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# WASHINGTON AND LEE LAW REVIEW

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## A Tribute to Alexander M. Harman, Jr.

*In recognition of his lasting contributions to Washington and Lee University, the Commonwealth of Virginia, and the practice of law, the Editors of the Washington and Lee Law Review dedicate this issue to Alexander M. Harman, Jr. These writings cannot begin to convey the respect for Justice Harman shared by those whose lives he touched, but we hope that they accurately reflect our admiration for him.*

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Robert J. Ingram\*

When I came to Pulaski, Virginia, over forty years ago, eager to start my law practice, Alex Harman took me under his wing. Teaching me how to be a lawyer was a formidable challenge for someone like Alex, who had such a keen grasp of the law.

Our W&L connection certainly aided my cause. Because the other two law firm principals were both "Wahoos," Alex's project was all the more singularly demanding.

I will never forget the impression I had when I first met this giant of a man. With his towering physical stature, he could be, and often was, quite intimidating.

Born in War, West Virginia, just across the state line from Virginia's Tazewell and Buchanan counties, Alex was a descendent of Adam Harman, one of the earliest settlers of this region and a man who was known as the "Great Warrior" for his prowess in fighting Indians.

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\* Senior Partner, Gilmer, Sadler, Ingram, Sutherland & Hutton, Pulaski, Virginia. Mr. Ingram is a former law partner of Alex Harman. Some of these remarks were delivered at Alex Harman's funeral in Pulaski, Virginia, on November 4, 1996.

On Alex Harman's death, a Pulaski newspaper editorial characterized Alex, in his quiet and gentle way, as another "Great Warrior for justice, who used his prowess in the law to benefit all."

Alex Harman attended Concord College for three years before entering the Washington and Lee University School of Law in 1941. While at W&L, he served as law student body prosecutor. Because the regular campus newspaper, "The Ring-Tum Phi," had been discontinued during the World War II years, he and a friend also set up and published a student newspaper which they called "The Columns." Alex was a member of Phi Delta Phi and Omicron Delta Kappa fraternities. He received his law degree in 1943. Later, in 1974, his alma mater bestowed on him an Honorary Doctor of Laws degree.

Alex was admitted to the Virginia State Bar in 1943 and began his private practice of law in Pulaski upon his graduation. He later became a partner in the Pulaski law firm of Gilmer, Harman & Sadler, where he practiced from 1944 until 1964. During those years, he also served as Pulaski Town Attorney. He was vice-president of the Virginia State Bar Association from 1949 until 1951.

Always civic minded, he served as chairman of the Pulaski Board of Zoning Appeals from 1958 through 1964, as chairman of the Pulaski Development Authority from 1962 through 1964, and as president of the New River Valley Industrial Foundation from 1963 until 1982.

Politics intrigued and fascinated him. He chaired the Ninth Congressional District Democratic Committee and held the chairman's seat on the Virginia State Board of Elections for a number of years.

He was quite active in the Benevolent and Protective Order of the Elks. He served as Exalted Ruler of Pulaski Lodge 1067, as president of the Virginia State Elks Association, and later as chairman of the Grand Elks Lodge National Board of Trustees.

In southwest Virginia, before he became a judge, Harman was active in the management of a Buchanan coal company. He also had interests in a taxicab company and a jewelry firm, both in Pulaski. He served on the boards of Virginia Maid Hosiery Mills and First Federal Savings and Loan Association of the New River Valley.

He was appointed judge of the then Twenty-first Judicial Circuit by Governor Mills Godwin in 1965 and occupied that bench until October 1, 1969.

In 1968, Governor Mills Godwin called on Harman for an arduous stint as one of eleven select members on the Virginia Commission for Constitutional Revision. That year, Harman was backed by then U.S. Senator Harry F. Byrd for a federal judgeship in western Virginia, but the Johnson administration left the position unfilled when the state's other Democratic Senator,

William B. Spong, supported another candidate. Ultimately, President Nixon gave that job to Republican H. Emory Widener of Bristol, himself a 1953 W&L law graduate.

In 1969, Godwin appointed Harman to succeed Justice Archibald C. Buchanan of Tazewell on the Virginia Supreme Court of Appeals. Harman served with distinction on the commonwealth's highest court until problems with his eyesight forced him to take early retirement on December 31, 1979. From that time until his death on October 31, 1996, he continued to serve as a Senior Justice on that court.

Before a standing room only audience in that venerable Richmond courtroom, Alex was presented to the court by our senior law partner, the late Howard C. Gilmer, Jr., a former U.S. Attorney for the Western District of Virginia. The late Stuart B. Campbell, Jr., of the Wytheville Bar and a former president of the Virginia Board of Bar Examiners, read the commission.

A news article written by Ham Crockford for the *Richmond Times-Dispatch* described the proceedings surrounding Alex Harman's 1969 swearing-in ceremony before the Supreme Court of Appeals as follows:

It was small wonder that all those Southwest Virginians poured out of the mountains yesterday to see Alexander Marris Harman, Jr. join the Virginia Supreme Court of Appeals.

The towering West Virginia native had been one of the most earnest boosters of their area's economic development since he moved there after getting his degree from Washington and Lee University's law school in 1944. That 'sideline' outlet for his energies was in addition to practicing law.

He set, and scored, equally high marks for himself in his judicial performance through the circuit that includes Carroll, Grayson, Pulaski and Wythe counties and the City of Galax.

It took two chartered planes to bring them, 104 of them in all, and Richmonders swelled the crowd. His mother, 77, a widow, came too.

She and her son, now 48, a bachelor with a football tackle's build, make their home together in Pulaski. His father, a coal mine operator, died in 1946.

I was on board one of those two chartered planes when they left our recently completed community airport, one that Alex Harman and others like him had worked long and hard to bring to its fruition.

What a festive day it was: "bloody mary's, screwdrivers and breakfast pastries" on takeoff and more serious libations on the return flights later that afternoon — "a party of parties," befitting our W&L heritage! After landing, Alex treated his enthusiastic crowd of supporters to a posh reception and luncheon. I feel sure that his tab reflected the extent of our thirst and our southwest Virginia gastronomic proclivities. I vaguely remember that sand-

wicked somewhere in between there were the speeches and the installation ceremonies for a Staunton lawyer, George Cochran, who was also sworn in as a new justice on that same day.

While Justice-to-be Harman waited his turn, the only other bachelor member of the court, Justice Thomas C. Gordon, Jr., of Richmond, was heard admonishing Alex in words to this effect: "There's nothing to it. It's just like a marriage ceremony. It's over so quickly, and after that, it's just the devil to pay!"

Small wonder that Alex never opted to tread the aisle of matrimony.

### *Some Final Reflections*

There are many other things I remember about Alex Harman. On a more personal note, let me share just a few:

I can still see, in my mind's eye, a huge lumbering form barrelling down the middle of Claytor Lake on water skis, being pulled by a boat which must have been traveling forty miles per hour. It was not a graceful nor a pretty sight — more desperate than anything else! Still, he didn't fall. I learned only later that Alex had never learned to swim.

There were times when Alex was absent minded. Years ago, when our law office needed to double its filing capacity, Alex bought a simple file cabinet with four stacked drawers. He was proudly showing it to our senior partner, telling him that this would serve the firm's filing needs for years to come. As is usually the case, the keys were taped inside the first drawer. When the senior partner wanted to know how the filing drawers could be locked, I will never forget Alex's reply. Almost condescendingly, he said: "It's very simple, you lock it by pushing this little knob up in the right hand corner." And with that, he did! It took two weeks for a local locksmith to restore the cabinet to its fully functional state.

Like so many who are possessed of sharp intellect, Alex had no mechanical aptitude whatsoever. Of course, one couldn't tell him that, for he certainly would have taken umbrage. When one of my sons was quite young, I remember Alex working with me into the early morning hours, trying to put together a little red wagon in time for Santa's arrival. It shouldn't have been difficult — just four wheels, a body, a handle, a tongue and various other assorted parts, which were interesting but also confounding. Still, we finally mastered the task and that little boy was mighty happy on Christmas morning.

Just before Alex's death, and while he lay in a hospital bed in much worse distress than any of us realized, he had an out-of-town visitor. As sick as he was and when talking was difficult for him, he asked this visitor to

assist him in what proved to be his last official request. All who knew Alex will remember how seriously he took the rite of franchise. He believed that one's failure to vote was a cardinal sin. So the visitor to Alex's hospital room completed Alex's absentee ballot application when Alex knew he would not be able to cast his vote in the upcoming November election. That gesture, I think, says much about what kind of person Alex Harman was.

Incidentally, and maybe it was purely by chance, that hospital visitor who filled out Alex's last absentee ballot application was the same small boy for whom Alex helped me put together that little red wagon many years before. Coincidentally, they had another connection too, they both completed their law schooling at Washington & Lee.

Finally, it goes without saying that Alex Harman loved his alma mater with every fiber of his being. I remember the spirited but meticulous planning that was required when he arranged to have a barrel of single malt Scotch whiskey brought over from Scotland for the May 7, 1977 dedication of Lewis Hall. Few know what a hassle it was. In order to clear U.S. Customs, he had to have the contents of the barrel emptied and put into bottles, which then had to be labeled by a licensed distillery. Next a tax stamp had to be affixed to each bottle. Only then would they pass muster. Thereafter, and before the dedication festivities commenced, he arranged to have all the bottles emptied back into the original barrel in the best tradition of "Jockey John Robinson." (That's another story many may recall, but too long to retell.) I still have and cherish a souvenir tin cup that Alex had made to serve as a suitable vessel for dispensing that glorious Scotch whiskey to all the dedication participants.

Alex's generosity to his beloved alma mater did not end there, for he left the bulk of his estate to our Washington & Lee University School of Law. It has been estimated that his bequest will approximate \$3 million.

Most of all, Alex Harman was proud of his alma mater. He worked diligently to help many an applicant gain admission, and when it didn't always work out, he was quick to let the administration know how he felt. He was comfortable in doing that because his bond with the institution was so close.

Alex Harman had no immediate kin who survived him. His friends sometimes worried that he might be lonely, but, in truth, this law school and all of us who were nurtured here, became his "chosen family."

We'll miss you, Alex!



James Jennings\*

Judge Harman, as he was known and routinely called by folks in Pulaski, Virginia, even after his elevation to the Supreme Court of Virginia, was by every measure a man of the law. He was not one to dwell on his own accomplishments. He did not view being a justice of the Supreme Court of Virginia as a grant of personal power. Rather, he saw it as an opportunity to be of service.

As a law clerk to Judge Harman, I was privileged to get to know him, become his friend, and to learn from a master mentor not only law, but also how lawyers should conduct themselves with their peers in and out of court. I learned from him that power easily can be abused and that constant diligence is required to conduct oneself properly. Lawyers are granted powers and special privileges in society that are necessary to the administration of justice. These powers and privileges are not to be used lightly or without consideration of the consequences of their use. Judge Harman constantly reminded lawyers of their responsibilities in a gentle but clear fashion, usually by example.

He was dedicated to the judiciary and believed firmly in its role in society. He always remained keenly tuned to the political process, the balance of powers of the branches of government, and the responsibilities of good citizenship. He thought the primary role of the Supreme Court of Virginia was to decide properly the case before it and to be careful not to set an unwarranted precedent with loose dicta. He was aware that the trial bar and the trial bench looked for guidance even in the nuances of the opinions of the Supreme Court, and he believed *stare decisis* demanded tight opinions clearly written and of sound logic.

A man of absolute integrity, he devoted himself to service of others as a lawyer and to the search for justice through the rule of law as a jurist. He fully understood that advocates are to use supreme court opinions as guideposts rather than as mechanical rules. Nevertheless, he was quick to stop the advocate who went beyond what he perceived to be the bounds of the court's power in making law. His opinions were crafted carefully to apply statutes and case precedent and not to create law from his personal feelings and reasoning.

A life long bachelor, Judge Harman's law clerks became "his boys," and he never lost touch with any of us after we left his service. He relished our successes and suffered our defeats, always encouraging us in our

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\* Principal, Woods, Rogers, Hazlegrove, P.L.C., Roanoke, Virginia. Mr. Jennings is a former law clerk to Justice Harman.

endeavors. He kept up with our families and enjoyed the company of our children as he came to know them. As one might expect, his boys became a fraternity. In our many reunions with "The Judge," as we called him, we were challenged in a gentle way to set higher goals and to dedicate ourselves more completely to the law. He set a high standard for us as a model, and we loved him.

He also loved Washington and Lee and strongly supported the School of Law. He served the law school in many formal and informal capacities, created a scholarship, and gave many of us who were graduated from the School of Law our starts in the practice of law. Seemingly, he always found reasons to stop by Lexington and to visit the school to confer with the dean or faculty. He offered his counsel to new deans as they arrived in turn over the years. He never imposed himself upon them though, probably because they readily accepted his counsel.

The Judge loved a good story and could tell war stories as well as any raconteur. In his career, he participated in the full range of experience that the trial practice can provide. He would gather friends, former clerks, and lawyers around a dinner table and spend the evening in conversation usually focused on the humorous side of life in the courtroom. In these wonderful evenings in which I participated, I came to realize that he not only was teaching while entertaining, but also was listening and measuring the progress of his wards.

This remarkable man left a mark upon the profession, a legacy for Washington and Lee, an inspiration to those who worked with him, and above all, a model for those who seek to follow the law as a career, whether on the bench or at the bar. His boys, among others, miss him.

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Barry Sullivan\*

It is a great honor for me to be able to talk with you this morning about Justice Alex Harman and what he meant to Washington and Lee. It is a great honor, but a difficult assignment, to try to convey in a few words all that Alex meant to the law school. He was a distinguished practitioner and an accomplished jurist whose legal career was fittingly completed by service on our highest court. Alex's alma mater was pleased to bask in his reflected glory. Some indication of the esteem in which the university held Alex

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\* Dean and Professor of Law, Washington and Lee University School of Law. These remarks were delivered at the funeral of Justice Harman in Pulaski, Virginia, on November 4, 1996.

might be found in the fact that we conferred on him virtually every honor in our arsenal: the honorary degree of Doctor of Laws, honorary membership in the Order of the Coif, the Distinguished Alumnus Award, and the presidency of the Law School Association. On the other hand, I know very well that these honors do not come close to showing what Alex Harman meant to Washington and Lee. Alex was a fiercely loyal, proud, interested, and generous alumnus. He was a very special member of our university's family.

Alex gave generously to the university. He served on the Law Council for many years, giving the law school the benefit of his vast knowledge and experience, and he also served as president of the Law Council. He was always available to give wise counsel to the dean, and I, like my predecessors, have benefitted greatly from it. Alex also contributed generously to the University in financial terms. Among other things, he contributed a substantial sum to establish the Alexander M. and Rose S. Harman Law Scholarship Fund in 1984, in memory of his father and mother, and his will makes provision for a substantial addition to that fund. Indeed, the Alexander M. and Rose S. Harman Law Scholarship Fund is the principal beneficiary under Alex's will. Alex's generosity has been light-hearted as well as high-minded. In 1977, for example, Alex even provided 45 gallons of fine Scotch whiskey to celebrate the dedication of Sydney Lewis Hall, whimsically recalling Jockey John Robinson's fabled celebration of the laying of the cornerstone of Washington Hall in 1824.

In view of all these benefactions, large and small, whimsical and profoundly serious, it bears emphasizing that Alex's most important gift to Washington and Lee was himself: his character and his values. The law school was part of the fabric of Alex's life. It was embedded deep in his heart, and it was never far from his mind. Alex had what only could be called a keen interest in the law school and an insatiable appetite for information about what was going on there. When I last talked with Alex a few weeks ago, he was not feeling very well, and he thought that it would be some time before he could come to campus again. Still, he was keenly interested in all that was going on. We were looking forward to a visit from Justice Anthony Kennedy of the United States Supreme Court, and he wanted to know about that. He also wanted to know, in excruciating detail, about the entering class — their grades, their test scores, what other things they had accomplished, and, most important to Alex, what kind of people they were. More than anything, however, Alex wanted to know about the students who held the scholarships he had established in memory of his mother and father. I told Alex that Brian Howie, who had been senior articles editor of the Law Review, was beginning a clerkship with Judge

Rhesa Barksdale of the United States Court of Appeals for the Fifth Circuit, and that Liz Misiaveg, who had served as editor-in-chief, was working for the firm of Faegre & Benson in Minneapolis. I told Alex that Brian and Liz had been students in my Supreme Court seminar, that they were both excellent students and wonderful people, and that they would be outstanding lawyers in the years ahead. I also warned Alex that it might be hard to find students as exceptional as Liz and Brian when we chose the next Alexander M. and Rose S. Harman Scholars, and that he should not expect us to top that achievement. Alex chuckled. Of course, he said, but that was exactly what he expected.

As I look back on that conversation, and on the many conversations Alex and I have had since I became dean two years ago, two things stand out in my mind. One is the very deep pride and interest that Alex had in the law school, especially with respect to its students. The other is the exceptional modesty that Alex always showed in his dealings with me and, to my knowledge, with everyone else. He was greatly interested in the law school, and he was greatly interested in seeing that it was run properly. He had no intention, however, of trying to run it himself, or of telling me how to run it. There was always good advice for the asking, but one had to ask for it. And one asked, of course, with great frequency. Alex's modesty was noteworthy because that is not a virtue that comes immediately to mind when one thinks of accomplished lawyers or distinguished judges, and Alex was both. But above all, he was a man of wisdom, and of great modesty and humility.

Alex was proud of the progress the law school had made in the quality of its program and the strength of its reputation, but that pride had a sharp focus. For Alex, education was about people. That is why he was so interested in the qualifications of our entering class and in what the members of the class were like as people. That is why Alex was so interested in the challenges that each of them faced and in doing what he could to make sure that those challenges would not be so great as to be disheartening or overwhelming. That is why Alex was always so concerned about the magnitude (and the consequences) of the financial burdens that so many of our students must shoulder today. That is why he took such interest in the accomplishments of our students and in the hopes that we hold for them.

For Alex, law was about people, too. Perhaps that is why he was so interested in law students and young lawyers. He knew that by touching them, and by enriching their lives, he would also enrich the lives of the countless people who would come to depend on those young lawyers, not just as advocates, but as counsellors, friends, and fellow citizens. For Alex, law clearly was about people. It was not about sport, and it certainly was

not about gladiators. Nor was it about amassing accolades or great personal wealth. For Alex, law was about problem-solving and peacemaking, and about the infinite possibilities it holds for enriching human life in ways both great and small, but particularly in ways that are small. As Alex knew so well, it is often the small ways that count the most. Above all, perhaps, Alex saw that law was about justice, not in some abstract sense that would have made him uncomfortable talking about, but in the profound sense that law provides an opportunity for the ideal to become imbedded in the particulars of human life. In that regard, I think of a phrase that the poet Seamus Heaney used in his Nobel Lecture last year, one that he took from Yeats: "They have helped me to hold in a single thought reality and justice" — to make reality and justice one. That, after all, is the end that we seek.

Everything that concerned Alex was motivated, I think, by the idea that we are put here for a purpose. We are put here to serve, to use the gifts that God has given us to try to help each other, to try to make life a little better for our neighbors, and to work together for goals that we believe in.

It is fashionable at the moment to paint lawyers as scoundrels, as people who know how to take, but not to give. It is fashionable to say that lawyers contribute little of value to society. I doubt that there is much truth to that sentiment. If there is any truth to it, however, it is because more lawyers do not hold the values of Alex Harman. It is because more lawyers do not have the love for their communities, and the love and respect for their fellow citizens, that Alex had. Alex loved Pulaski and its people, and he loved Washington and Lee. It was a love that was returned many times.

What, then, did Alex mean to the law school? Above all, he gave us a model to which we can aspire if we wish to live good and useful lives, as lawyers, as citizens, and as human beings. Personally, I can say that conversations with Alex always left me with a renewed sense of what law schools can do at their best: encouraging the growth and development of generous, public-spirited, caring, ethical, and competent lawyers who will serve their communities as well as their clients. Alex always made me feel good about our law school and about our profession.

Alex Harman was a big man, a good man, a generous and gentle man, a modest man. I will miss him.

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# ARTICLES

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