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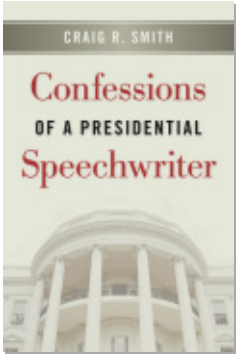
# Chapter Thirteen. Protecting Broadcasters' First Amendment Rights

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## CHAPTER THIRTEEN

# Protecting Broadcasters' First Amendment Rights

One day in early August of 1986, my realtor called to say that an elderly woman who lived on the 12th floor of my building, in a condo with a south- and west-facing wraparound balcony, wanted to sell her place without listing it. She wanted a quick sale, providing enough money to get her into a retirement home in Williamsburg. I had 24 hours to make a bid before it went public. It took me five minutes to OK the deal. I moved up to the top floor of Madison House and once again looked down the Potomac and into the sunset.

During the summer of 1986, I would move up in another way. After the New York Times Company gave me a grant to write a book on the history of First Amendment challenges in America, I received a call from News America Corporation inviting me to New York for a private lunch with the Australian turned U.S. citizen Rupert Murdoch. Up to this time, I had been unsuccessful in getting Murdoch to join the foundation. Here was my chance. A limousine picked me up at LaGuardia Airport at 11 a.m. and whisked me off to Murdoch's office in the building that housed his company and the *New York Post*, his salacious tabloid. The context for my visit was clear: In 1981, Murdoch had purchased the *Boston Herald* from the Hearst Corporation; his company, Fox Broadcasting, also owned a Boston television station. He had been given a waiver by the FCC under the cross-ownership rule because the *Herald* would have gone under if it couldn't transfer revenue from the television station. Murdoch was not at all unhappy that the newspaper he bought regularly attacked Senator Ted Kennedy, often referring to him as "fat boy." Kennedy was furious and decided to introduce legislation ending Murdoch's waiver under the cross-ownership rules.



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I was ushered into Murdoch's "Citizen Kane" office, where we made a little small talk and then adjourned to a private dining room overlooking the East River. We were joined by the editor of the *Post*, who barely said a word during our lunch. I noted that Murdoch served a Sanford chardonnay with our salmon; Sanford is a wonderful Santa Barbara winery. Was it a coincidence? Or had Murdoch read my resumé and learned that I graduated from UC Santa Barbara? He asked what I planned to say in my filing at the FCC regarding how the agency would carry out the Kennedy mandate. (His legislation was passed because it was attached to a spending bill that Reagan couldn't veto without bringing the government to a halt.) I repeated the arguments against the cross-ownership rule from memory. A week later, a check for $10,000 arrived to support the work of the foundation, the same amount we received from our other newspaper supporters.

When he had introduced his bill in late 1987 to end Murdoch's cross-ownership waiver, Kennedy said, among other things, that the Freedom of Expression Foundation was "a front" for Murdoch. I was furious and happy at the same time. Furious, because Kennedy had slandered the foundation, which had many more supporters than Murdoch, including Kennedy's friends at the *New York Times* and the *Washington Post*, and we had attacked the cross-ownership rules long before Murdoch came into the picture. Happy, because I could use the attack by Kennedy to raise funds for the foundation from conservatives. I held a press conference in which I listed all of our contributors and our board members, including Katharine Graham. I then pointed out to the press that Kennedy could not be sued for anything he said on the floor of the Senate, but if he was not on the floor of the Senate or in one of its committees, his speech was not protected.[1] Therefore, I challenged him to come off the floor of the Senate and repeat his charges about the foundation. "If he does," I declared dramatically, "I will sue him for slander." Needless to say, Kennedy never took up the challenge, and the coffers of the foundation were filled anew.

In the meantime, the press, including Graham's liberal *Washington Post*, went after Kennedy and his sneaky tactics. On January 5, 1988, the *Post* wrote, "It is disgusting that these all-inclusive spending bills . . . become vehicles for special, personal and even petty interests pursued by legislators when they think no one is looking." Six days later, I was quoted in the *New York Times* on the issue. On January 6, 1988, the *Wall Street Journal* weighed in: "Senator Ted Kennedy now admits he plotted to kill a newspaper he doesn't like; indeed he boasted about it."

Murdoch was forced to sue the FCC, which was commissioned to carry out Kennedy's legislative mandate. When the case of *News America*

*Corporation v. FCC* was finally resolved, we were vindicated. The Kennedy legislation was condemned as a "bill of attainder," that is, aimed not at a group or category of businesses, but at one man, Murdoch, and therefore it was unconstitutional. In footnote 11, the U.S. Court of Appeals for the District of Columbia wrote:

> Senator Kennedy appeared to believe that the Freedom of Expression Foundation was little more than a Murdoch front organization working in concert with News America. . . . That perception is not borne out by the record in this case. Freedom of Expression Foundation is a nonprofit organization supported by numerous daily newspaper publishers, broadcast licensees, newspaper and broadcast trade associations, and other corporations. For instance, the *Washington Post* and the *Times Mirror* organizations are major contributors; News America is a relatively minor one.[2]

The foundation was an even bigger player on the First Amendment stage. The decision reestablished the FCC's right to issue waivers for the cross-ownership rule. We filed papers asking the FCC to abolish cross-ownership rules altogether. In response, they voted to reform them in a way that allowed for more waivers and expanded cross-ownership opportunities.

## MAKING A RUN AT THE FCC

For his 1986 Senate race, Packwood had amassed a huge $4 million campaign war chest. His opposition in the Republican primary was a fundamentalist minister who attacked Packwood on the abortion issue and for his disloyalty to Reagan. Against my advice, Packwood decided to hammer the minister with negative radio ads. The strategy backfired when voters decided Packwood was using his money unfairly. He won the primary, but it was closer than it should have been. Learning his lesson, Packwood went on to an overwhelming general election victory as I sat on the set at CBS doing another stint with Diane Sawyer. We were saddened by the fact that the Republicans lost their majority in the Senate despite Packwood's win.

Packwood found himself without the prestige of being a committee chairman, and with his wife Georgie beginning to protest his drinking. She demanded that Packwood and their children enter counseling. The children must have squirmed through these sessions, especially when Packwood admitted that his career was more important to him than his family.

I learned this sad story on one of the many days that he and I sipped wine in his underground chamber in the Capitol building late in the afternoon. (Senior senators get these special rooms in the bowels of the Capitol for their private use.)

Nineteen eighty-seven began with a bang when Mark Fowler resigned from the FCC and I became a candidate for the Republican opening on the commission. I was supported by Packwood, which wasn't much of an endorsement with Reagan, who would make the appointment. Vice President Bush told me he would support me after his personal candidate, an African American aide, was eliminated. However, Eddie Fritts of the NAB and other members of the foundation's boards badly wanted me on the FCC and let the White House know. I called in chits from all the senators I had helped over the years. When letters came in from Senators Alan Simpson, Strom Thurmond, Pete Domenici, Mitch McConnell, and Barry Goldwater, it was clear I was the Senate's candidate for the job and I would have no trouble getting confirmed if nominated.

But getting the President to nominate me was another matter. The evangelicals wanted one of their broadcasters on the FCC, and the White House tried to appease them, given their support for Reagan. However, it was eventually discovered that the evangelicals' potential nominee was a closet atheist! Another candidate moved forward from another quarter, only to be found guilty of tax evasion. Bush's candidate languished on the list.

As lead candidates bubbled up, they could be seen at various functions on the arm of the former chair of the FCC, Dick Wiley, whose claim to fame was imposing the cross-ownership rule in 1975 to punish the *Washington Post* for its role in the Watergate crisis. He now opposed the cross-ownership rule, realizing that it was broadcasters who buttered his bread. After stepping down from the chairmanship of the FCC, he had formed his own law firm and by 1987 was the preeminent communications lawyer in the nation. He would volunteer to show potential FCC nominees around, wine and dine them, and then assure them that he could coach them through the confirmation process.[3] Wiley, with whom I had played some doubles tennis at NAB events, paid no attention to me until May. That's because on May 5, Tom Griscom, assistant to the President for communications and planning, wrote, "I have looked into the situation regarding the seat to be vacated by Mark Fowler and am happy to advise you that you are very definitely a candidate for the position. . . . You are very much in the running. I'm hoping it won't be long before I have something nice to tell you!" Since Griscom had worked for and was close to Minority Leader Howard Baker, his words meant a lot. Sure enough, I was finally called to the White House

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for an interview with Patrick Dennis, the head of White House Personnel; my name then appeared all over the trade publications, which claimed I was sure to get the nomination. Dick Wiley took me by the arm at the first party at which he spotted me and began acting as if he had been my mentor for years. Then nothing happened for weeks. Finally it was announced that Patrick Dennis would be the new nominee. Tom Griscom called me from the White House and personally apologized: "I thought you had it; I really did. But the Reagan people weren't going to let a Packwood guy onto the FCC. So they picked one of their own from the inside."

The failure to get the FCC nomination upset me more than any of the other jobs I failed to get. It also led to another moment in my life when an existential assessment was in order. I had continued to mentor friends and help them with their lives. One was having trouble with depression despite a successful career in law. "I'm happy when I'm around Ann, but struggle everywhere else," he confessed.

"So marry Ann," I told him. He took my advice, and they are still married over twenty-five years later. However, in their jobs and marriages, often building families with children, my mentees had much less time to spend with me.[4] Others were having trouble as adults. Two were going through divorces, which led them to question their judgment. When they did have time to get together, they were less interested in philosophical issues and less available for one-to-one dinners. Furthermore, my personal life was empty. I began to think it might be time to move on or get onto a campus where your social life and vocation are intertwined. My vacations in California had their problems. I was transient in California, as visitors often are. I sometimes had nothing to do during the day while I waited for people to get off work and be ready for dinner. What if I had my own home and life there again? An excuse to move soon presented itself.

## THE COMPLEX DEATH OF THE FAIRNESS DOCTRINE

Let me begin by summarizing our progress up to 1987 on getting the Fairness Doctrine repealed. After our hearings of 1984, Chairman Mark Fowler of the FCC had instituted its investigation of the doctrine. We filed the results of the Senate hearings, and I testified before the FCC along with others seeking repeal of the doctrine. The FCC concluded that it was "constitutionally suspect," but that they were obligated to impose it because it had been codified in 1959. The FCC then found Meredith Broadcasting in

violation of the doctrine because its station in Syracuse did not give the Syracuse Peace Council, yet another Nader subsidiary, the right to present a contrasting point of view regarding the use of nuclear energy. On September 30, 1986, the case came before Judge Laurence Silberman, the husband of Packwood's former press secretary; he was highly critical of the FCC during oral arguments. Earlier in the month, Justice Bork of the D.C. Court of Appeals, with Judge Antonin Scalia concurring, ruled on the teletext case, saying that the Fairness Doctrine had not been codified in 1959; that 1959 amendment to the Communication Act of 1934 only said that the FCC had the right to impose the doctrine, not that the doctrine had been codified.[5] If they could impose the doctrine, they could suspend it. Relying on this ruling, Silberman issued his decision in January 1987, which remanded the *Meredith* case back to the FCC for rehearing. The FCC suspended the Fairness Doctrine on August 4, 1987. The Supreme Court then upheld the FCC's action by denying Nader's appeal. It was a great victory for our coalition.

We still had a battle to fight on another front. When the Bork decision came down, several members of the House and Senate vowed to codify the Fairness Doctrine, arguing that had been the intent of Congress in 1959.[6] Senator Fritz Hollings (D-SC), who replaced Packwood as chair of the Commerce Committee, initiated the effort. I was allowed to testify at the hearing in March of 1987 and embarrassed some of the Democrats who constituted the majority on the committee by pointing out that the right-wing Eagle Forum, among others, supported the doctrine and had used it to kill the Equal Rights Amendment. I also relied on Bork's decision to stress that the argument about airwaves being scarce was invalid. I cited the case of Frederick Berg, a man who filed a fairness complaint against NBC alleging that the World War II Holocaust never happened, and demanding that his contrasting point of view be put on the air. Instead of dismissing the complaint out of hand, the FCC had the obligation under the law to pursue it, costing NBC a fortune in legal fees. I was backed up over the next week with editorials I requested from *USA Today*, the *Washington Post*, the *Wall Street Journal*, and many more. The campaign of persuasion was in full swing.

When Hollings's bill came to the floor of the Senate, Packwood gave a magnificent speech attacking the bill as an assault on the First Amendment. Near the end of the address, Packwood pulled a letter from his pocket from the Justice Department. It had recommended to President Reagan that he veto this bill if it came to his desk. The bill passed, as expected, but it did not carry by enough votes to override a veto. The House also passed the bill because most politicians hate the press, because it has at some time reported

something inaccurately and/or uncovered their scandals—financial, sexual—and their unethical conduct. So any attempt to deregulate the media always meets with massive resistance on Capitol Hill.

Luckily for our side, Ronald Reagan had once been a broadcaster and was open to their arguments. He vetoed the legislation and announced the fact in his radio address to the nation on Saturday, June 20, 1987. The bill was dead in the Congress, and so was the Fairness Doctrine, or so we thought. Hollings was not finished. In December, he used Kennedy's tactic of attaching an amendment to the continuing resolution for the funding of the government. The amendment would have reinstated the Fairness Doctrine. The House included the amendment in its version of the continuing resolution, and the resolution then went into a conference committee to have the differences worked out. President Reagan made clear that there were only two pieces of the resolution that would cause him to veto it and bring the government to a halt. One was the limitation on aid to Nicaraguan rebels, the Contras, and the other was the codification of the Fairness Doctrine. The Senate conferees sided with the President by a vote of 14 to 13, and the House reluctantly went along. The Fairness Doctrine was finally dead.[7] And our fight had made national headlines. The foundation was more credible than ever.

At that juncture, it would have been easy for the advisory boards to have declared victory and dissolved the foundation. But to a person, they said they valued the research I provided and wanted the foundation to continue. I told them I would think about it. It hit me that the foundation might serve as an entree to a campus as a kind of First Amendment research center.

## THE BORK FIGHT

However, before I could run that idea past the Senator, he got into another battle with the White House. It afforded me an inside look at the Supreme Court nomination process. When President Reagan nominated Robert Bork to the Supreme Court, many conservatives were delighted. He was a distinguished scholar as well as a strict constructionist judge. And from my perspective, he had been very helpful during the Fairness Doctrine fight. However, adding another conservative to the Supreme Court set off alarm bells in the liberal community, particularly among women's groups that feared repeal of *Roe v. Wade*, which gave women the right to choose to have an abortion.

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Liberal groups knew that Bork had lots of baggage. As a Yale professor, he had defended strict construction and close reading of the Constitution, and attacked judicial activism. As a member of the D.C. Circuit Court of Appeals, he had put his philosophy into his rulings. More troubling was the fact that as acting attorney general, Bork had fired Watergate prosecutor Archibald Cox when no one else would do it. The ABA divided on the Bork nomination, with the majority declaring him "well qualified," and the minority claiming he was "not qualified." In contrast, in the earlier cases of William Rehnquist and Antonin Scalia, the "well qualified" designation had been unanimous. The ABA majority report claimed that Bork's rulings had been "fair" and "balanced."[8] Bork's essays and books revealed that he did not believe the Constitution should be interpreted liberally. He drew the most attention for his 1963 article in the *New Republic* and his lectures that were published in the *Indiana Law Journal*. In the former, he implied that the 1964 Civil Rights Act violated the rights of white property owners; in the latter, he made clear that only explicit language in the Constitution gives Congress power to act. Furthermore, his literal readings of laws often ignored legislative intent, which worked against the interpretations put in place by the Warren Court in general, and *Roe v. Wade* in particular.

Since Bork was not tainted by any financial or other kinds of scandals, he would have to be attacked on ideological grounds if his nomination was to be stopped. That tactic had not been used before; only conflicts of interest, financial scandals, or past racism had stopped previous nominees.[9] In an appearance on *Face the Nation*, Senator Joseph Biden, who was considering a run for president in 1988 and was the chair of the Judiciary Committee, had warned that if the President nominated Bork, the Senate would resist because Bork had an unacceptable "predisposition" on all major issues. The day after Bork's nomination, Ted Kennedy hyperbolically proclaimed that "Robert Bork's America is a land in which women would be forced into back alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, school children could not be taught about evolution." A week later, Biden pleaded with the public to become more active because the administration was moving the Supreme Court back in time. When Biden continued to assure groups that he would oppose the Bork nomination, even the *Washington Post* faulted him: "While claiming that Judge Bork will have a full and fair hearing, Sen. Joseph Biden this week pledged to civil rights groups that he will lead the opposition to the confirmation. As the Queen of Hearts said to Alice, 'sentence first—verdict afterwards.'"

However, Bork became his own worst enemy. I watched as he humorlessly engaged Senator Arlen Specter (R-PA) in a long philosophical debate on the Constitution. He claimed to have changed his mind about *Hess v. Indiana*, another free-speech case. Stunningly, he said that he would not overturn *Roe v. Wade*, and that commercial and broadcast speech probably deserved more First Amendment protection than he had previously believed. Bork was dismissive toward the Ninth Amendment, which reads, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Senator Leahy (D-VT) claimed that Bork was undergoing a "confirmation conversion." Bork's craven, lackluster performance gave Packwood his rationale for opposing the nomination.

However, the White House gained an advantage when press reports of plagiarism eliminated Senator Biden from the ongoing Democratic presidential nomination process. Biden borrowed liberally from a speech by Neil Kinnock, the Labour candidate for prime minister of Great Britain. Reporters soon found paragraphs from Robert Kennedy's speeches unacknowledged in Biden's campaign talks. Then a reporter discovered that Biden had been suspended from law school because of plagiarism. Three strikes and Biden was out.

President Reagan went on the offensive; eventually, he would make more than thirty public statements in support of Bork—some on national television to the viewing public. This campaign of persuasion was another major turning point in the nomination process because from here on out, presidents would make public statements supporting their nominees, a practice that was quite rare prior to Reagan. Nomination debates moved from the Senate to the public sphere.

Packwood attacked Bork in a speech on the floor of the Senate after the public and media pressure forced the full Senate to take up the nomination. George Will then attacked Packwood in the *Washington Post*.[10] After three days of dramatic debate, six moderate Republicans, including Packwood, voted against Bork. The nomination was defeated 58 to 42 on October 23, 1987. The White House public-relations machine and congressional liaison office could not overcome Bork's rhetorical inadequacies, change of positions on important cases, record on political issues, and the major media opinion leaders turning against him.

## FINDING A HOME

During the Bork fiasco, Vice President Bush began to campaign in earnest for the Republican nomination. I had begun working with Jim Pinkerton, Bush's "issues guy," in April of 1987. One of the first documents I worked on was a position on "Trade Policy."[11] Along with it I suggested that Bush's speeches needed to project the persona of a man who was "a straight shooter, a guy who plays by the rules, and an intelligent guy who is not afraid to be tough. Let's kill this wimp stuff now." Because of his Ivy League background and Gentleman Jim approach to life, Bush was seen as something of a softy by some reporters and columnists.

When Bush made his formal announcement, I provided language to deal with the fact that no sitting vice president had been elected to the presidency since Martin Van Buren in 1836. Addressing this issue, Bush would state that "records were made to be broken." He wrote a note thanking me for "putting old Martin Van Buren to rest." I then helped Bush get ready for the Republican primary debates, in which he performed rather well. My favorite moment came when former governor of Delaware Pete Dupont asked Bush to "give peace a chance." Bush responded, "Let me tell you something, Pierre," which was his real name, "America must always operate from strength." That prick burst Dupont's bubble and he vanished as a viable candidate.

## THE JOB HUNT

I continued to seek an avenue back into academia. One opportunity occurred in November 1987 when I was invited to speak at the National Communication Association's annual meeting in Boston. The NCA had rented Faneuil Hall, where Daniel Webster had given a number of his famous speeches. I was invited to present a paper on Webster since I had published research about the remarkable Massachusetts senator and two-time secretary of state. It was wonderful to give the lecture in the old hall where Webster had given a eulogy to Thomas Jefferson and John Adams, who happened to die on the same day, July 4th, fifty years after they had signed the Declaration of Independence. Behind me was a mural that portrayed Webster's famous 1830 Senate debate with Senator Robert Hayne. My appearance ended a busy year that included lectures at Drake University

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in Iowa, DePauw University in Indiana, Clemson University in South Carolina, and, much to my delight, the University of Virginia.

To keep the board of the foundation happy, if I were to move to a campus, I would have to be near a media center, and I knew there were only a few places I wanted to live. The choices were further narrowed by the available openings for full professors with tenure. Eventually, I was asked to interviews at the University of Maryland and George Mason University, both near Washington. On the other side of the country were interviews at the University of California, Berkeley and California State University, Long Beach.

I set up preliminary meetings at Berkeley and Long Beach during my Christmas break in California. I liked the fact that the Berkeley department had the courage to call itself "Rhetoric" where so many others shied away from the term and went with the new catchall "Communication Studies." The University of California was a "research one" university, meaning the emphasis was on publication of research, not the teaching of students. I had published numerous scholarly articles and headed a prestigious foundation. However, as I have mentioned, the University of California usually required that a professor publish a university press book before tenure could be obtained. I had published two textbooks and a study of the ratification debates surrounding the Constitution, but none was a university press publication. The department chair at Berkeley tried to ease my anxiety on the matter. He said that they could give me all the credit I needed to be eligible for tenure within a year of my being hired. While I had a scholarly book in the works, I did not have a university press contract. So I was leery of the Berkeley arrangement, particularly having watched professors of mine perish when I was an undergraduate.

On January 5, I drove to Long Beach State to meet with Richard Porter, the chair of their Speech Communication Department. The interview got off on the wrong foot because traffic delayed my arrival, so a meeting with the dean of the college, which Porter had arranged, was canceled. Porter, a former Navy man, told me that the department had gotten the job line for which I was applying because the department had a very good record in terms of hiring minorities and women. "It's kind of ironic that a white, male Republican would be our hire using a position we received as a reward for our affirmative action record!" Well, I thought to myself, if you only knew the diversity I would be bringing to the place.

## BUSH BOXES WITH RATHER

Back in Washington, the 1988 presidential campaign was in full swing. I was regularly sending issue-position papers to the Bush camp, and memos on how he should conduct himself in debates. Then came one of the strangest nights in American political history.

On the evening of Ronald Reagan's last State of the Union Address, Dan Rather was to interview Bush on the *CBS Evening News*. Around the city, people gathered over cocktails and dinner to watch the Bush interview and then the State of the Union Address. I knew that Bush was concerned about being tied to the Iran-Contra scandal in which the United States had shipped arms into Iran, who then sent other arms to our allies in Nicaragua to fight Daniel Ortega's Communist government there. Roger Ailes, who was advising Bush at the time, told me that Rather's producer assured Bush that after a question or two on Iran-Contra, the interview would move on to other issues. Bush insisted that the interview be live so that it could not be re-edited by CBS. Ailes was in Bush's vice-presidential office during the interview, and I watched from a dinner party, martini in hand, as millions of Americans tuned in at 6:30 P.M. Eastern Standard Time that cold January evening.

After the headlines, Rather turned to interview Bush, who appeared on a screen in front of Rather. Of the three anchors of the evening news shows, Rather was by this time the most sensational. For example, he had caused a stir when CBS refused to interrupt a football game for the *CBS Evening News*, and Rather had stormed off the set. As expected, Rather began the interview by peppering Bush with questions about Iran-Contra, and Bush defended himself, saying he was "out of the loop" on the deal. Rather didn't buy it. He quoted former secretary of state George Shultz and Bush's aide Donald Gregg to the effect that Bush was informed about what was going on. Bush told Rather that he had answered the questions on Iran-Contra and wanted to move on to other issues. Rather refused and continued to question Bush about Iran-Contra. Bush said that Rather's producer had promised that other issues would be covered. Rather ignored him. Angered, Bush finally said we all make mistakes. "How would you like it if I judged your career by those seven minutes you walked off the set? I have respect for you, but I don't have respect for what you are doing tonight."

Rather looked stunned but pushed on. "Mr. Vice President, I think you'll agree your qualifications for president. . . . are much more important than what you just referred to." He then asked Bush to participate in a full press conference on the issue. Bush responded that he had done 86 news conferences since March of 1987. Rather put words in Bush's mouth: "I

gather the answer is no. Thank you very much for being with us." Turning away from the monitor on which Bush's face could be seen, Rather said, "We'll be back in a moment."

The shock of Rather cutting the Vice President of the United States off stimulated a chatter across the nation as we all waited in anticipation for Reagan's last State of the Union Address. Two and half hours later, the President arrived in the House chamber to more than the usual huzzahs and cheers at 9 P.M. Eastern Standard Time. Even though the House and Senate were now in the hands of the Democrats, civility demanded that Reagan be given his last hurrah. As he moved up to the dais, Reagan handed a copy of his speech to the Speaker of the House, Tip O'Neal, and another to Bush, both of whom sat behind a high desk that was behind Reagan.

Reagan began by acknowledging the record of his presidency, but said, "Let's leave that to history: we're not finished yet. My message to you tonight is, put on your work shoes—we're still on the job." The audience cheered. He humorously reasserted his philosophy: "Chinese philosopher, Lao-tzu, said, 'Govern a great nation as you would cook a small fish; do not overdo it.'" This principle was used to support a spirit of bipartisanship, which Reagan hoped would pervade the Congress.

After this introduction, Reagan announced that his speech would be organized around "four basic objectives." The first focused on strengthening the economy. The second on social programs, particularly schools. The third on global strategies for economic development and the spread of democracy. The fourth objective was to enhance national security. This was an important and effective move since it consolidated his speech in understandable blocks instead of covering 51 issues in 51 minutes, which is too often the case with State of the Union Addresses.

He then turned to economic growth as the Vice President and the Speaker could be seen turning pages and following along. Reagan's underrated use of statistics could be seen in this section as he wove evidence into the speech: "We have had a balanced budget only 8 times in the last 57 years. For the first time in 14 years, the federal government has spent less in real terms last year than the year before. We took $73 billion off last year's deficit. . . . The deficit itself has moved from 6.3 per cent of the Gross National Product to only 3.4 per cent." As he often did, Reagan concluded his litany of statistics with a punch line: "I can assure you, the bipartisan leadership of Congress, of my help in fighting off any attempt to bust our budget agreement. And this includes the swift and certain use of the veto . . ."

Two paragraphs later, Reagan launched another litany that was prologue to one of the most unconventional moments of any State of the Union

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Address. Reagan pointed out that only 10 of 91 appropriation bills had made it to his desk on time: "Last year, of the 13 appropriations bills due by October 1st, none of them made it. Instead, we had four continuing resolutions lasting 41 days, then 36 days, and two days, and three days. And then along came these behemoths." Suddenly, everyone's attention, including the television cameras, was drawn to tall stacks of paper sitting near the President. He moved over and lifted one up and brought it back to his lectern: "This is the conference report—a 1,053 page report weighing 14 pounds." He plopped the stack down to much laughter. He stepped over and picked up another one. "Then this—a reconciliation bill six months late . . . 1,186 pages long, weighing 15 pounds." He plopped it down and picked up another stack, again to continuing laughter and cheers. "The long-term continuing resolution—1,057 pages long, weighing 14 pounds." He dropped it on the table and then continued to much laughter, "That was a total of 43 pounds of paper and ink. You had three hours—yes, three hours—to consider each, and it took 300 people at my Office of Management and Budget just to read the bill so the government wouldn't shut down. Congress should not send another one of these. . . . And if you do, I will not sign it." The House Chamber erupted with applause and cheers. This passage was signature Reagan taken to new heights. The use of a litany of statistics, visually illustrated by heavy props, and concluded with an effective punch line.

Reagan then called for education and welfare reforms. On welfare, Reagan uttered this line contributed by Peggy Noonan: "There are a thousand sparks of genius in 50 states . . ."[12] On the issue of drugs, again Reagan was unconventional. The moment went this way: "The war against drugs is a war of individual battles, a crusade of many heroes—including . . . someone very special to me. . . . Nancy, much credit belongs to you, and I want to express to you your husband's pride and your country's thanks." The audience cheered as the First Lady took a bow from the gallery. With a wink, Reagan added, "Surprised you, didn't I?"

Near the end of the speech, Reagan argued that progress was being made in terms of returning Latin America to democracy. His proof played right into the Iran-Contra scandal, which had been the subject of Rather's fight with Bush hours earlier. Having won over the audience, Reagan could now help his vice president out. "The Sandinista regime knows the tide is turning and the cause of Nicaraguan freedom is riding at its crest. Because of the freedom fighters . . . the Sandinistas have been forced to extend some democratic rights, negotiate with Church authorities, and release a few political prisoners." Reagan called on Congress to "sustain

the freedom fighters," clearly indicating that the Iran-Contra crisis was behind him. In fact, Reagan claimed that we could be for Nicaragua what foreigners like "Lafayette, Pulaski, and Von Steuben" were to the American Revolution.

Reagan closed by taking his audience outside of the House Chamber and down to the Potomac, where they could see the lights of Washington, D.C., reflected in the river. It had become his "shining city on a hill."

The fallout from the earlier Bush-Rather dustup had begun immediately. The CBS switchboard lit up like the Eiffel Tower on Bastille Day. During his lead-in to ABC's coverage of the State of the Union Address, Sam Donaldson took a shot at Rather by saying he went "too far," and accused him of "arrogance." The next night Rather tried to rationalize what he had done: "Now, a personal word if I may about last night's interview with Vice President Bush. First, no, CBS did not mislead the Vice President about the subject matter. . . . Secondly, I of course respect the office of the vice presidency. . . . Trying to ask honest questions and trying to be persistent about answers is part of a reporter's job. . . . The fact that more attention is given to the heat than the light is regrettable, but it goes with the territory."

Neither man was helped by the exchange. Despite his disclaimer, Rather had violated the rules of the interview and been rude to the Vice President. Bush had hit Rather with a cheap shot, a tactic that tarnished Bush's image. On the Republican side in the Iowa caucuses, the winner was Bob Dole, even though Bush had the better ground team. Bush faced the challenge of having to win in New Hampshire, or being out of the race. Luckily, Bush ran ahead of the pack there, and then consolidated his victory on Super Tuesday across the South. At that juncture, he asked me to rewrite his standard campaign speech and make it sound "presidential"—no more petty stuff, because he believed he had won the nomination fight and wanted to run as a national leader, not as a politician seeking the nomination. At last he had seen the light.

## A CALIFORNIA CONNECTION

My job interview process continued when I flew back to Long Beach for a full day of conversations and a lecture to the students on the campus. The dean and the provost were excited about bringing in my foundation. At the end of my lecture, the students peppered me with questions. My interview with the faculty went well until a senior member of the department asked,

"These job lines are hard to get. What guarantee have we that you will stay? After all, you've jumped all over the place in your career."

Before I could answer what seemed like a fair question, another faculty member jumped in. "Don't answer that. You don't have to answer that. It is none of our business. Our job is just to hire the most qualified person for the job."

Before a fight could break out, I interjected that I did not mind answering the question, and proceeded to say, while there were no guarantees, I believed I was "at a point in my life where I'm ready to settle down. And as a native Southern Californian, Long Beach makes a lot of sense to me. My parents are only 100 miles down the road." At the end of the day, Richard Porter told me I would receive an offer of a full professorship with one class off each semester to run the foundation on the campus. I told him I looked forward to working out a contract, not knowing how difficult that would eventually prove to be.

In late March, I received word that the president of George Mason University had confiscated the job line in communication and turned it over to the Economics Department so they could hire a Nobel Prize–winning economist. However, the job at Maryland was still open and I was invited to spend April 6th on the campus, interviewing and giving a guest lecture on political campaigns. My problem with the Maryland position was that the administration did not seem to have full faith in the department. Having been through the debacle at Virginia, I did not want to take the risk of joining a department that might be done in.[13]

A few weeks later, the job offer had not yet arrived from the dean at Long Beach, so I called to inquire about the delay. He said there were a couple of problems that needed to be worked out. First, the Chancellor's Office was leery about having the foundation move to the campus and use the university's charitable status with the IRS. I told the dean that we had our own 501(c)(3) status with the IRS, and that I would make all of our books available to the Chancellor's office. "Well, what about this?" he suggested. "Why don't you keep the foundation off the campus, and start a new center on the campus that the foundation would fund?"

"That's fine with me," I replied. "In fact, it works to my advantage. I just can't imagine why they want to do it that way."

"There is no explaining how lawyers' minds work."

"What's the second problem?"

"Well, that's a bit more difficult. It turns out that we have never brought anyone to this campus with tenure. So we would like to give you credit toward tenure, and bring you up for tenure after your first year. How does that sound?"

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"I'm afraid that's unacceptable. I had tenure at the University of Alabama in Birmingham."

"Yes, I know, but we've never done this before."

"My board will not allow me to move the foundation and its staff to California without a tenure guarantee. I can go to Berkeley for the same terms you've offered me."

That seemed to surprise the dean, who concluded our conversation by saying, "Let me see what I can do." I was beginning to think I'd have to spend another year in Washington and start to search for an acceptable job all over again. In the interim, I was a guest speaker at the Bill of Rights celebration at the University of Virginia and then, with other presenters, treated to a candlelit dinner in the famous Rotunda at one end of the lawn in the center of the campus. A week later I gave the first Carroll Arnold Lecture at Penn State. In my opening remarks, I was very happy to be given the opportunity to acknowledge everything Carroll had done for me while I was his student. Silver-haired, he beamed from the front row of the auditorium.

By May things began to fall into place. Bush had sewn up the nomination as the Soviets withdrew from Afghanistan, giving the administration a boost. He prepared for the Republican Convention scheduled for New Orleans in August. He had me appointed to the Convention Special Proceedings Staff where I would help speakers with their speeches and contribute lines for his. I couldn't help wondering if there might be a place for me in the Bush administration if he won the election. My subsequent meetings with Roger Bolton, Bush's chief of staff, did nothing to lower my expectations. In Atlanta, the Democrats nominated Michael Dukakis, the governor of Massachusetts, who selected Senator Lloyd Bentsen of Texas as his running mate. It was the first conjunction of a Massachusetts-Texas ticket since JFK and LBJ. And the Democratic ticket moved into the lead in the polls.

The dean at Long Beach called to say that the decision on tenure would be left to the department. If they voted for it, he would grant it. I was relieved because I believed I could carry that vote. A week later, word arrived that the department had indeed voted to grant me tenure. I began to make preparations to move myself and the foundation to California. I met with Packwood in the Senate Caucus Room. When I described the job to him, he congratulated me on my return to academia but expressed sadness at my leaving Washington.

I put my condo overlooking the Potomac on the market, and it sold for a nice profit a few weeks later. I could now afford a place to live in Long Beach. I resolved that I was not going to be a California commuter; I wanted to live close to the campus, which luckily was only a few miles from

the beach. So I could live near the beach, avoiding the smog and blight of the larger Los Angeles metropolitan area, and still get to work quickly. My new home was a short walk to the beach. It sat on a peninsula that jutted into a bay.

My going-away dinner back in Virginia took place at the apartment of Phil Bane, one of my former students. All of my friends who were former Virginia students showed up and we had a grand time. Each one had a story to tell about me—some funny, some moving, some life-changing. I promised to visit often and told them to come to California when they got the chance.

After the movers pulled out, I began my drive across the country on July 25, 1988, heading down to Bristol, Virginia, my first night on the hot and humid road. I drove across the length of Tennessee the next day from the mountains to the Mississippi River flats. I had dinner with a former student in Memphis, Mason Granger, who was the station director of the NBC affiliate there. I spent the 27th and 28th in Arlington, Texas, with my former student from San Diego State, Jack Williams, who had fathered my godson. He had moved up at American Airlines and with his wife Judy created a wonderful family.

On July 29, I drove to Amarillo to stay with one of the quirkiest contributors to the Freedom of Expression Foundation. Stanley Marsh ran the ABC-TV affiliate there, and through his wife, the couple inherited a small fortune, since her grandfather had invented barbed wire. They used their money in innovative ways. First, they adopted many children. Then they built their home, Toad Ranch, where I stayed; it contained a small menagerie of various animals. There were camels, llamas, peacocks—who woke me in the morning with their shrieks—pigs, horses, sheep, and even an island for black swans.

## A DIGRESSION: ME, PAUL, AND MICHAEL

The 30th was marked by an easy drive to Albuquerque, where I stayed with my college chum Paul Bardacke and his wife in their house on the bank of the Rio Grande River. I came to catch up on things and play some tennis. The next day was blistering hot. Luckily our tennis match was interrupted by a rare summer rain. However, just as the rain started, Paul screamed, "Run for the house!" It was as if he was allergic to raindrops. When we got into his house, I said, "What in the hell was the rush? The rain was nice."

"Look at your socks."

Suddenly, I saw blood coming through the top of my socks in several places. "Oh, my God. What did that?"

"Mosquitoes. They are the most vicious I've encountered anywhere in my life." Calamine lotion was applied to the bites and I had learned about the famous killer mosquitoes of Albuquerque.

It was good to relax with Paul. We had met as rival debaters in high school and then wound up on the same debate squad in college. As I mentioned earlier, it was Paul who introduced me to Michael Douglas. At that time, Paul was very liberal, and his older brother, who attended Berkeley, was an avowed socialist who played a part in the Free Speech demonstrations there in the '60s. Paul's parents were socialist English professors. He was one of my many buddies who thought someday he might become president of the United States.

After graduation, Paul went on to law school, became a very successful lawyer in Albuquerque, and began to talk about making a difference in the world. I encouraged him. Then I received a letter in which he wrote, "I would like to be Attorney General [of New Mexico]. But I am nervous about politics—about running for office—about possibly losing—about reorganizing my life. I guess I called you just because I wanted you to say 'do it, have fun, learn from it.' I think you said that."[14] And I had.

In 1982, when Paul ran for attorney general of New Mexico, Michael and I came to help out when I could get free of my duties at Chrysler. Because of his celebrity status, Michael was very helpful in raising money. His wife at the time was Diandra, a shy but beautiful daughter of the Spanish ambassador to America. Michael and Diandra had met at Jimmy Carter's inaugural. He literally fell in love with her across a crowded room. At the fundraisers we did for Paul, Diandra felt uncomfortable in the crowds seeking to get close to Michael. So my job was to keep her company, which also served to keep me away from the Democrats at these events who might object to Paul having a Republican advisor. Diandra and I became good friends.

I wrote Paul's main campaign speech, rehearsed him for events, and worked on his campaign commercials, which Michael then filmed. Michael and I became much closer. One night in Santa Fe, Michael, Diandra, and their infant son Cameron were put up in one cabin and I was in another behind Forrest Fenn's art gallery, where we held a fundraiser for Paul. After the gallery emptied, Michael and I stayed up and drank before the fire in my cabin reminiscing about old times. That night, we also talked about gun control. Michael lived only blocks from where John Lennon had been shot in 1980.

Working with his friend Jann Wenner, the editor in chief of *Rolling Stone*, Michael had helped to create Cease Fire, an organization that fought for gun-control legislation. I was able to get Senator Packwood to help us out behind the scenes on one important piece of legislation, and then I wrote speeches for Michael on the topic. For me, it was the beginning of both a renewed relationship with Michael and a new cause. Eventually, he was named an "Ambassador of Peace" by the United Nations and expanded his area of concern to land mines, small arms, and children used as soldiers. I continued to write speeches for him to give around the world. He also helped my campus center by raising funds for it; in fact, while making the film *Wonder Boys* in Pittsburgh in 1999, he sent a letter to his friends begging them to send funds to the center.[15]

During his election campaign in 1982, Paul had fire in his belly and easily won. He served for four years with distinction; in fact, the Justice Department Building in Santa Fe is named for him. Paul was a leader of all the states' attorneys general in their suits against the tobacco companies. He ended a lot of corruption in New Mexico and strengthened its criminal code.

However, term limits prohibited Paul from running for statewide office for four years. So it wasn't until 1990 that Paul could seek the governorship.[16] Former governor Bruce King entered the Democratic primary against Paul. We did what we could, but King won with 52 percent of the vote, and Paul was heartbroken. That did not stop him over the ensuing years from being a very successful lawyer; he even appeared before the Supreme Court.

After leaving Albuquerque, I traveled on to Flagstaff and finally to see my aunt in Laguna Niguel, who acted as my realtor. I visited my parents and then moved into my condo on August 4th. It felt wonderful to be home in California again. Soon I was visiting my parents regularly, renewing old friendships, and starting new ones. And importantly, learning the virtues of living in Los Angeles.

But first, it was off to another political convention.