

BULGER'S POLITICAL TRIBALISM

by **Harvey Silverglate**

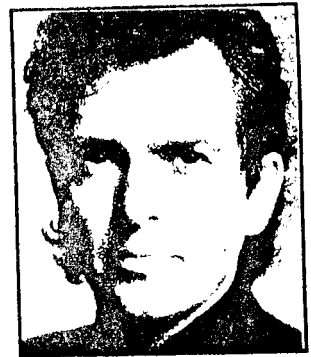
*One dissenter
learns a lesson
about bucking the
Senate president*



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PERSONALLY

Shootout at the "oy vay" corral

by Harvey Silverglate

I started out on Bulger's enemies' list, ended up disillusioned with Dukakis, and learned that when you square off against the machinations of the political establishment, it's not so much Jew versus Irishman or lawyer versus politician, but insider versus outsider. That's the path I traveled when I began raising some basic questions about the nomination of Bulger aide Paul Mahoney to a district-court judgeship and ended up as a central figure in what can best be described as the shootout at the "oy vay" corral. So I think the time has come to tell my side of the story.

My "feud" with Bulger

My supposed long-standing feud with Senate President William Bulger started, unbeknownst to me, in 1981 when I wrote him to protest the cruelty of his treatment of then-senator Alan Sisitsky, who was having a nervous breakdown on the floor of the Senate. The autocratic Senate president's behavior was atrocious. He mocked the ill senator and then expelled him from the Senate chamber. When news coverage of the episode failed to bring forth a torrent of protest, I wrote Bulger a somewhat hyperbolic letter, taking him to task. The Bulger response — a predictable and vituperative attempted defense of his actions — began with the demeaning salutation: "Dear Silverglate."

I'm willing to bet that though Bulger might not have forgotten about the exchange, he thought it no big deal. Yet he now dates the start of our "feud" to that single letter.

Seven years later, our paths crossed again in a very public fashion. My law partner Andrew Good and I were

(Chauncey B. Wood assisted in the preparation of this article.)

representing Boston real-estate developer Harold Brown, who was involved in federal criminal case for having passed \$1000 to a Boston city official who'd threatened to halt an already started moderate-income rental-housing project owned by Brown unless his palm were greased. Bulger's friend and former law partner, Thomas Finnerty, was demanding of Brown some \$400,000 — the second of three installments purportedly owed by Brown to Finnerty, representing Finnerty's stake in the downtown Boston 75 State Street office-building development project, which Finnerty claimed was due him in exchange for his "services" in the project's early days. When Finnerty was unable to produce satisfactory documentation proving he had actually done work to justify a fee that, in total, would have come to more than \$1 million, Brown, represented and advised by Good and me, refused to pay.

Finnerty then sued Brown in Suffolk Superior Court, and Brown defended his refusal by asserting that it would be unlawful to make the payment to Finnerty. During the course of pre-trial discovery, documentation showing that Bulger had received from Finnerty just about half the initial \$500,000 payment made earlier by Brown to Finnerty became part of the public record. Bulger characterized this payment as a "loan" that he promptly repaid to Finnerty when he learned the money had come from Brown. This documentation found its way into a *Boston Globe* Spotlight Team series on the project. And for several months afterward, the "75 State Street scandal" and Bulger's relationship with Finnerty made splashy headlines. The episode ended when Brown, against Good's and my advice, settled the suit by agreeing to



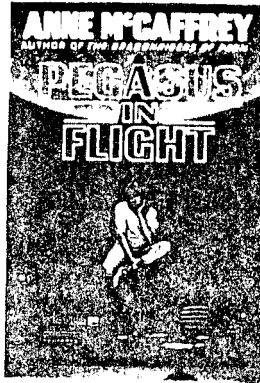
Bulger: keeps an iron grip on judicial appointments

BRUCE HILLIARD

Lauriat's

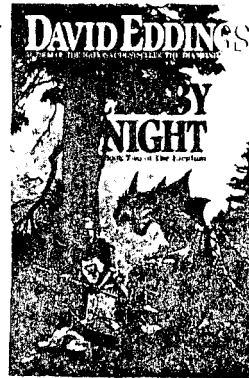
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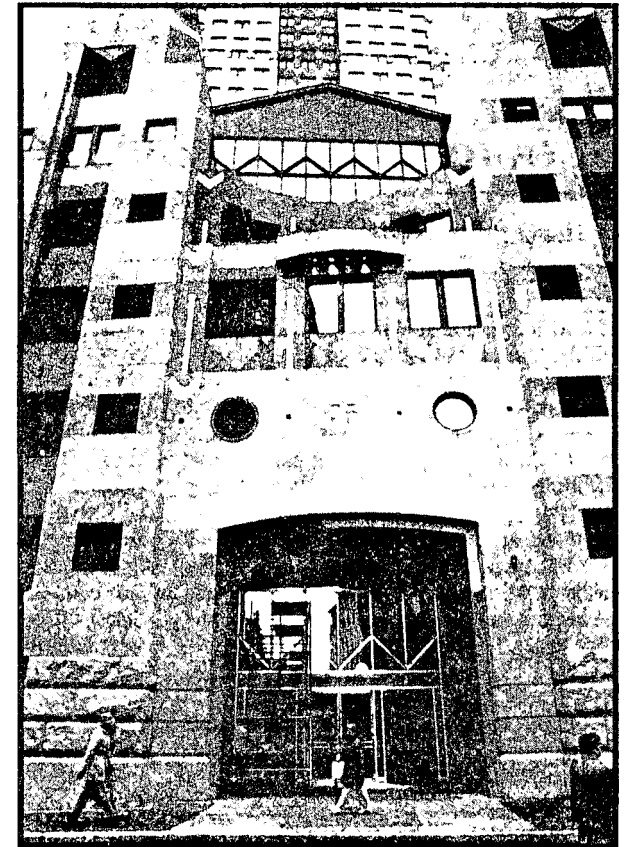


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75 State Street: an irritant for Bulger

ERIC RASMUSSEN

Personally

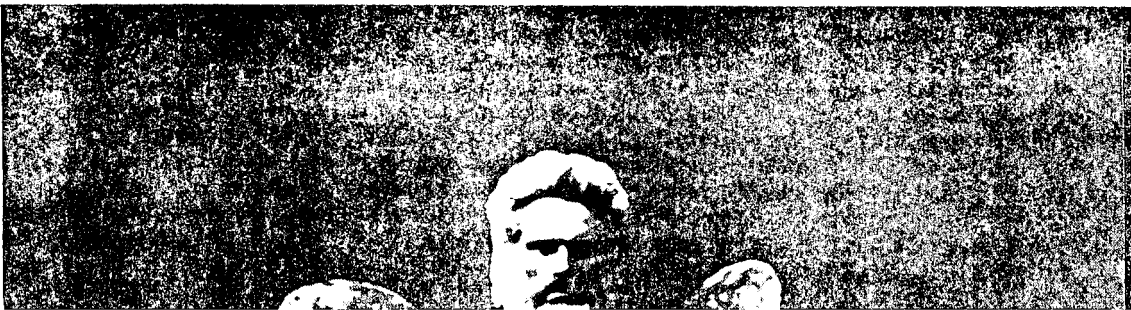
Continued from page 11

pay Finnerty a fraction of Finnerty's claim and the feds terminated an investigation of the project without issuing any indictments.

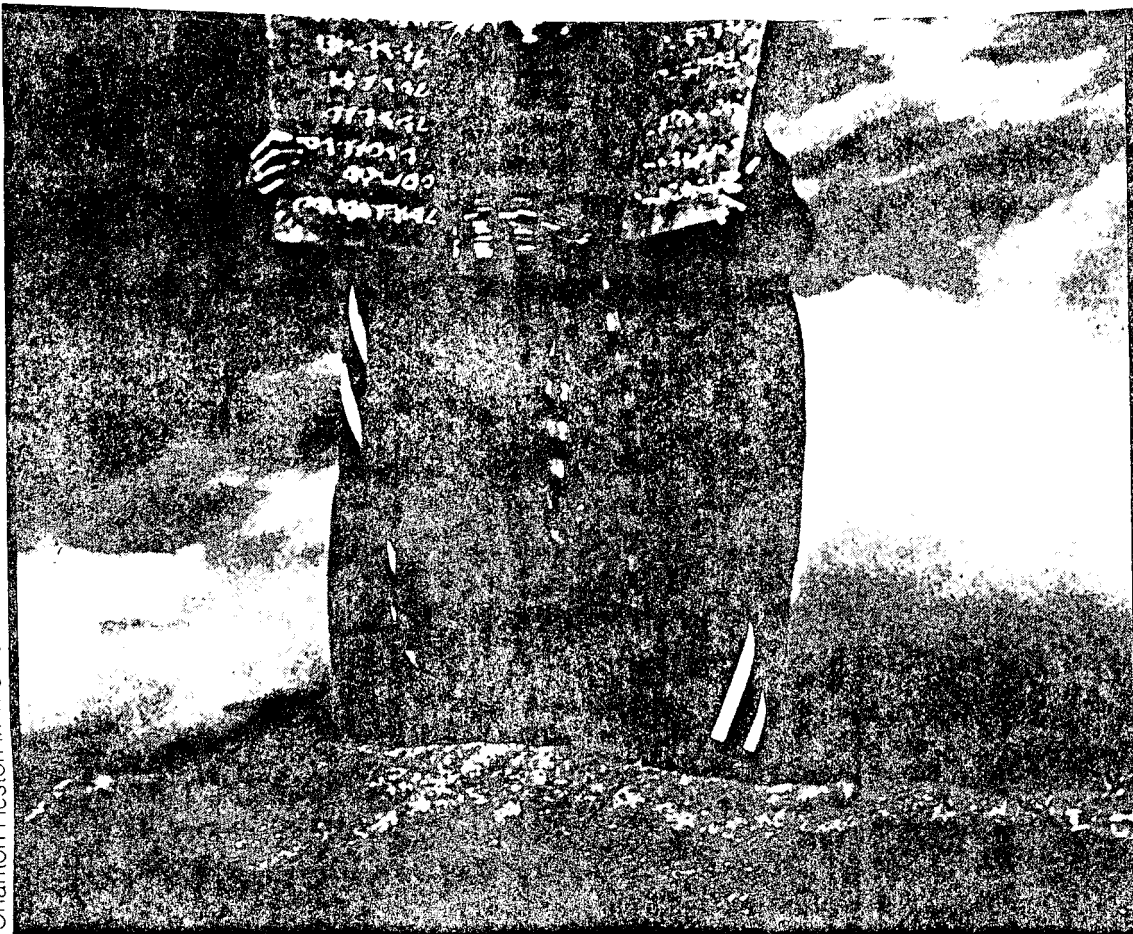
During the 75 State Street controversy, Bulger, or someone on his staff, remembered and pulled out my 1981 Sisitsky letter. Bulger's staff cited the letter as proof that I held a long-term grudge against Bulger. Suddenly I soared to the top of Bulger's carefully kept enemies' list.

After the furor died down, I returned to my law practice and Bulger went back to running the Senate. Even at that point, when we were supposed to be mortal enemies, our paths had never crossed, and we'd not exchanged a single word.

The Mahoney mess



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Paul Mahoney, as district-court judge. A few weeks earlier, I had read a *Globe* Spotlight series that linked Bulger's grasp of the judiciary to the deteriorating quality of justice in many Massachusetts courts. Some lawyers associated with Bulger, the *Globe* reported, got favored treatment from certain judges. Bulger's influence was buttressed by his substantial control over the judiciary's annual budget and his iron grip on many appointments within the judicial system, including the selection of judges and clerks.

I found it doubly distressing that Dukakis, who had voiced profound disgust with and opposition to this way of doing the public's business when he'd entered state politics in the '60s (I had helped in one of his early campaigns for state representative from Brookline), was making a patronage appointment — a lifetime judgeship awarded to Bulger's chief of staff — now that he was bereft of his last shred of dignity at the end of his disastrous third term as governor.

In addition, I'd been told by a number of newspaper reporters that during the height of the 75 State Street controversy, Mahoney had tried to peddle one rumor after another about me and my partner Good to the local press in an effort to blur the message about Bulger by discrediting the messenger. A reporter also told me about a comment Mahoney had made to him, indicating that the Irish reporter should stick with Bulger and Mahoney rather than with people named Silverplate and Brown. These reports, if true, suggested to me that Mahoney may have had some character traits not terribly appropriate for a judge.

When I told these stories to my friend and colleague Harvard Law Professor Alan Dershowitz, he decided that someone should bring this information — and the rumored reason Mahoney had not been selected for a judgeship during an earlier try — to the attention of the Governor's Council, which would confirm or reject the nomination. None of the information qualified as more than hearsay, but it seemed sufficient to justify an investigation. Although I hadn't originally planned to go to the hearing, I told Dershowitz that I would accompany him, even though I saw no personal reason to testify as my hearsay would not add to Dershowitz's. Still, I noticed telltale signs that the wagons were being circled around Bulger and Mahoney and figured that I'd better show up. I just wanted the process to work. If a fair and thorough investigation failed to substantiate the hearsay, then, I felt, Mahoney should be confirmed.

Stranger in a strange land

I should have realized that something untoward was happening when, about two weeks before the December 5 Governor's Council confirmation hearing on Mahoney, Dershowitz reported to me that he'd received a telephone call from a lawyer practicing in the firm that had represented Bulger in the Finnerty-Brown 75 State Street litigation. The lawyer, a friend of Dershowitz, told him that if he testified against Finnerty, Bulger, according to Dershowitz's recollection of the conversation, "would

See PERSONALLY, page 30

Personally

Continued from page 12

unload" on him. The message sounded familiar: during the 75 State Street litigation, an emissary from Bulger, who was also a friend of mine, had relayed similar advice to Good and me.

The day I spent at the Governor's Council hearing was an experience unequalled in my 23-year legal career. It's not that I haven't been in inhospitable settings before. Once, a state judge in Buffalo threatened to throw me out of the sixth-story courtroom window were I to mention the Constitution one more time; and a state judge in Jersey City would not let me represent a client because I was a "foreigner," which in local parlance means I wasn't from the Garden State.

But these instances of being a stranger in a strange land paled in comparison to the way I felt waiting in the State House, outside the Governor's Council chamber. The room was crammed with folks I'd never seen before, but the hostility was palpable. Daggers were coming out of their eyes. I had crossed the system, and I was going to pay the price. Suddenly, the governor walked in the room. He shook hands with, and greeted, a number of those staring at me. But he managed to ignore me (and Dershowitz as well), despite my support going back to his days as state representative. It was as if Dukakis had finally learned the credo of the Beacon Hill pol — "If you're not with me, you're against me."

The scene inside the council chamber was even worse. Bulger was called as Mahoney's first witness, and after a perfunctory laudation of the candidate for his good character and hard work, he launched into one of the most vicious tirades against Dershowitz and me that has graced a public chamber in Massachusetts in recent years. You've all heard the words by now: "connivers," "manipulators," "liars," and "murderers of reputations." As if to make the social ostracism complete, he asked the crowd to just "look at them, look at them."

At that moment, it dawned on me just



Dukakis: finally learned the credo of the Beacon Hill pol

JOHN NORDELL

how much of an irritant the 75 State Street episode had been for Bulger. During the litigation itself, there was not much he could do to me. I was within the confines of the legal system, where I was armed with the power of the subpoena and where witnesses had to take an oath to tell the truth. But now that I had ventured into his world, he was going to have his way with me. And he did. The rest of the hearing was anticlimactic. Bulger had

managed to shift the focus from both Mahoney's qualifications and the issue of cronyism to himself and us — the insider and his insider friends versus the outsiders.

The next day's press coverage of the hearing came as an even bigger shock to me. The news media played the story as a resurgence of long-simmering ethnic and religious wars between the Irish and the Jews. Although it would be easy to see some of Bulger's name-calling as veiled

anti-Semitism, that would miss the point. It was more a case of using ethnic tribalism as a call to arms in a political war against interlopers. The attack wasn't proof of anti-Semitism on the part of Bulger; it was proof that he would use any weapon at his disposal to discredit us as meddling outsiders both to settle the 75 State Street score and to get us out of his hair in the patronage arena. Our obvious Jewishness was just one element of this.

The ethnic diversion also allowed Bulger to succeed, perhaps beyond his wildest dreams, in converting the hearing from a debate on how judges — who assume lifetime positions of great power — should be chosen and investigated into a so-called tribal battle. The issues of judicial selection in general and Mahoney's nomination in particular were left in the dust.

Last Wednesday, Paul Mahoney was confirmed to a district-court judgeship by a unanimous vote. I hope he rises above the circumstances of his confirmation hearing and uses his newfound life tenure to resist influence-peddlers and favor-seekers.

For my part, I've learned a few lessons from this experience.

First, I now see what it is that has so changed Mike Dukakis from the highly principled, stubbornly clean-government type he started out as when I first campaigned for him. One simply cannot show up under the Golden Dome day in and day out and not let the cronyism and the deal-making get to you. Such knowledge tempts one to support a two-term limitation for political office — a rule that, though disturbingly undemocratic, not only would have turned out Mike Dukakis before he became a discredited disciple of the hackocracy but also would have forced Billy Bulger back into the private sector.

Second, I've seen close-up how a call to tribalism, the "us versus them" mentality, can be dangerous and destructive, how it can divert attention from issues like truth and honesty, and how it can stir up the misguided passions of the media, who, after all, get a lot more excited about the prospect of an ethnic tong war than a debate over good government. □