britannica been digitized yet?” the answer would have been “Yes, and in fact we’re already on our third computer system.” Publishing an annual revision of a 32,000-page encyclopedia is a major undertaking, and the development of computer-based systems for handling this huge amount of data promised similarly major economies.

The text of the encyclopedia was first digitized – keyed into a digital database – about 1977; the data fed an RCA PhotoComp photocomposition device that produced the page film from which offset printing plates are created. In 1981 the data was ported to a more powerful Atex system, a system mainly used by newspapers because it offered a very robust set of editing tools. But when a full revision of the encyclopedia was undertaken – one in which every page in the set would have to be recomposed, rather than the 1,000 or 2,000 that had been typical for some years – Atex proved inadequate. It was replaced in 1984 by the Integrated Publishing System, or IPS, a purely software solution developed by the Watchtower publishing arm of the Jehovah’s Witnesses.

Because Watchtower carried on a very heavy publishing program in 60-odd languages it had taken the initiative to develop a system with good editing tools and a WYSIWYG composition engine and one that natively handled a very large set of alphabetic and symbolic characters. Marketing, licensing, and support for IPS were handled for the

Witnesses by IBM, on whose mainframe it was designed to run. Having installed IPS, Britannica's Editorial Computer Services group undertook a program of customization, adding such features as hyphenation and justification, a spell checker, and various editorial management tools. The editing segment of IPS, called PSEdit, used a text markup system that, while proprietary, was sufficiently SGML-like that in time it proved readily convertible to that system or to HTML. (Less readily convertible was PSEdit's use of color and reverse video as meaningful attributes.) A typical short Britannica article, displayed on an editing screen (an IBM 3079 terminal) looked like this:

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mic                                bull terrier/
*=>                                EDIT MODE
0001 *** NOTE -- THERE IS TURDUISSE TEXT IN THIS UNIT ***
#P30010SEpk, #10-001*ZTIF192245# 000 A#
IBM TEXT REVISIONS ' 002 IBM TITLE REVISIONS ' 000#
<TI><DH>bull terrier, %<ETI> <ART ami, odogs00036p4>#R400081N3idw, bull
breed of #R4000311idw, dog dog developed in 19th-century England from
the bulldog and the white English terrier, a breed now extinct; the
Spanish pointer was later bred into the line to increase
#230010SFami, gbullterriits size.#
The bull terrier was developed as a courageous fighting dog but
not an aggressive fight provoker. A muscular dog, it has a short
coat, tapering tail, erect ears, and small, triangular, deep-set
eyes. It stands 48 to 56 cm (19 to 22 inches) and weighs, ideally,
about <PTD>20 to 22</PTD>23 to 27 kg <PTD>45 to 50</PTD>50 to 60
pounds). It is generally friendly and is considered, for its weight,
the strongest of all dogs. There are two varieties of bull terrier:
coloured, which is any colour but white, and white, which is white or
white with darker head markings.#
See the <TBX ptdogterrier>Table of Selected Breeds of
Terriers</TBX> for further information.#
<QD 0200625 2b>(For the breed formerly known as the pit bull
terrier, see #W4LMTVITmic, staffordshire terrier</Staffordshire
terrier</REF>).)#

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One unique and essential bit of customization added by the ECS group was a method of inserting metatext tags, called hooks, into text articles and linking them in such fashion that they behaved analogously to what later came to be called hyperlinks. These tags were used in a variety of ways: to link illustration files and their related caption files to points in article text; to connect cross references with their referents; to connect groups of topically related articles with the outline of topics in Britannica called the Propaedia; and, most numerous, to connect terms and their citations in the Index with the actual points in text from which they had originated and to which they

pointed back. In the graphic above, the pink strings are the hooks. The Index hooks and Propaedia hooks would later be exploited in Britannica Online to produce an elaborate navigation system over the whole body of 65,000 articles.

The task of "surfing" the Web, as it was already known, looking for informative and authoritative sites on an encyclopedic breadth of subjects fell to the editor in chief of Britannica. He originally asked for a budget variance to permit the hiring of a temporary editor for the summer but was turned down. Such external links, opined the senior manager who denied the request, were not going to be an important feature of BOL.

In the event, by the locking-down of the data in preparation for the September release, 398 links to other Web sites were appended to a slightly smaller number of encyclopedia articles (a few having two or more such links). The surfing method relied heavily on the Virtual Library that had been created at the mother Web site at CERN, which provided a topically organized set of URLs from which to begin. It is perhaps worth remarking that even at that early date the city of Hoboken, New Jersey, had a Web site.

Part I

From the middle 1980s people who were in some way associated with the Encyclopædia Britannica began to encounter the question "Is the Britannica available on the computer yet?" or, a little later, "When will Britannica be available on CD?" The questions, infrequent at first, became increasingly insistent as the '90s opened and the CD-ROM format became more widely familiar. Many people now believe that they remember seeing Microsoft's Encarta CD-ROM encyclopedia in 1990 or 1991. In fact, Encarta on disk debuted in 1993 and was neither the first encyclopedia on CD-ROM - that had been the DOS-based text-only Grolier's in 1985 - nor the first multimedia encyclopedia on CD-ROM - that was *Compton's MultiMedia Encyclopedia* (a Britannica property) in 1989.

By the late 1990s the question had mutated to "Is Britannica online yet?" The answer, which surprises some people to this day, was "Yes, and in fact it was the first such reference resource available on the Internet." That Encarta was able to dominate the market for CD-ROM encyclopedias from the moment of its entry is attributable to Microsoft's exhaustless funds, market position, and casual disregard for quality work. That Britannica's early coups should be so little known is attributable to factors beyond the scope of this essay, but chief among which was the inability of the company's senior management to embrace electronic publishing and pursue it forcefully.

With the benefit of hindsight, a surprising number of people now claim fatherhood or motherhood of Britannica Online. A quick online search will turn up several of them. When some scholar finally undertakes to write a full history of the modern Britannica company, others will doubtless pop up. Lest their versions of history become too firmly embedded as conventional wisdom, I have compiled the following sketch of the genesis and early development of Britannica Online, focusing entirely on the people who actually created it, who had the ideas and did the real work, and who, when the company had finally lost not only its early leadership but its sense of direction, could only look back wistfully at what was one of the most rewarding episodes in their careers.

Background

Corporate Environment. From its formation in the 1940s until 1995 or so, the modern Britannica company existed in a state of tension, sometimes creative and sometimes not, between two roughly coequal parts, the editorial operation and the sales operation. Sales was intrinsically the stronger of the two, because it was the source of funds and growth and because so many senior company executives came up through the sales organization. The editorial side was able to hold its own chiefly because of the extraordinary influence which

Mortimer Adler exerted. A separate essay might be written on the powerful personality of Adler; suffice it here to note that he had the ear of successive chairmen of the Board of Directors and the support of most of the Board and of significant outsiders.

The sales organization was built upon in-home direct sales. It was an article of faith that a high- ticket discretionary-purchase product like an encyclopedia could be sold in no other way, or at least not in the volume required to support the enterprise. The field sales force used leads, some generated by local marketing but most generated by the company through national advertising and other means (and powered by a budget that exceeded the editorial budget), and for nearly every sale sent back to the company a time-purchase contract and a small down payment. The salesman, his district manager, that manager's regional manager, and the sales vice president next up the line all collected a commission on the sale. The cost of the goods (in 1990 roughly \$300) and the cost of the sale were financed on the future payments receivable. One result of such a highly leveraged system was a relentless drive to recruit more salespeople, in order to produce more receivables. Another result was an inordinate sensitivity on the part of senior sales executives to what they judged to be the mood and morale of the field force.

Senior management was, nonetheless, not unaware of the revolution in information technology that began to affect the consumer market in the 1980s. While the Britannica and its text were off limits (with one exception), the company had another product with which to experiment, the Compton's Encyclopedia. Compton's was intended for young readers and was used almost exclusively as a premium in sales of the senior set. The editorial cost of maintaining Compton's was, in effect, a promotional expense. It was believed that the sales force would have no objection to using the Compton's name and content in electronic products.

CMME. In 1987 Britannica was approached by Educational Systems Corporation, a San Diego company that was building a networked classroom study resources system for schools and wanted to include a CD-ROM encyclopedia in the package. Britannica refused

to make the EB text available and offered Compton's instead. With even that lesser amount of text to deal with, ESC realized that it would need also a text-search engine of some sort. For that they approached the Del Mar Group, a small company founded by Harold Kester, which had just such an engine.

The Del Mar Group's engine, called SmarTrieve, was arguably the most accurate and efficient such engine then available outside a research laboratory. In the contract signed in March 1988, Del Mar Group not only licensed SmarTrieve to ESC for use in the school product, but it also undertook to handle the parsing of Compton's text and to design the overall data structure for a CD-ROM-based multimedia encyclopedia, including graphics and audio and video segments. The data-structure design, authored by Kester and Art Larsen, was apparently the first of its kind and later was a core element in the disputed Compton's patent.

Compton's MultiMedia Encyclopedia (CMME) was first demonstrated publicly in April 1989 at an educational conference in Anaheim, California, by Greg Bestick of ESC, now called Josten's Learning Corporation. In a year-end wrap up, Business Week magazine dubbed CMME one of the top ten new products of the year. Britannica, having retained the right to market CMME in the consumer market, began selling it the following year. The original version, tailored to Radio Shack's Tandy computer, was followed in 1991 by a Windows version and a short time later by a Mac version. During this same period (I have so far not found the exact date) an agreement was made to license Compton's digitized text to Trintex, a consumer-oriented information service running over a proprietary network. (Trintex, after the withdrawal of one of its three original partners, became the Prodigy service.)

Electric Britannicas

The Early Disks. While CMME was still in its initial development phase, Kester set his sights on the EB text. At Microsoft's CD-ROM Expo in February 1989, he had showed an executive of Britannica

Learning Corp. how the digitized Compton's data, running under SmarTrieve, could almost instantaneously yield an answer to the query "Why do leaves fall from trees in the autumn?" In September he demonstrated the SmarTrieve technology at the Chicago headquarters of Britannica, and the following month he secured an agreement under which he was given access to the EB text data. As he recalls, it took his two IBM 80286 computers some three months of continuous processing to parse the whole of the EB text (into a proprietary format dubbed BSTIF, for Britannica Software Tagged Interchange Format) and produce the inverted index. But while this provided him great satisfaction, it was of only secondary interest to Britannica at the time. In March 1990 Britannica purchased the Del Mar Group, and with it the rights to SmarTrieve, and folded it into the Britannica Software division (renamed Compton's New Media in 1992). Priority was given to the development of the consumer CMME for various platforms and to an ambitious program of consumer CD-ROM publishing, ranging from the Guinness Book of Records to the Berenstain Bears.

The search for an application for the EB data, one that could be done as if it were in spare time and that would not alarm sales management, led to the Britannica Electronic Index, or BEI. BEI ran in DOS and was essentially the SmarTrieve index of EB data on a CD-ROM. A typed-in query would yield a relevance-ordered list of references to the text in the form of volume-page- quadrant citations. (Sidebar 3) For the user, BEI was supposed to function as a super index, far surpassing even the two-volume printed index in comprehensiveness and, unlike a printed index, able to deal with queries involving more than a single term. As a product, it was a giveaway - yet another premium item used in hope of promoting sales of the print set.

The first true electronic Britannica product arose in part from a spate of publicity generated in mid-1991 by critics of certain high school history textbooks, which had been found to be rife with factual error. It emerged that most textbook publishers relied on outside service vendors for such fact-checking as was done in the development of textbooks, and often none was done at all. Fact-checking is slow, tedious, and difficult. An electronic product with

sophisticated search- and-retrieval capabilities running over a superior text base could make the process more effective and cost-efficient. From this insight proceeded the notion of the Britannica Instant Research System, or BIRS (at first known internally as "Fact Finder"). Intended for the professional user, BIRS ran under Windows 3.0 and consisted of two CD-ROMs, one containing the SmartTrieve indices and the other containing the Britannica text. The contents of both disks were to be transferred to the user's PC hard drive, which had thus to be of 1-gigabyte capacity, very large and very expensive for the day. BIRS was introduced in June 1992 with what was for Britannica substantial fanfare, but it was bought by only a very few venturesome customers, including the small Evanston, Ill.-based editorial service company that had served as the beta site.

"Network Britannica." While managing to see BEI and BIRS out the door, and thereby allowing the nose of the camel into the tent, Kester had been pressing for an independent budget to support research into how the core Britannica data - not only text but indexed and classified text - could best be exploited electronically. He assembled a team, the main members of which were John Dimm, already at Britannica Software by way of ESC; Bob Clarke, a consultant and freelance seer whom Kester had worked with in the earliest days of the Del Mar Group; John McNerney, whose experience lay in network administration and security; Rik Belew, a professor of computer science at UC San Diego, who served as a part-time consultant; and two doctoral students from his department, Brian Bartell and Amy Steier. By late 1992 these formed a separate, and somewhat isolated, group within Compton's New Media, and it was formally organized as the Advanced Technology Group in April 1993. In August 1993, the ATG moved out of the Compton's offices in Carlsbad, California, and opened its own office in La Jolla, near the UCSD campus. Mention must also be made here of an honorary member of ATG, Vince Star, who oversaw the Britannica publishing system in Chicago and had thus been responsible early on for preparing text data for transfer to the West Coast group. The introduction of email in the Chicago office in early 1993, at first and for some time on a very limited basis (limited not merely by resources

and a learning curve but also by the fact that it was "elm" mail, a UNIX application for which one had to learn some rudiments of a clumsy editor called "vi"), had the effect of cementing relationships between ATG and a few committed hands at headquarters.

The earliest and thereafter driving goal of the ATG team was set by Clarke, who forcefully held out the assertion of Scott McNealy (he of Sun Microsystems) that "the network is the platform." This could actually be taken in two ways, and Clarke argued both: First, "the" network - the Internet - was the emerging standard; second, as a development strategy, solving the hard problem first - building what he called System Britannica, essentially a networked version of Britannica - would lay a solid foundation from which to derive CD-ROM and other versions.

Thus, what was finally released as the Britannica CD 1.0 (known simply as BCD) in 1994 was in effect the network product ported to a disk for use in a PC that was both server and client.

The problems were many. Britannica text included a great many "special characters," including letter forms and diacritics used in non-English words (often proper names), mathematical symbols, and scientific notation. Translating raw Britannica text into ASCII or into the larger but still limited character sets used in Windows and other platforms was difficult and error-prone, and the results were judged unsatisfactory by the Britannica editors. These transliterations also compromised the accuracy of the indexing done by the search-and-retrieval software. Large portions of mathematics and science articles (such as complex formulae or chemical diagrams) in the set had been created as "special comp" for the printing process - essentially pieces of artwork that had no counterparts in the digitized text database and thus left "holes" when the text alone was used. Much other artwork of a more conventional sort was considered essential to supplement the text.

On the technical side the problems were equally challenging. The raw text was huge - just over 300 Mb - and consisted of tens of thousands of separate files, a number that jumped once the Macropaedia articles, some of which ran to upwards of 250,000

words, were split into manageable chunks. Then there were the questions of which networks to design for, for what download speeds, and for what sorts of display? Windows had not yet penetrated the network market in any significant way, and the most common machines used for data display were the VT100 "dumb terminals."

Beyond matters of implementation were larger questions, to which Clarke, in particular, was giving much thought: What truly innovative products and what wholly new methods of information representation and use might arise from learning how to exploit the indexing within Britannica and the subject-classification codes that were used to tag the text? In a network environment, what relationships might obtain or grow up between the content of Britannica and other information resources on the network?

Annus Mirabilis: 1993. An unexpected stimulus to ATG's efforts occurred in January 1993, when the Editorial Department at Britannica was approached by representatives of the University of Chicago, who proposed to help develop a LAN-based version of Britannica to run on the campus network. The University already had amassed considerable experience in dealing with large textual databases, notably the ARTFL archive of documents in French literature.

Discussions continued for a few months, and a bit of prototyping was done, but in the end the proposal came to naught. The useful results of the episode were three: a demonstration in which some Britannica text on a university server was accessed via dialup connection from the EB Library and displayed on a PC in glorious green ASCII; credibility for the proposition that there might be a market for a networked Britannica product among colleges, libraries, and other institutions; and, in one of the earliest of the meetings, a mention of the word "Internet," heard then and there for the first time by the Britannica side.

From the outset Chicago and La Jolla took quite different approaches to conceiving Network Britannica. In Chicago it seemed natural to assume that the product would employ wholly proprietary software. In La Jolla the ideas of easy exchange of information, open

standards, and off-the-shelf applications held great appeal. John Dimm, who had first-hand experience in developing the various flavors of the Compton's CMME and was therefore intimately familiar with both the difficulty of the platform-specific approach and the brittleness of the results, was especially ardent in championing the adoption (and adaptation as needed) of available and proven solutions. It is also worth remembering that even given development focused on LANs, provision had to be made for dialup connection as well, which at the time meant, at best, 9600 baud transfer rates.

The first concrete step in the direction of general solutions was the decision to abandon SmarTrieve in favor of the WAIS search engine. WAIS (Wide-Area Information Server) had been introduced two years earlier as the first full-text search engine capable of running over multiple, distributed databases. Contact was made with the WAIS office in Mountain View, California, and in a short time a formal agreement was reached for code-sharing. A WAIS staff programmer (Harry Morris) who was already at work on version 2 of WAIS was the main liaison with ATG, working chiefly with Brian Bartell and Amy Steier. Steier's work involved developing software able to recognize phrases in English text and treat them as fixed units for indexing and retrieval. Bartell sought to improve the estimation of relevance by the retrieval engine by incorporating into its logic a number of "experts" sensitive to certain conditions, such as the occurrence of a search term in a document title, or multiple occurrences within a document, or occurrences early rather than late in the document. (A minor byproduct of this business association was an invitation to WAIS's founder, Brewster Kahle, to speak at the Britannica Editorial Convocation in October 1993, where Vince Star and his colleagues memorably appeared sporting propeller beanies.)

On April 14, 1993, the "eb.com" domain was registered with InterNIC, largely at Clarke's instance. Chicago was far from accepting the Internet as the platform for Network Britannica, but ATG was forging ahead, protected mainly by the 1,723 air miles separating them from the home office.

Up to the summer of 1993, Dimm was proposing that Adobe Acrobat be adopted as the document viewer for Network Britannica.

The choice of Acrobat was in line with his view that established and widely used software was preferable to a proprietary solution. Acrobat, which provided page views of documents, would solve the problem of displaying formulae and the like, though not that of capturing them in the first place. As it happened, Britannica was at that point considering Adobe, among others, as a supplier of a new system to replace IPS. In the end, neither came to pass. Dimm gave a presentation at a computer science class at UCSD and there saw a demonstration of the World Wide Web, using Tim Berners-Lee's original browser. Shortly thereafter, in June 1993, he saw a pre-alpha-release version of Mosaic at the American Booksellers' Convention in Miami. He immediately began plumping for the Web as the platform and Mosaic as the viewer for Network Britannica. By the time Mosaic was first formally released, in version 0.5a in September, the challenges of data conversion and making WAIS Web- and Mosaic-compliant were already in course of solution.

A large sample of EB data was parsed (from BSTIF) into HTML in November and was browsable by means of Mosaic. By early December the whole article database was up and running. Bartell and McInerney had written a cgi (common gateway interface; a standard piece of coding later but a bit of rocket science at the time) program to link Mosaic, WAIS, and the document collection. (Special characters were still a problem; one exchange of emails concerned the all-important (for Britannica) "æ" character.) McInerney had built the necessary servers and firewall and had created a user-authentication system based on users' IP addresses. At a time when such was still possible, McInerney communicated directly with Marc Andreessen at the NCSA center in Champaign, Illinois, where Mosaic was under development, on getting the WAIS-HTML gateway to function properly.

The result was an application that invited the user to type in one or more search terms, which were then processed by WAIS in order to produce a relevance-ranked list of document references. These references were then presented in a Web page, created on the fly, with links directly to the documents, which were Britannica articles or portions of articles. In subsequent development this "hit-list" page

featured a brief extract of each document (to enable the user to make a more informed selection), while the returned article showed the search term(s) in boldface.

In the second half of December the firewall was cautiously opened to a few people outside the ATG office, who were invited to look in it.

Rik Belew was able to browse Britannica articles from his campus office, as was a key contact at the UCSD library, and Vince Star logged in from Chicago. The first semiformal demonstrations took place in what we may as well call the

Mensis Mirabilis: January 1994. During this month there occurred the first demonstration to the Chicago editorial staff of EB Online, now given management's very quiet blessing as "Britannica Online." A demonstration to Rik Belew's computer-science class on January 14 and another four days later to staff members at the UCSD library ended the quiet. No version of Britannica Online was ever declared the official alpha release, but had there been one it would have been the version used in these two demos. Word spread very quickly, and by early February the UCSD library reported being inundated with requests for access to BOL. For the Belew demo, John Dimm added a link at the end of the article "Vatican Museums and Libraries" to the Library of Congress' experimental "Vatican" exhibit (hosted on the University of North Carolina's very active "sunsite"). This was the first of what came to be called "external links" and later "Related Internet Links," or RILs, in BOL. Also, in time for the Belew demo, Dimm implemented a system of internal linking from classified lists of related articles (in the Propaedia outline) to the articles themselves, thus enabling topical browsing. On January 20, Dimm sent an email to the product management group in Chicago containing the HTML for an alpha-level public home page for Britannica Online. At the very bottom of the page, he copied over the standard publisher's information from the printed title pages of every Britannica volume, slyly adding "La Jolla" after "Chicago" in the list of the company's principal operating centers.

On February 8, following an announcement by a senior Britannica officer at the American Booksellers' Convention in San Francisco, an article by technology reporter John Markoff appeared on page 1 of the Business Section of the New York Times, headlined "Britannica's 44 Million Words Are Going On Line." The cat was truly loose; McInerney immediately began recording hundreds of hits on the firewall protecting the data. Beta testers were recruited at various universities (Nancy Johns at the library of UIC, in Chicago, was notably enthusiastic; also involved were faculty or staff from Stanford, Dartmouth, and ??), and volunteer testers began showing up as well. One, known simply as "Larry" and evidently based in the computer science department of the University of Idaho, discovered BOL and promptly added a link to it from his own home page, which otherwise featured graphics inspired by Metallica and other favored bands. His link read simply "a pretty good encyclopedia." By contrast, "Joel," at the University of Illinois, quickly adapted the outline scheme of the Propaedia in BOL for a project of his own and had to have something of copyright law explained to him by Britannica's legal department.

From February until the formal release of Britannica Online 1.0 in September 1994, the work of ATG and of those involved in Chicago was chiefly refinement of the concept. The Indexing group of the Editorial Department was recruited to run exhaustive tests on the WAIS search engine, their results then being used by Bartell and Steier to fine-tune the proprietary "experts" that weighed the relevance of responses to queries. Vince Star wrote the parser that produced HTML documents directly from the PSEDIT data, thus eliminating the awkward and "lossy" intermediate step involving BSTIF. The special character problems were largely solved (though mathematical expressions continued to be difficult to manage). About one-tenth of the illustrations in the print set, some 2,200 in all, which had been determined by the editors to be essential to a full use and understanding of the text, were captured digitally and linked to their proper locations in the articles. The index hooks in the PSEDIT data, linking points in article text to entries and citations in the printed Index, were in a later parsing converted to href tags in the HTML data, thus creating a network of some 1.2 million internal links

through the text of BOL. A number of links to other Web sites were added to articles, demonstrating how BOL might serve not only as a source of reliable information and instruction in itself but also as an edited guide to the best of what the Web might come to offer.

In September the firewall was opened to those colleges and universities that had already subscribed to BOL. It was not, all in all, a difficult sell. Where the typical college library bought a single set of Britannica, stashed it in some out-of-the-way spot on the open shelves, and replaced it every five years with an updated printing, BOL was available instantly to every student and faculty member from his or her desktop and was kept as current as the editors, and their ATG colleagues, could make it. The information in it was more thoroughly indexed, more easily navigable, hence more accessible than that in the print set, and there was never any waiting for the volume one needed to be returned to the shelf.

The opportunity to demonstrate the power of (nearly) real-time updating had to await the development of new technical capabilities, notably the ability to edit, parse, WAIS-index, and insert a single article into the database. On September 6, 1995, Cal Ripken, Jr., of the Baltimore Orioles broke Lou Gehrig's 56-year-old record for consecutive games played; two days later - the technical tools still being fairly crude - the article on Gehrig, which had stated that the record remained unbroken from 1939, was revised to acknowledge Ripken's feat. A small step for an editor, a giant leap for electronic publishing.

Part II

From its first release in September 1994, Britannica Online was a great success with its first intended audience: colleges, universities, and libraries. By word of mouth, assisted by its beta- tester partners, and through the efforts of a tiny sales force, BOL secured a remarkable market share over the next two or three years. Some hundreds of institutions in the United States signed up, as did a

number of overseas institutions who took the initiative themselves in making contact. A year later, in the fall of 1995, BOL was made available to individual subscribers as well, but BOL's penetration of the consumer market never matched the company's hopes. One chief reason, no doubt, was that at the institutional level no other encyclopedia could hope to match Britannica's reputation or performance; while for many consumers, looking for homework assistance for younger students, there were credible competitors, especially those that were supplied freely with that newest of aspirational goods, the home PC.

At the time of its initial release, BOL was not considered by senior management to be the future of the company. From the home office perspective, the release of BIRS had shown the way to produce a consumer CD-ROM version of Britannica that the sales force could accept, namely one priced at the same level as the print set. Though it seems in retrospect nearly incredible, buyers were found for BCD 1.0 at \$1500. One wonders how those few feel now about the purchase, or even how they felt six months later. A standard price-stratification program followed, with successive cuts in price down to a couple hundred dollars, below which it was feared that the sales force would begin to rebel. The disks were available only through the sales force, but as the price of the CD fell so, too, did the commissions, and while no one was certain where the floor was, there was no doubt that it existed. Suggestions for retail distribution of the CD were met with blank stares or worse.

With senior management's orientation being defined by the direct-sales orthodoxy, the excitement that was felt over BOL was confined largely to the ATG staff, to the Chicago technical group, to many of the editors, and to a few others. The institutional market for the Encyclopædia Britannica had always been very small, little more than an afterthought in sales and marketing planning. BOL looked like producing more money than the print set had in that market, but not enough to make the next company president.

As a result of this rather dismissive attitude towards the project - which in any case was tolerated only insofar as it did not impede the production of BIRS and BCD 1.0 - and of the physical distance of

ATG from Chicago, the ATG team had enjoyed a good deal of freedom, which turned out to be freedom to work on new technologies. A "project manager" for BOL was, in fact, appointed in Chicago, but he seldom visited La Jolla and delayed adopting email until early 1994, by which time it was too late to discover that he had little idea of what was evolving on the Coast.

What is perhaps the most remarkable aspect of the ATG period is that the group did not find itself, in September 1994, with nothing to do. The launch of BOL on a paying basis was, on the contrary, just the opening they had been looking for. Alongside and in conjunction with the development of BOL they had been working on complementary ideas, ideas for enhancements and extensions that, they believed, would carry BOL and perhaps the company into the 21st century. There were three principal such ideas: Bibliolinks, Mortimer, and Gateway Britannica. They shared a vital premise: that the attributes of the Britannica - breadth and depth of scholarship, comprehensiveness, accuracy - held the potential to make BOL the center of the serious part of the World Wide Web.

Bibliolinks

The idea for Bibliolinks was a natural and seemingly simple enhancement. If the Britannica was a summary statement of human knowledge, then each article was similarly a summary of knowledge about that particular subject. All major articles and several thousand of the shorter ones supplied bibliographic references for further reading as an aid to the user who desired to go beyond the summary. Bibliographies ranged in length from a single work to multipage, highly structured surveys of whole fields of study. In addition, there were numerous references to published works in the running text of articles.

The project was carried out by Belew and Steier, beginning in the fall of 1993. The first step was to develop a software program to recognize the bibliographic citations in the text or bibliographies of articles, to separate the citations composing each bibliography, and to

decompose each citation into the various types of information used to identify a particular item: title, author, publication date, and so on. This effort leaned heavily, of course, on the consistency of style used in the encyclopedia. Another program then compared these citations to records in Roger, the electronic card catalog of the library at UCSD. Where matches could be made with a predetermined level of probability, the text of the citation in the article was then tagged as a hyperlink pointing directly to the corresponding "card" in Roger.

In its beta state (not formally released to the UCSD campus until the fall of 1995), Bibliolinks was able to find and create links to Roger for upwards of 70% of the recognized bibliographic citations in BOL, a total of more than 200,000 links, with about 95% accuracy.

A BOL user, reading a Britannica article and coming to a reference to some published work or to the article's bibliography, could see at a glance which items could be found in the UCSD library system. Clicking on the entry would bring up the Roger record, which would tell the user the call number of the physical item, which library held it, and whether it was currently available or checked out. This facility alone would have made Bibliolinks an important development. As the librarians were quick to recognize, however, there was another and potentially even more valuable application: Bibliolinks could serve as a natural language "front-end," or search tool, for the library's collection.

Where other online search tools were capable of searching on author's name, title, or some relatively narrow set of search terms, Bibliolinks offered the same sophisticated search capability as BOL. Moreover, for the non-initiate, such as undergraduates, and for any searcher looking outside his or her field of expertise, the BOL-Bibliolinks tool provided not simply a list of relevant library holdings but an authoritative guide to further reading.

A major side benefit of the Bibliolinks project was that it forced the editorial group to undertake a project to review and update bibliographies that had not had adequate attention and to add still more to the encyclopedia. Unfortunately, except for that effort, the project came to naught. It underwent a series of postponements and

suffered from the frequent changes of priority that handcuffed all the extension projects.

Mortimer

Early in 1993 Clarke and Bartell began a series of experiments in automatic text classification. Clarke brought to the work an understanding of the nature of classification and experience in automated cluster analysis, Bartell his knowledge of the application of neural networks to the problem of information retrieval. Still fondly recalled are Clarke's first sketches of a graphical search interface, in which a few circles represented broad topics, within which would be represented individual "hits" (documents in the data being searched that were found to satisfy in significant degree the criteria for the various topics); the different diameters of the circles were proportional to the number of hits falling within each, or, as it was termed at the time, their "pregnancy."

In building his experimental software, Bartell employed a mathematical technique called multidimensional scaling. Very roughly, groups of text documents were analyzed statistically to find associations among the lexical elements (words and phrases) of which they were composed. While particular terms might be characteristic of certain subjects, such terms are too few and infrequent to serve as reliable indicators for each of a large set of diverse documents. The tendency of clusters of terms to occur together in certain patterns, however, is much more diagnostic of subject matter, and it was these patterns that Bartell's program was intended to detect.

Meanwhile, Clarke discovered the Propaedia. This volume of the Encyclopædia Britannica consisted chiefly of an elaborate "Outline of Knowledge." The outline provided precisely what was needed in order to construct a tool that would not only cluster but classify documents, namely a logical and thorough taxonomy of topics. As part of his study of the Propaedia, Clarke got in touch directly with the Editorial group in Chicago, from whom he learned that each of the 64,000-odd articles in the Micropaedia portion of the encyclopedia had been

classified against the Propaedia outline. One or more tags denoting the classification(s) of each article were part of each article's text file in PSEdit.

A training set of about 45,000 tagged Micropaedia documents (some 70% of the whole) was selected and submitted to analysis. The neural network in effect "learned" how to recognize the semantic characteristics of articles in various categories. The first test of the software's efficacy as a classifier was then to submit articles from the remaining 30%, without their Propaedia tags, and compare the software's suggested classification with the editors'. Accuracy at the top level of classification - the ten principal parts of the Propaedia - was about 96%; it decayed progressively at successively deeper layers, falling to about 75% at the fourth level. In subsequent tests and demonstrations, the software's output was generally held to three levels.

The next and far more demanding test was to submit text documents from other sources to the classifier. In the course of many months of development, sample data were obtained from the Los Angeles Times, the New York Times, and the yet-unpublished new edition of the Grove Dictionary of Music and Musicians. Results varied with source but were uniformly good, sometimes excellent. The Grove articles, written in a style similar to that of Britannica, were classified with great accuracy. Articles from the New York Times varied in style and vocabulary; news articles were handled very well, while some feature columns proved hard to place in topic space. Editorial inspection of some of these showed that they tended to be musings about this and that, with no consistent or firmly stated subject; the classifier, interestingly, tended to place these in the category Literature.

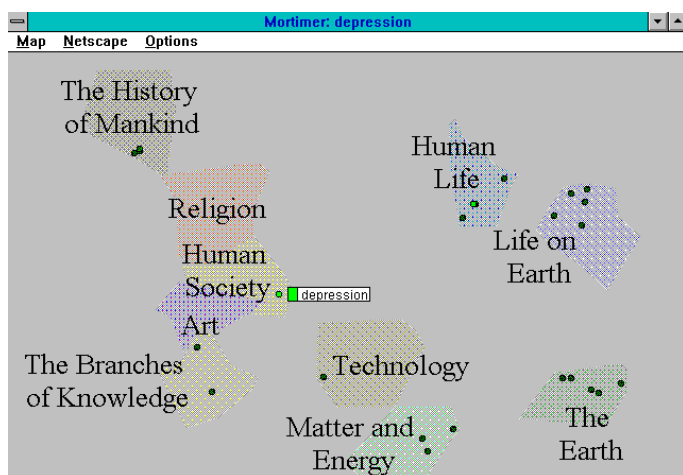
The system was dubbed "Mortimer" by Kester, in honor of the originator of the Propaedia. An essential element of Mortimer was a method for displaying the results of the calculations performed by the software. In essence, for each analyzed document, a probability score was calculated for each possible topic, in this case 176 topics (the number of third-level rubrics in the Propaedia). These scores constituted a vector in a 176-dimensional space. That vector, and

those of all other documents under analysis, had then to be projected onto the two-dimensional space of the computer screen. Distortion of one sort or another was inescapable, and there was no one correct answer; and, indeed, a lively debate over how to effect the visualization persisted for some months. The actual user interface adopted for demonstrations within Britannica and to outside parties, designed by John Dimm, showed the topic areas as large, irregular-colored regions. (The shape, size, and relative positions of these regions had previously been calculated in a similar fashion from the semantic statistics for all training documents in each classification.) Clicking on one of these areas would bring it to the foreground and reveal the next lower level of classification. By this means the user was able, in effect, to navigate down through the outline.

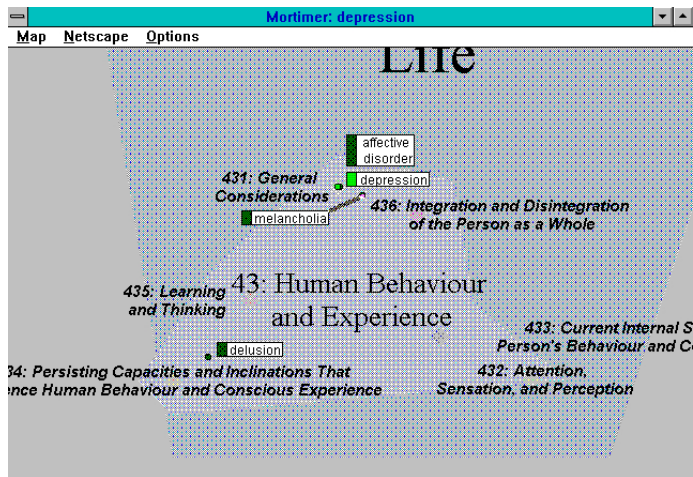
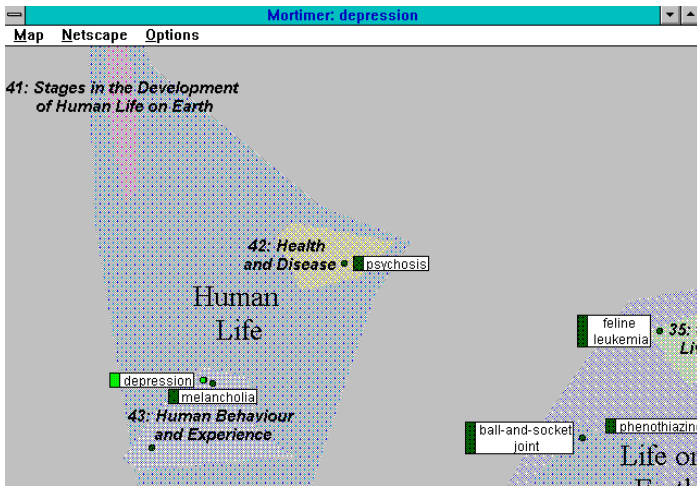
In March 1995 Bartell and Clarke filed a patent application for Mortimer; their patent for "Method and System for two-dimensional visualization of an information taxonomy and of text documents based on topical content of the documents" was granted in April 1997.

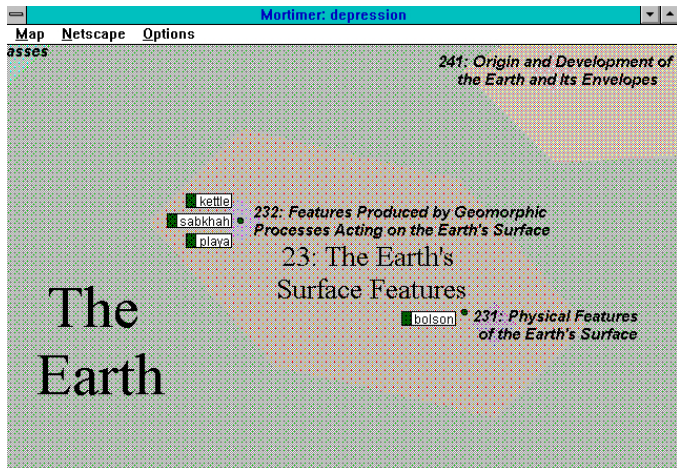
When Mortimer was given a search query, it would determine which documents in the set were relevant, assign a topic value to each, and place dots - indicators of "hits" - in the topic map. This ability was especially impressive when the query term was polysemous, i.e., might have any of several quite different meanings. Kester's favorite term for demonstrating the power of Mortimer was "depression," which might refer to economics, psychology, geology, or other matters. Here is the top level of Mortimer's display of articles in Britannica relevant to the query term "depression." The green dots indicate Britannica articles. The one judged most relevant, because its title matches the query term, has its title shown as well. If the user decided that the sense of "depression" in which he was interested lay in the area of Human Life, he could click on that area to produce a second topic map at the next level down; another click would bring the view down to the third level. Note that article titles are revealed as part of this navigation downward. Alternatively, had the area of

interest been geological depression, the user might have clicked down from The Earth to this third level display.



This ability to detect and distinguish different senses of search terms is called "disambiguation." No ordinary search engine could do this; no ordinary search engine can do it today. More remarkable still, Mortimer could run over several distinct databases of text documents simultaneously. Hits from different sources appeared as differently colored dots on the map. (Unfortunately, no screen shot of this is available.) It was this aspect of the tool that underlay the third of the imagined extensions of Britannica Online, the notion of Gateway Britannica.





Gateway Britannica

This concluding section of the history of the making of Britannica Online is more in the nature of a postscript, in that it looks at an idea that never got onto the ground, to say nothing of off it. It was an alluring vision that, from 1993 to 1995 or perhaps 1996, provided the core BOL team with a direction and much of its impetus.

From their first acquaintance with the Internet and especially with the World Wide Web, it became clear to the editors of the Britannica that they stood at the brink of a paradigm shift. (That overworked phrase is used here with no apology and no irony.) The printed and bound Britannica had customarily been imagined in the context of the individual at home, where the encyclopedia - however used - typically dominated physically the bookcase, even the room in which it was lodged. The editors had now to imagine the encyclopedia, as it were, shelved somewhere within the Library of Congress. The electronic version, existing for the user only as momentary tracings on the computer screen, might well become merely one of countless databases available in a vast and uncharted ocean of digital information. The ATG group, from their quite different perspective, and perhaps a bit earlier, grasped exactly the same point. The motive

for Gateway was their shared determination to position Britannica, not as one resource among myriads, but as an entry point of choice for all serious knowledge seekers on the Web. (One of Kester's internal presentations to senior management opened with an animated sequence in which angels tugged open a pair of ornate gates, to the accompaniment of a bit of Holst's *The Planets*.)

Mortimer, clearly, was a key element in the plan. Mortimer offered the promise of systematic topical and query-driven access to a body of information beyond and far more extensive than the encyclopedia itself. The encyclopedia would serve a two-fold purpose: Its content would provide basic information about topics of interest to Gateway users, while its structure would provide a means of organizing and indexing the Web at large (or that portion of the Web given over to the kinds of knowledge with which the encyclopedia was concerned). Bibliolinks would perform a parallel function with respect to physical libraries.

Using demonstrations of Mortimer to broach the subject, Kester and others held exploratory meetings with representatives of the *New York Times*, the *McGraw-Hill Encyclopedia of Science and Technology*, the *Grove Dictionary*, among others, in an effort to understand how such diverse operations might cooperate in a Gateway project. Interest was high enough that several publishers furnished test data, as noted above. Kester worked up a detailed business plan.

The Gateway idea came to naught. In part the failure was owing to Britannica's financial difficulties. Money for ambitious projects was, of course, hard to come by, but senior managers, feeling perhaps that they could not afford a single misstep, were unable to fix upon any strategy at all. Following the sale of the company early in 1995, the new ownership was overwhelmed by immediate problems. When a strategy for the company at last emerged, it lay in quite a different direction from the Gateway vision. Key members began leaving ATG, culminating in Kester's departure in 1999. The La Jolla office, reduced at the end to engineering annual releases of the Britannica CD, closed in 2001.



Britannica's Advance Technology Staff in La Jolla, California

Standing Left to Right: Lisa Carlson (Merriam Webster staff), Lisa Braucher Bosco, Harold Kester, John McInerney,

Seated: Brian Bartel, Chris Cole, Rik Belew, Amy Steier, Robert McHenry (then the Editor of the Encyclopaedia Britannica), John Dimm, Bob Clark [c. 1995]

