

Wisconsin Pharmacal Company's revolutionary female condom will soon undergo tests. The device is a soft polyurethane vaginal liner shaped like a diaphragm, and because its outer ring covers the female labia it prevents any direct contact between male and female

genitalia. In fact sexual partners using the female condom are hardly even having sex, their act being more like riding a subway at rush hour on a cold winter night. Researchers have dubbed the device "the garbage bag." Finally, March may be remembered as the

month that auspicated a new American rights movement, "wardrobe rights." In Boston a federal worker, Mr. Roger Arnold, lost his 15-month battle against the Bureau of Alcohol, Tobacco, and Firearms' requirement that he wear a tie. He is being dismissed. But

in Tampa, Florida, Mr. Lee Grant has hired legal counsel to defend him against the charges of a former employer who claims that he wore garish sport coats while selling used cars at Darby Buick in Sarasota. The battle lines have been drawn! —RET

CORRESPONDENCE

This Coogler Shall Remain Homeless

I write as counsel to Deborah Mashibini to inquire when it is that she will receive her Coogler Award ("The Worst Books of the Year," *TAS*, March 1988). We are sure it will be at least as tasteful and useful as your writings.

—Robert Hayes
Coalition for the Homeless
New York, New York

Lawrence Walsh and Southern Air

In Charlotte Low's recent article "Lawrence Walsh's Holy War" (*TAS*, March 1988), she makes reference to potential conflicts of interest among lawyers on his staff. She makes no mention, however, of any potential conflicts of interest regarding Mr. Walsh himself.

Last spring, a colleague and I revealed a potential conflict of interest involving the special prosecutor. It received little attention in the national press and was generally downplayed by those who chose to follow up on the reports. Yet, further investigation revealed some very interesting questions regarding the Oklahoma City law firm where Mr. Walsh was "of counsel" and its relations with Southern Air Transport (SAT), the air cargo firm that handled the transfer of TOW missiles from Texas to the Middle East.

In late April 1987, freelance reporter Tony Kimery and I were able to report that the law firm, Crowe & Dunlevy of Oklahoma City, had handled the aircraft registration of three 707s purchased by SAT from Kuwaiti Airlines. Two of the planes were confirmed as those used in the missile transfer. When we interviewed him, Mr. Walsh denied any possible conflict of interest, explaining the aircraft registration performed by Crowe & Dunlevy was similar to handling a title search for purchase of a home. In effect, he said no true attorney-client relationship existed. Furthermore, he added, he had known nothing of the work performed for Southern Air Transport.

Several days after our interview, we were able to review additional records maintained at the Federal Aviation Administration documents center in Oklahoma City and discovered still more interesting information about the business relationship between Crowe & Dunlevy and SAT. It appears the relationship was more than a passing "title search." First, the law firm attempted to help speed the actual registration and purchase of the 707s from Kuwaiti Airlines. Telex copies indicate that in late 1985 the law firm encouraged the Federal Aviation Administration to hasten the process.

But the most serious questions are raised by documents that concern a lease agreement between Southern Air Transport and a firm called Safair Freighters. Southern Air Transport leased a handful of Lockheed L-100s from Safair, planes reportedly used

by SAT in the re-supply effort of the contras in Nicaragua. Who reviewed the lease agreement for Southern Air? Crowe & Dunlevy. The FAA records show that SAT asked Crowe & Dunlevy to review the lease agreement and that the firm responded with an approval of the agreement.

Mr. Walsh might not have known of the business relationship that existed between the law firm and Southern Air Transport. But it presents us nonetheless with some rather interesting questions. How has his probe dealt with Southern Air Transport? Did his law firm unknowingly play a role in the transfer of missiles? The telex copies on file with the FAA show dates that might be critical in establishing how use of the planes came about. . . .

None of this is meant to impugn Mr. Walsh's integrity or character. And it does not mean he knew of any business relationship between Crowe & Dunlevy and those involved in the missile transactions. But I believe it certainly gives one pause to wonder.

—Jerry Bohnen
News Director, KTOK Radio
Oklahoma City, Oklahoma

Charlotte Low replies:

Mr. Bohnen's letter prompted me to call several legal ethicists at major law schools to see what their answers might be to the questions he raises. The consensus seems to be that it is sophistic to argue that work performed by a law firm is not "legal work" just because it is simple and routine. Much legal work, from a no-asset divorce to evicting a tenant for nonpayment of rent, is of such a routine nature that litigants often do it themselves to save the attorney fees. But should they hire a lawyer to do a job, they certainly have a right to assume that they have set up an attorney-client relationship with that lawyer. They have a right to expect that their communications will remain confidential and that the lawyer will not suddenly switch sides.

As the American Bar Association's Model Rules of Professional Conduct say, "Loyalty is an essential element in the lawyer's relationship to a client." With respect to former clients, the rules say that a lawyer cannot represent anyone with a "materially adverse interest" to the former client in the same or a substantially related matter without the former client's consent and cannot "use information relating to the representation to the disadvantage of the former client." Law firms are subject to the same constraints as individual lawyers, and lawyers who are "of counsel" (on a part-time consulting basis) to a firm, as Lawrence Walsh was to Crowe & Dunlevy, are treated the same in the ethics rules as full-time members of the firm.

It is likely that Southern Air Transport hired Crowe & Dunlevy—at the high hourly

rates a well-regarded firm like Crowe & Dunlevy undoubtedly commands—to handle the registration of its 707s because Southern Air's management thought Crowe & Dunlevy had the expertise to do the job quickly and efficiently. I am informed that airplane registration is a profitable side business for many Oklahoma City law firms, because the Federal Aviation Administration maintains its nationwide aircraft registration records in that city. As for sending telexes to the FAA asking the agency to hurry along the process, well, that's advocacy, which is what lawyers do for a living.

Finally, no one would seriously argue that reviewing a lease agreement is not legal work. It is likely, though, that neither Lawrence Walsh nor Richard C. Ford, the Crowe & Dunlevy partner who runs the Oklahoma City branch of the independent counsel's office for the Iran-contra investigation, personally performed any of this work, which seems from Mr. Bohnen's description to be of the type normally done by junior associates or even paralegals.

The next question is: What are the ethical obligations to his firm's former clients of a lawyer who forsakes private practice to carry on a government investigation such as a special prosecution that arguably touches on the very activities for which the client hired the firm to do legal work? It is highly likely that Walsh's staff has looked into Southern Air's activities, both on the Mideast missile shipment end and the contra re-supply end. Is there a conflict of interest that should disqualify the lawyer for the government work? The answer of most ethicists and the ABA model rules would ordinarily be, no problem, if we can assume the special prosecutor did not handle the former client's work personally and has left the firm. "The standards are designed to encourage people . . . to contribute their time to government work," says Stephen Gillers, professor of legal ethics at New York University.

Walsh and Ford might be home free on this question were it not for the anomaly that Ford (unlike Walsh) has never completely severed his ties with Crowe & Dunlevy. He continues as a partner with the firm and is volunteering his time with Walsh from Oklahoma City. By imputation, then, it can be said that the entire independent counsel's office retains a connection with Crowe & Dunlevy. This is a situation so unusual that it does not come up for specific discussion in the ABA model rules or their copious commentary, but one well-regarded ethicist says, "There could be some problems." After all, the model rules bind lawyers and law firms equally in forbidding them to take adverse interests to former clients or use protected information.

Questioned about possible conflict of interest, Ford's response is a flat denial that

any problem exists. "This is old news," he says. "They were unrelated matters that were long ago and closed." Queries relayed to Walsh went unanswered. But it is clear that Ford and, by implication, Walsh have access to Crowe & Dunlevy's closed Southern Air Transport files. The bulk of the serious counts in the 101-page indictment Walsh filed against the Iran-Contra Four on March 16 revolves around activities in which Southern Air was intimately involved. According to court records, Southern Air has said that it was asked to participate in the Iran weapons sale by Secord, and in the contra re-supply by North.

Pondering Gilder in Peshawar

Belated congratulations on your twentieth anniversary [*TAS*, December 1987], as news travels slowly to the Khyber Pass. I enjoy *TAS* as much now as I did when you published it as *The Alternative* years ago.

Yet a recent trend, on its pages and elsewhere, is disconcerting and typified by a remark by Mr. George Gilder (which I reconstructed from memory, having lent my copy to some *mujahedeen*). Arguing [in his article, "The Message of the Microcosm"] that technology has rendered geography meaningless, he notes that all the important parts of Cuba are now found in Miami; true if by important he means nice. However, the geographic and political Cuba is as highly troublesome as heavily armed, and so are their Soviet colleagues in my neighborhood.

I can't help but wonder if many of us, wowed by technology and tangled in the worldwide ganglion of silicon electronics that Mr. Gilder describes, haven't taken a Whiggish turn and landed in what could be called illogical positivism. Conflicts are not always won on Gross National Products with cellular phones. One suspects that plenty of high-tech Athenians sneered at backward Sparta as bereft of art, culture, and invention, and only interested in armies. Yet Spartan armies won.

Gilder is always good reading, and he should keep faith in American ingenuity and keep blasting at backward economists, but lest he go overboard he should perhaps tear himself away from the Radio Shack catalogue and spend a week in Russell Kirk's library.

—Stephen J. Mast, Editor
Humanitarian News Service
Peshawar, Pakistan

George Gilder replies:

Masty's letter is trenchant and powerful and I salute him for his current work on the frontiers. Nonetheless, his resistance to the message from the microcosm conceals the canker of a conservative death wish. Upheld by leading conservative philosophers with an aristocratic bent and disdain for "men in
(continued on page 47)

EDITORIALS



BUSH RESURRECTED

by R. Emmett Tyrrell, Jr.

Where were you when first notified of the political death of George Herbert Walker Bush? Well, those of us who harbor an intense interest in the great game of politics have been notified of the Vice President's moribund condition off and on for some years, but think of where you were during the most recent reports.

In early February I received the sepulchral news at Luis Muñoz Marin International Airport in San Juan where I chanced upon a Democratic political adviser of legendary wit and astuteness. Geopolitical curiosity had taken me to the Caribbean for a week of reconnoitering during which I was out of touch with presidential campaigning. Before my departure, however, Bush was heading towards the Iowa caucuses and the New Hampshire primary with a vast sum of money and a huge and efficient campaign staff. Nationally he was the front-runner by a volupt margin. Yet three nights before my illuminating encounter in San Juan Bush did poorly in the Iowa caucuses, and now

he seemed to be slipping in New Hampshire.

"He's dead," reported this distinguished pundit. Charity enjoins me from relating his identity. He is a gentleman and he was only reiterating what all the Washington insiders were pronouncing. He went on to inform me that a shocking report of a telephone call from the Vice President to Panama's General Manuel Antonio Noriega just before our invasion of Grenada had sealed Bush's fate—all Washington was in full throat against him. Enlightened Washington's line was: "Bush will be out of it after New Hampshire."

How was it possible that in a matter of a week 108,477 Iowa Republicans in caucus assembled could bring Bush to ruin? Think of all the states Bush led, particularly those Southern states. Think of his superb staff, the obvious support of the Administration, that \$20 million in his campaign treasury. My San Juan confidant waved all this away, offering to bet me legal tender that Bush was through.

Adapted from RET's weekly Washington Post column syndicated by King Features.

The media knew no better. On the CBS Evening News an adaman-

tine Dan Rather spoke of Bush's "humiliation," in Iowa, which left him "an embarrassing and fading third." Mary McGrory spoke of Bush's "crucifixion." *Newsweek* spoke of Bush "fighting for his very survival" after having been "eclipsed by Sen. Bob Dole and the suddenly credible Pat Robertson." Well, "eclipsed" for how long and "credible" to whom? My personal favorite among all the pundits' death notices was that of Michael Kramer, chief political correspondent of *U.S. News & World Report* who from chill New Hampshire, perhaps mere hours before Bush's victory, reported that the Vice President "now seems headed for a college presidency—or to the chairmanship of the Purolator Corp., a job that has been more or less kept open for Bush in the event of his (involuntary) retirement from politics." (Emphasis added.)

So now Bush has swept far ahead of all comers. No one will stop him in his quest of the Republican nomination, and the fractious Democratic party faces its most chaotic convention in decades. The economy is strong. Fears of a recession are evaporating. Bush

has demonstrated an ability not only to survive but also to debate effectively against competent opponents, almost any of whom might make a race of it against any present Democratic contender. Yet the death notices will not end. Take my word for it.

The insiders now murmur that Bush cannot win in the fall, and that the Democrats much prefer him over Senator Dole as their opponent. The Democrats in 1980 had a favorite Republican opponent too; his name was Ronald Reagan. Reagan also fared badly in the Iowa caucuses back then; and that authoritative political pundit, Richard Reeves, reported that President Carter had just "lost his favorite Republican opponent." "The former California governor was a set-up for Mr. Carter," Reeves declared. "The President's polls showed him taking everything from Reagan but conservative Republicans."

It is George Bush's luck to be constantly underestimated by the pundits. That is why they will continue to count him out. One other pol has suffered the same low esteem from the insiders, the aforementioned Ronald Reagan. □



A CONFERENCE FOR CHAOS

In the art and practice of diplomacy there is one sure way to bring matters to confusion and to mischief. Convene a conference, inviting the multitudes. Old hands in our State Department must know this. When, after World War I, the wily French Foreign Minister Aristide Briand hoped to drag America into the affairs of perfidious Europe, he exploited American innocence by asking that we sign a treaty with France outlawing war. In those days our Secretary of State was even wiliier than the suave French. Recognizing a trap that would make us the virtual defender of French security, Secretary of State Frank Kellogg said: Sure, and bring all peace-loving nations into the treaty. The consequence was chaos, and the treaty for "the outlawry of war" never bound

anyone to do anything other than snicker.

The Reagan Administration's projected peace conference for the Middle East promises chaos too, but it will not keep us free of foreign entanglements as did old Mr. Kellogg's diplomacy. It will drag us into an area where American interests are already being secured by others, mainly the Israelis. Moreover, it will drag us there under the most perilous circumstances, which is to say that after our imbecilic diplomacy has weakened Israel sufficiently we shall have to commit our forces to defend our interests.

Right now, in a turbulent area fraught with religious and ethnic discord of, shall we say, arabesque complexity, Israel defends Western interests. Unlike other Middle Eastern govern-