The *Catfish Solution* Memoir

Introductory Note: These excerpts from the book *Catfish Solution* are presented as memoir-like material written in 1974 and first published in 2018. Why "memoir-like"? Because the book is primarily focused on the author's experience as U.S. Maritime Administrator and Federal Communications Commissioner – the functioning and failures of those agencies and some suggestions for reform.

The memoir-like material contained here (chapters 1-3 and a portion of chapter 5) is an attempt to answer the question the author was often asked: "How did you ever come to be Maritime Administrator?" (or an FCC commissioner). What was it in my background (if anything) that might have contributed to these presidential appointments? What lessons might there be in my story that would be of relevance to those mentoring young persons who wish to prepare for public service positions?

Notwithstanding that focus, for anyone who is sufficiently interested in my memoirs to have reached this online location there may be some details and observations here not available elsewhere.

Nicholas Johnson, Iowa City, December 13, 2019

Chapter One

Educating a Dissenter: The Early Years

It Is difficult to separate my experience, insights and memories of the Federal Communications Commission from my own background and personality – and I do not try. There are no known deliberate misrepresentations in this book, but neither can anyone, including this author, guarantee the truth of recollections. Memories evolve with time and their retelling. Others could write about these seven and a half years (1966-1973); some already have. Their recollections and opinions may differ from mine.

It is only fair to provide a brief sketch of the upbringing, experiences and perspective that accompanied me when arriving at the Federal Communications Commission on July 1, I966.

If you disagree, and would rather skip this chapter, you might want to start with chapters two or three.

If you'd like to know more, read on.

Students in high school, college, law school, and teachers engaged in career counseling may find it useful to read about the forces that moved the author to government service. During informal question and answer sessions with students they often ask about the path to, as they put it, "get into government."

Secondly, any piece of writing – including court opinions and newspaper stories – is in part about the author as well as the subject at hand. The more you know about an author the more your comprehension and ability to challenge his or her assertions is enhanced.

Finally, this book is an unabashed personal account of what I did, said and thought as an FCC Commissioner. It makes no pretense of being an unbiased, academic analysis. It is almost impossible to understand what any individual did from age 31 to 39 without some notion of what happened during the prior 30 years. In any event, here are selections from my first three decades.

My life has involved a heavy measure of the academic – a word intentionally used to connote both its pejorative and positive qualities.

I was literally born on a university campus – the University of Iowa Hospital – in Iowa City, Iowa, during the fall of 1934. Both my parents grew up as farm kids, children of immigrants; she, Edna Bockwoldt, from northwest Iowa, he, Wendell Johnson, from northeast Kansas. Both came to Iowa City about the same time and were University of Iowa graduates. My father created and directed at that University one of the world's first and principal center for research in speech pathology (stuttering and related speech and hearing handicaps). He attended Alfred Korzybski's lectures on general

semantics (the role of language in human behavior, as distinguished from a "semantics" of defining words). Dad wrote People in Quandaries and helped launch the International Society for General Semantics and its journal, ETC, with Drs. S. I. Hayakawa, Anatol Rapoport and Irving J. Lee. I was brought up with general semantics and it helped to shape my broad, social-impact understanding of communications while at the FCC.

A strong undercurrent of humanist values came from my parents, their friends, school, Unitarian Church, and reading. Those values remain to this day.

Iowa City was an intellectually stimulating small town during 1934 to 1952 and remains so today. It is occasionally characterized as "the Athens of the Midwest," and still brags of more poetry and novels per person than any city of comparable size in the United States, along with similar Chamber of Commerce and University claims.

The town was small enough even as a child you, as small-town folks say, "knew everybody." It seemed to me at the time there was almost total blindness to socio-economic status, racial or religious differences. The fellow who sold popcorn and soft drinks at the college ballgames, and the Iowa City Press-Citizen outside Racine's Cigar Store, was as well-known a personality as the president of the bank across the street, football coach or University president.

The Iowa Child Welfare Research Station was one of the first to study so-called "normal children." Notwithstanding that entry requirement, I was admitted to the two-year-old, three-year-old and four-year-old groups. At age five I moved down the street to a kindergarten in the University's experimental schools, the first of 13 years in a building with an elementary and high school until graduation in 1952. Twenty years later I was asked to deliver the last commencement address before the University closed the schools ("The Last Commencement Address: The U High Idea," June 1, 1972).

Rather than the expensive, elite, private school one might imagine, a legal fluke made U High even more egalitarian than Iowa City's public schools. Schools were provided by townships. The townships around Iowa City each

had so few students they could not afford high schools. By law, townships without high schools had to send their students, and pay their tuition, to school districts that did. Because U High charged lower tuition than Iowa City's high school, City High, U High's student body was predominantly farm and small-town kids along with those of us raised in professors' homes. They were not only fully competitive academically in high school and college, they also enabled the rest of us to maintain some measure of respectability athletically in Eastern Iowa Hawkeye Conference basketball, football and track.

Our teachers were University professors with a commitment and sense of excitement about educational process that transferred to us. In addition to our being their students, we were the subjects, the guinea pigs, for their creation, testing and revision of the nationally accepted Iowa Tests of Educational Development, as well as other research. Only later, when my children were educated in what were said to be good public schools, did it become obvious how exceptional the University of Iowa Elementary and High School education had been. There are few schools approaching their teaching and research quality today and the nation is the poorer for that.

We were encouraged to develop a sense of our own individuality and worth (what a theologian might characterize as "divine spark") in an atmosphere in which such growth was not only tolerated but positively encouraged. Of course, critics might use words like "permissive" and "lack of discipline," but we didn't do crazy stuff and neither individuals nor physical property suffered discernable damage.

Once trained to challenge teachers, challenging the notions of fellow FCC commissioners with dissenting opinions came naturally. The notion that it is possible, even sometimes commendable, to dissent was enhanced with early knowledge of the dissents of Justices Hugo Black, Louis Brandeis, Benjamin Cardozo, William Douglas, Oliver Wendell Holmes and others. To do so as a member of a multi-person administrative agency was illustrated for me by the dissents of Federal Trade Commission Commissioner Philip Elman (1961-1970) while I was Maritime Administrator. Justice Black was a special hero with his dissents, though as a high school student the prospect of my someday serving as his law clerk did not even appear in dreams.

U-High's courses would sometimes involve writing our own textbooks, as in geometry. Most teachers believed our love of learning, and skill with methods of learning, was more important than memorization of facts. Whether in spite of their approach or because of it, we seemed regularly to better the state-wide test scores of our peers in other schools.

Out of this early experience came a respect for the intellectual and rational process as an approach, if not the only approach, to problem solving and public policy. We also developed a commitment to public purpose and public service – whether by a research psychologist or an elected public official. It was unthinkable even to contemplate private profit from public business, particularly if it would involve even the slightest compromise of the public interest.

My own academic interests tended to focus on the social sciences, government, law and politics. The first reported indication of a commitment to popular representation and social change came in the fourth grade. We students organized what may have been one of the early student sit-ins – for this occasion in our grade school principal's office. Our demand was for an elementary school student council. That our request was granted was considered a great victory. In retrospect, Principal Herbert F. Spitzer was probably thrilled beyond words with this evidence of student initiative and would only have wondered why we waited so long with our demand.

During junior high I worked as a janitor and night watchman for the Iowa-Illinois Gas and Electric Company. After cleaning and waxing floors, it was my responsibility to open the community meeting room for local civic groups and lock up when they left.

My parents had given me a copy of The Autobiography of Lincoln Steffens, and I used the long evenings reading what seemed an incredibly lengthy volume. I was turned on by Steffens' challenge to communities around the turn of the century. He claimed he could find corruption in any American community within a couple weeks.

Iowa City struck me as the perfect place to test his thesis. Peacefully nestled along the Iowa River, peopled by intelligentsia and upstanding

merchants, it was simply unthinkable Steffens could find corruption in Iowa City.

Once I learned Lincoln Steffens obtained much of his information from waitresses and taxi drivers I began looking for and interviewing waitresses and taxi drivers. Many were willing to share what they knew.

Within three days they told me of charges that bribery had occurred with purchases of trucks and parking meters. The most horrifying discovery was a plan to locate the City's swimming pool on farmland seven miles from town rather than the City Park.

Investigation revealed a member of the City Council had an interest in that land. A classmate and friend of mine, Dick DeGowin, arranged our first introduction to city government and politics. His mother, president of the local League of Women Voters, explained what was then Iowa City's ward system for council members. We began circulating a petition throughout the ward of the councilman who owned the land.

We then attended a City Council meeting and placed the petition on the bench in front of that council member, while presenting as persuasive a speech as we could muster. Ever after we've had a little extra pride when we drive by the pool in Iowa City's Park.

My mother's father, Mox Bockwoldt, arrived in America on his own in 1890 as a 15-year-old speaking no English. After a course in double-entry bookkeeping in Davenport he made his way to a lifetime of farming and business in northwest Iowa. He served in the Iowa House of Representatives for sixteen years and once gave me a tour of the House Chamber where I was permitted to sit in his seat. I was very proud and fond of him. When he presented me a gift of the 1939 Code of Iowa I not only read it from cover to cover (with some fast skimming through the building code) but was inspired by it to use precious paper-route money to buy a copy of the 1936 Municipal Code of Iowa City.

My reading of Iowa City's Code led to my first successful court case.

The first fellow in my class with a driver's license was Lou Maher. Lou and I would occasionally shop for electronics equipment. We never bought any as I recall, but we did spend time looking. One day we emerged from a World War II war surplus store to discover Lou's car, parked in the alley, had a parking ticket under the windshield wiper. We could scarcely afford gasoline, and certainly couldn't pay parking tickets.

I agreed to be Lou's lawyer, prepared myself on the local law of alley parking, and argued our case before the local justice of the peace. Relying on the loading zone provisions of the Code, which authorized alley parking for those loading merchandise, I created and argued a doctrine of constructive loading. Surely the drafters of the authorized alley-parking exception must have intended to include the possibility of loading within the exemption for loading. After all, no one can know when parking in an alley whether the store will have, and they will be loading, that which they have come to purchase. Lou was found innocent, although admonished not to do it again.

This left me a little perplexed at the time: if I was correct, and we had done no wrong, why should we not do it again? If, on the other hand, there was no doctrine of constructive loading, shouldn't we have been fined? It was only years later that I became aware of the fact that the Justice of the Peace, Emil Trot, was also a graduate of University High School and was undoubtedly approaching our behavior from much the same perspective as my elementary school principal received our demand for a student council.

During junior high Dick, other of our young friends and I formed what we called the Junior Bureau of Investigation. We collected old wanted posters from the Postmaster, Sheriff, and Chief of Police. After I wrote a text for the group on fingerprint classification we used the fingerprints on the posters for training exercises. We wrote FBI Director J. Edgar Hoover of our willingness to provide local assistance to his organization. Although he sent us literature and encouragement, he kindly explained why we could not be a Johnson County Chapter of the Federal Bureau of Investigation. (Of the six of us, three ended up as medical school professors, two as law professors, and one as a Ph.D. chemistry professor.)

This activity led to what all of us believed to be my first encounter with the FCC.

A University of Iowa criminology professor, Richard Holcomb, administered an annual Iowa Peace Officers Short Course for state and local law enforcement officers which he invited us to attend. That was where we learned of the importance of communications to police work, and Mr. Holcomb provided us some catalogs from radio equipment suppliers.

Since none of us had either a police car or the money to acquire radio equipment we bought a ten-in-one kit from Allied Radio in Chicago for thirteen dollars. The catalog informed us that with this kit we would be able to build from among the ten choices a phono oscillator. This device was intended to enable the utilization of an AM radio receiver to play music, from a phonograph without an amplifier, through the radio's amplifier and speaker.

To broadcast from the phonograph to the radio an antenna was attached to the phono oscillator. The instructions warned that one should never use more than a 25-foot antenna. This was exactly the wrong thing to advise junior high school boys. We promptly climbed out the attic window onto the roof of my parents' home and began stringing up 500 feet of braided copper wire.

Although the voice transmission would only broadcast on unused frequencies we discovered when we broadcast in Morse code the signal could be received on a car radio parked directly under the transmitter of the 5,000-kilowatt local radio station, WSUI. Scarcely had our experiment concluded when one of our members, Howard Berg, reported from Iowa City's east side that he had seen an FCC monitoring truck. We never knew the truth of that report, but I always suspected that the time it took us to turn that transmitter back into a ten-in-one kit radio receiver would have set a record.

During the Second World War Iowa City was the location for a U.S. Navy pre-flight training school. We learned how to communicate with semaphore flags, ran the obstacle course, rooted for their Seahawks' ball teams, and went on their hikes. We were as welcomed by them as we were by the

University professors whose laboratories we wandered through as if they were our playrooms. (One of our friends, Jerry Holland, became acquainted with John Glenn at that time and was later rewarded with appointment to Annapolis, where he now teaches, having completed a tour as captain of a submarine.)

I also attended a Navy course in Morse Code and, after our near run-in with the FCC, constructed a telegraph service between my house and that of neighbor Willie Weber. The use of wire required pounding nails through the roof of Willie's house, the leaks from which his mother, Martha, still remembers to this day. It also involved draping copper wire through the trees of a neighbor's yard which significantly weakened the signal. My mother suggested if we really wanted to talk to each other we might just use the telephone, but mothers never understand such things.

The high school was sufficiently small, maybe 200 or 300 students, that everyone necessarily participated in virtually every activity. There were three or four bands in which I played a variety of instruments while participating in all varsity sports, the full range of drama and speech activities, student council and several clubs. The debating team, which won state-wide championships, brought me to a serious consideration of public policy issues long before it otherwise would have happened, as well as providing some experience in analyzing and presenting issues in public speaking. We always had current events discussions in our social science classes exposing us to what was going on in the world. In my senior year John Haefner's course, "Readings in Social Studies," introduced us to Plato, Machiavelli, Marx, and the Utopians.

My interest in student politics evolved about the sophomore year in high school; I was elected president of the student council both my junior year (which was unprecedented at U High) and re-elected my senior year. Along the way I was also elected President of the Iowa Association of Student Councils and served for three years as the National President of Hi-Y – the high school branch of the Young Men's Christian Association (YMCA).

The Hi-Y position carried with it the opportunity to represent the YMCA to the United Council of Churches (UCC) and its high school component, the United Christian Youth Movement (UCYM). The irony of a young Unitarian

representing Hi-Y to an affiliate of a UCC that refused membership to the Unitarian Church was not lost on me. When I complained that a young men's organization really should have someone under the age of 65 on its board of directors, I was promptly appointed. That was to be my first experience as a minority group spokesperson. It also gave me my first contact with some of the country's top business leaders, and exposure to what I would subsequently come to know as systems analysis.

"What is the role of a Hi-Y in the 1950's?" I asked and discovered another lesson that was to serve me well in Washington 25 years later. When it comes to the fundamental issues – such as "what is our purpose and why are we bothering with this at all?" – not only does no one have the answers, the odds are no one has even asked the questions.

"Now that schools and city recreation departments are providing facilities formerly only provided by the Y should we reconsider our recreation facilities program?" I asked. "And where does the 'Christian' part come in? Is the dance my local Hi-Y puts on somehow more Christian than the dance sponsored by my high school Letterman's Club? It sounds like the same words and music to me." Years later somebody told me they were going to have a study of Hi-Y, but I don't think I was sent a copy, and I wouldn't bet major changes were made.

One of my first trips to Washington alone was for a YMCA Youth in Government program. I then presumed it must be about the most important thing going on in Washington, as we went from agency to agency for briefings and debates of public policy issues. As Maritime Administrator and FCC Commissioner I would meet with Washington study groups of high school and college students and try to recall the special feeling I had about my own experience when their age.

The chance to meet President Harry S. Truman would have been something special at any time. He struck us as friendly and natural, and genuinely interested in our following careers in government as he spoke of his earlier years of Kansas City court house politics.

Such programs do have their impact. A few years later when I had a chance to spend the summer in Washington, D.C., as a law student clerk at

Covington & Burling, I snapped at it – while my University of Texas classmates chose summer jobs in Austin, Dallas, and Houston. I spent that summer plowing through thousands of pages of FCC opinions, trying to find a pattern to the award of TV licenses in comparative hearings. The only pattern involved newspaper ownership. Commissioners appointed as Republicans were often unconcerned about common ownership of papers and stations. Democratic Party appointees were more likely to consider it a demerit.

There was an opportunity in high school to participate as a student senator for a day or two in the State Capitol building in Des Moines. We debated and enacted legislation. Having been splattered with mud by semi-trucks I drafted, introduced, lobbied for, and succeeded in enacting a bill requiring trucks to be equipped with mud flaps. The idea caught on and ultimately was enacted by the real legislature. It was a proud experience to return to the chambers my grandfather had first shown me.

After graduating from high school, I married a grade school and high school classmate, Karen Chapman, and we went to the University of Texas in Austin together. We each held a couple part-time jobs apiece, had our first child, Julie, carried a full load of course work, managed our apartment house, and lived on $1200-to-$1300 a year. Karen earned a degree in education and began teaching. I majored in political science and then attended and graduated from the University of Texas Law School. We both made a deliberate choice to avoid student activities and use this time in our lives to concentrate on education though there were plenty of temptations to do otherwise.

We chose Texas both because it would have been a little awkward for both of us, if attending the University of Iowa, to have neighbors and long-time family friends as professors, and because I had a sinus condition for which Texas was believed to be the answer. It was.

But once there we found just being in Texas during the 1950's (1952-1958, plus a year in Houston) was an education for a couple of Iowa kids. Nationally these were the years of President Eisenhower, Senator Joseph McCarthy and the Silent Generation. Politically the state was divided between the Democrats who voted for Republican presidential candidates

(conservative wing), and Democrats who voted for the Democratic presidential candidates (labor, liberal, loyalists). The oil and gas industry had considerable political power.

And yet in the middle of Texas, amongst the conservative-oil-McCarthy-racist population was a small cluster of Texans not unlike the people we'd known in Iowa City.

Yet there was a difference. The difference was that they were eking out an existence in a very hostile environment and were toughened by their guerilla lifestyle. Intellectual freedom was a prized possession they were willing to and had to fight for. Of course, there were those who would rather settle for a nice job with an oil company, and all the country club privileges thereto pertaining. But they could not avoid the realization they were making a choice. They could not unconsciously slide into that verdant pasture; they full well knew they'd chosen to switch rather than fight.

We had to picket to open a local movie theater to Blacks. The dormitories had to be integrated. The first Black had only recently been admitted to the Texas Law School by a U.S. Supreme Court decision (Sweatt v. Painter, 339 U.S. 629 (1950)). The first Black came onto UT's football fields during our years there. There were black and white drinking fountains and often rows of rest rooms – professionals, working class, public – all divided by Black and white as well as men and women.

Eleanor Roosevelt was forbidden to speak on campus. Willie Morris, the author of North Toward Home, had to risk his job as Daily Texan editor and challenge an official censor because the Regents had been angered by his daring to carry AP news items impliedly critical of the natural gas industry. The revered law school dean, Page Keeton, had to put his job on the line more than once as did various chancellors.

As a local precinct captain I began to see the relationship between political power and money. The abject poverty of Black East Austin stood in stark contrast to the palatial homes in the hills of white West Austin. When those in power forced others into a life of poverty, inadequate education and the poll tax, the result was only 10 percent of East Austin voted while 90

percent of West Austin did – thereby both legitimizing and perpetuating the inequity.

Central to the consciousness-raising process (for those of us who experienced it) was former Daily Texan Editor Ronnie Dugger's The Texas Observer begun in 1954. It was one of the first and best of what ten years later were called underground newspapers. It spawned numerous first-class writers, including Bill Bramer, whose novel The Gay Place also describes the Austin and Texas of the 1950s of which Willie Morris wrote.

Although merely living in and being forced to the choices Texas offered in the 1950s was education enough, my course work was not incidental. Largely through former students and friends of my father and others at Iowa, I was able to make contacts in each department of the University of Texas that were willing to help me find the best of their colleagues.

Dr. Bill Wolfe was especially helpful. Dr. Bill Livingston helped steer me into political science. In any event, the result was that I had first-class professors for all my courses, from freshman English on. This gave me contact with good minds; men and women interested in education, ideas and excellence. It was as nearly a continuation of what University High School offered as one could find at a state university.

My junior year there was a coincidental combination of courses that had a collective impact upon me and would later influence my understanding of corporate domination of television. There was a cultural anthropology course taught by an iconoclastic Professor J. Gilbert McAllister, once described as "a Texas liberal confronting galloping McCarthyism and deep Texas conservatism." He had us read, among other things, Ruth Benedict's Patterns of Culture.

Dr. McDonald's course in Twentieth Century Political Thought introduced the class to Arthur Koestler's Darkness at Noon and George Orwell's 1984 (also assigned reading in two or three other courses). Dr. Robert R. Blake's social psychology course opened my eyes to some of the early experiments studying how an individual's behavior and observations could be altered by a group. A very colorful professor of agricultural economics, Dr. Montgomery, gave a series of lectures (having nothing to do with either

agriculture or economics) attended by as many visitors as students. He was the one who introduced me to Thorstein Veblen's The Theory of the Leisure Class, which ultimately influenced my book, Test Pattern for Living. Moreover, this was followed during my law school years with the combined impact on the national consciousness of books such as Vance Packard's Hidden Persuaders, William H. Whyte's The Organization Man and C. Wright Mills' The Power Elite.

The combination of course work and political realities of Texas gave me a perspective that has proven useful over the years. America does have a class system. It was obvious to me walking a few blocks east or west from our Austin apartment. Wealth and power tend to reinforce each other. They are occasionally associated with oppression of individuals and ideas that stand in their way. They often practice excessive materialism. Texas gaudy is merely a comic caricature, a less hypocritical rendition of the tasteless greed of those for whom "more is better and too much is not enough."

From power and oppression can come bending of the human spirit, the twisting of ideas, values and lifestyle into forms that more smoothly serve the economic interests of those who control. To prevent this requires a massive effort at consciousness raising.

Those who seek to reform such a system – such as Dr. Martin Luther King and Senator Robert Kennedy – must be prepared to exhibit extraordinary courage in confronting those who have the power to bring them untold misery and even death.

I would later come to understand the role of television in this process.

Chapter Two

The Law: Training and Practice

After college the CIA wanted to interview me (never seriously considered it), did interview for the Foreign Service (U.S. State Department), avoided interviews with corporations, and ultimately decided to attend law school. This was not so much a perception of law as a rational path to a life of

social reform as a way station; the all-purpose graduate program. Law school could provide relevant training for business, government service, teaching – as well as the practice of law. It would provide three more years to mull over decisions about a career.

Law school also appeared from a distance to offer rigorous training in analytical process. Once back in Austin, now in law school, I was not disappointed. Not all professors and students were equally gifted intellectually, but all at least seemed to be striving for excellence and tidiness of mind. Maybe I took it more seriously than other students, but probably not. We were reminded of Justice Oliver Wendell Holmes admonition, “The business of a law school is … to teach law in the grand manner and to make great lawyers.” [Remarks, Harvard College’s 250th Anniversary, 1886.] Such an environment provided a felt obligation to develop one’s knowledge and skills, as a medical student might feel, because of the professional responsibility, not to mention the grief one might forever carry at having inadequately protected another’s fortune or life.

Law school had its impact in a variety of ways. The first-year spirit was sometimes akin to what I imagined in a Marine Corps boot camp. The efforts and skills were different from an undergraduate college education, success was guaranteed to no one, and long hours and hard work seemed the only possible response. Years later, The Paper Chase (1973), a movie about law school, reminded me of my own experiences. The analytical skills – dissecting court opinions and statutes, arguing from one line of cases to another – tend to be somewhat dehumanizing. Because of an occasional Judge Learned Hand or Justice Oliver Wendell Holmes opinion there is some regard for good writing, and torts law (injuries) has occasional flashes of humor and passion for the plaintiff. But property, procedure, bills and notes, and the rest of the standard curriculum are generally in a metaphysical world all their own – kind of like playing three-dimensional chess and trying to remember where all the pieces are. And except for a rare Fred Rodell (Yale law professor and author, Woe Unto You Lawyers (1939)) it is rare that anyone inside the legal establishment subjects the whole legal system to the ridicule occasionally deserved.

The law school curriculum puts a heavy emphasis upon the rights of property, the rich, and large corporations. This has changed markedly in the last twenty years with courses in poverty law, civil rights, and consumer protection. But that revolution was only beginning in the 1950s, and even today the orientation of the curriculum in most law schools has not changed that much. I was uncomfortable with this emphasis, but not openly rebellious.

The faculty was first rate, largely due to the efforts of Dean Page Keeton (my torts professor). I worked as a student assistant (the law school title was “quizmaster”) for the prior Dean, C.T. McCormick, who was also my evidence and contracts professor. Another Dean (Northwestern University School of Law), Leon Green, offered a course he created titled “Injuries to Relations” I enjoyed. A brilliant and prolific young professor, Charles Alan Wright, taught my constitutional law class. He later came to be known to the legal profession for his work on the federal courts treatise, and to the public for his defense of Richard Nixon. Others – Gus Hodges, Corwin Johnson, Millard Ruud, George Stumberg, Jerre Williams, Bill Young – provided not only an understanding of their own specialized area of the law, but of legal ethics, professionalism and excellence.

The law review experience was harrowing but invaluable. It was probably my first time in nineteen years of schooling to be subjected to such rigorous training in writing and editing. A casenote of a couple pages in the Texas Law Review (a discussion of a current court decision) could take six weeks to research, and ten drafts to write and edit into something the editors would accept.

My classmates and I talked over our plans after graduation. There were long arguments about the relative merits of large and small firms – a subject about which we had neither experience nor expertise. Some wanted to represent criminals and injured plaintiffs. Most were content to practice corporate and securities law with Texas’ largest firms or oil company legal departments. During the short time I was in law school we watched these firms’ starting salaries go from $200 to $300 a month, and then $500. That kind of money was hard for law students to resist.

Charlie Wright (as he was colloquially known to students) told me about the option called a “judicial clerkship” and ultimately sold me on the idea. After Yale Law School he had clerked for Judge Charles E. Clark, U.S. Court of Appeals, 2nd Circuit. Clerking was then relatively new to University of Texas Law School faculty and students.

Law clerks are young, all-purpose personal assistants to state and federal judges, usually selected for one-year appointments. (They are unrelated to the position of clerk of the court, a relatively permanent administrative position serving judges, lawyers and the public, receiving and providing access to legal papers.)

Judges select their law clerks from among the top graduates of the nation’s law schools each year. The one-year rotation has disadvantages for judges, who are constantly training new assistants, but it does insure judges will be rejuvenated and stimulated by law schools’ latest ideas and graduates. Judges are expected to decide and write their court’s opinions, but much of a judge’s legal research can be handled by law-review-quality new law school graduates.

The law clerks probably have the better of the bargain. They are provided a year of paid post-graduate training in legal research, come to know rather intimately the workings of at least one judge’s mind and decision-making process, meet members of the bar, and conclude their year ready to move into teaching, government or practice. (Nicholas Johnson, “What Do Law Clerks Do?” Texas Bar Journal, May 22, 1959.)

Judge John R. Brown was appointed to the United States Court of Appeals, 5th Circuit, in 1955 by President Dwight Eisenhower and expressed a willingness to take his clerks from the University of Texas Law School. Dean Keeton helped with Judge Brown’s selection process, in return for which Judge Brown spoke at the law school’s annual tax conference in Austin.

I was not the top student in my graduating class, but had done well, served as articles editor of the Texas Law Review, and not incidentally made the highest grade in Dean Keeton’s torts class. Judge Brown agreed to an interview, and ultimately hired me.

In this country the federal court system exists side-by-side with our states' court systems. Each has trial courts and appellate courts. The federal district courts are the federal trial courts. The United States courts of appeals are, for most purposes, the final tribunal for any appeal from a federal district court. Appeals can be taken from a federal court of appeals to the U.S. Supreme Court on a petition for certiorari, but unlike the courts of appeals the Supreme Court can choose its cases. Out of thousands of requests, it may hear and issue opinions for fewer cases in a year than the FCC does in a week. Most will involve conflicts between decisions of U.S. courts of appeals, interpretation of the Constitution, federal statutes, or other significant principle of law.

The states are clustered into ten numbered regions, called circuits, each with its own federal court of appeals. At that time the Fifth Circuit included the Gulf Coast states, from west to east: Texas, Louisiana, Mississippi, Alabama, Georgia and Florida.

I had, and still have, a tremendous respect for Judge Brown (who at this time is Chief Judge of the Fifth Circuit). The contrast between his sense of humor and his position made him a spectacular public speaker and fun to work with. He had been an outstanding student at the University of Michigan Law School, had a good mind, and worked hard. Living and working in Houston, his previous specialty as a practicing lawyer was admiralty law, and he retained his interest in this salty and colorful bayou of the law.

He took a real interest in his clerks. Although the Judge lived in Houston, the Court's official location was New Orleans. It also sat in each of the states in the Fifth Circuit (except Mississippi). Because the Judge took his clerks with him, there was quite a bit of traveling and opportunity to experience America's segregated Southland.

One of my first experiences involved his insistence that I use a dictating machine – an alien technology previously unknown to me – to compose my briefing notes on the cases coming before the three-judge panels to which Judge Brown was assigned. My brief summaries of the facts and law were circulated to Judge Brown and the panel's other two judges. The thought of

briefing real cases was exciting enough. The fact that judges rather than law professors were going to read and possibly be influenced by my analyses was intimidating. The prospect of dictating them without the chance for revision made it almost impossible for me to talk into the dictation machine at all.

While I retained my respect for the seriousness of the legal process, it was a valuable, liberating experience to internalize the realization that these cases are decided by humans. One wants to be responsible, fair and thorough. But having done that, nothing is gained by prolonged agonizing. It's better to pick up and read the briefs, think through the facts and law to a conclusion, dictate the memo, and move on to the next one.

One of my challenges in law school was trying to remember case names and holdings (the legal rule from the courts' decisions). Most legal training involves techniques of analysis, legal research, or spotting the issues. There's not as much focus on memorizing legal rules as students of biology or history might confront when memorizing their facts. But a memory is required and mine was relatively poor. What to do?

Ultimately, this approach evolved: read the court's statement of facts and both sides' arguments, figure out how it should be analyzed and decided, then read the court's analysis and decision. If the judge's analysis and decision is analogous to my own there is no need to remember that case. If those facts ever arose again, on a law school essay exam or later in practice, my instinct was equivalent to the law. (Of course, case holdings have to be researched and cited in any legal opinion or brief.) Only cases that did not square with my analysis and sense of justice would have to be memorized.

This instinct proved a good guide through two clerkships, teaching, practice, and jobs as Maritime Administrator and FCC commissioner. It was certainly reassuring whenever Judge Brown and his colleagues would end up agreeing with the analysis in my memo. (Even more so, of course, when a dissenting opinion of Judge Brown was supported by the Supreme Court.) The Fifth Circuit judges were almost all men for whom I had great respect (there were no women, as was common in those days): Chief Judge Joseph Chappell Hutcheson, Jr. (appointed 1931), Judge Richard T.

Rives (1951), Judge Elbert Tuttle (1954), Judge John Robert Brown (1955), Judge Benjamin Franklin Cameron (1955), Judge Warren Leroy Jones (1955), and Judge John Minor Wisdom (1957). (Four of those seven lived well into their nineties.)

That year (1958-1959) the civil rights cases were already beginning, and the Fifth Circuit's record was one of which all Americans could be proud – especially considering the flaming crosses in judges' yards and other social pressures they confronted.

One of the men for whom I had greatest respect was U.S. Supreme Court Justice Hugo L. Black. My father spoke of him with admiration. I had read his opinions in government classes and law school and had long admired his tough insistence upon the basic provisions of the Constitution, his willingness to dissent, and his humanism. Each of the Justices has a responsibility for a circuit, and Justice Black's circuit was the Fifth – which contained his home state of Alabama.

Although Justice Black was getting one hundred or more applications from outstanding young lawyers for his clerkship positions (justices then had two), I decided to try for it. Judge Brown wrote a nice letter for me and so did Judge Rives – who was from Alabama and probably the closest to Justice Black.

The interview with Justice Black was really honor enough. That marble monument called the Supreme Court is one of the most beautiful and awesome buildings in Washington. When it opened one justice is said to have refused to work there on grounds the only appropriate way to arrive would be on the back of a large white elephant.

My first day, when my wife, Karen, drove north on First Street, pulled up and parked in front of the Court to let me out, our six-year-old daughter, Julie, responded much like that justice. She took one look at the building, turned to me with a look of incredulity and asked, "Daddy, do you work in there?" Thereafter my co-clerk, Jack McNulty, and I usually traded off driving each other to work.

The courtroom itself is one of the grandest rooms in the country. But for a young law school graduate to be escorted by a guard past the black wrought iron gates, down a long, high-ceilinged marble corridor to an appointment with Justice Black in the inner sanctum of the building was a real thrill.

As it turned out, he hired me, and I would regularly report to work there each day. But I never forgot the excitement of that first meeting, nor did constant exposure ever erode my real respect for Justice Black (known to his law clerks as “the Judge”), the building, and the legal system it symbolizes.

Much of my subsequent difficulty at the FCC is probably traceable to my experience at the Supreme Court. The Supreme Court experience gave me a benchmark by which to judge the performance of other court-like institutions, a benchmark by which the FCC sometimes becomes a laughing-stock. The standards to which the Court holds itself, while necessary and commendable, are unrealistic for most institutions. It’s unfair to hold the FCC to the same standards as the Court in all cases. For starters, the FCC issues more opinions in an average week than the Supreme Court issues in a year. But it’s not unfair when the Supreme Court’s example is both applicable and attainable.

The justices read the lawyers’ briefs, attend the oral argument, discuss the case in closed conference and vote on the outcome. The chief justice designates the justice to write the majority opinion. It is written, circulated among, and certainly carefully read by the others. If the author and eight more sign on it is a unanimous opinion. If a majority sign on, those disagreeing can write concurring or dissenting opinions. Occasionally a separate opinion is sufficiently persuasive to change other justices’ votes. Justices write their own opinions. And to the extent their clerks offer research or debate the merits of a case with their justice, the Court has the assistance of a couple of the nation’s ablest law school graduates.

At the FCC, by contrast, aside from my dissents it was somewhere between rare and never that a commissioner would author either a Commission ruling or separate opinion. Opinions are prepared by the staff of the relevant bureau (e.g., Broadcast Bureau, Common Carrier Bureau),

approved by the bureau chief, and put on the Commission's Wednesday agenda. Indeed, given the complexity and length of many of the opinions it's unlikely they were even closely read and comprehended by all commissioners if they were read at all.

There was little if any contact between Supreme Court justices and practicing lawyers. For a justice to meet with a lawyer about his or her pending case was unthinkable. There were few phone calls or visitors of any sort. Having experienced the standards of the Supreme Court it was difficult to avoid drawing contrasts with the FCC and encouraging my Commission colleagues to do a little better where their roles are similar.

Things are different at the FCC, and understandably so. The FCC is not just a court, hearing appeals from decisions of its staff and hearing examiners (the regulatory commissions' trial judges, now called administrative law judges). It is also a legislative body, with the power to enact regulations said to have "the force and effect of law," using a legislative process during which appropriate direct contact between legislators and interested parties may be acceptable.

The Supreme Court deals with few lawyers or clientele on a regular basis (except the government's lawyer, the Solicitor General in the Justice Department). The FCC sees almost no one other than its regular customers (members of the Federal Communications Bar Association, major corporations' executives and lobbyists), all of whom are well known and often former colleagues and social friends of the commissioners and staff.

Of course, it's more difficult for commissioners and staff to maintain a professional distance from their small, specialized clientele than it is for the Supreme Court justices to keep a distance from the entire nation's bar membership. But greater efforts could be made to police commissioners' social and other private contacts with industry representatives.

At the Maritime Administration a log was kept of every person entering the Office of Ship Construction. If every FCC commissioner's office and bureau at the FCC was required to keep a public list of the names and affiliations

of individuals telephoning or visiting the agency some of the grosser abuses would be reduced.

There is a measure of insecurity and anti-intellectualism within the Commission that discourages the use of able independent minds. There is also a lack of appreciation for the drawing power the Commission could have. My hiring practices followed the courts' law clerk model: high quality young lawyers for one-year terms. Other commissioners could do likewise. Individuals with no interest in an FCC career might be willing to consider a one-year assignment in a commissioner's office. Scientists, systems analysts, economists and other social scientists who wouldn't think of accepting civil service status might be willing to serve on advisory committees or take phone calls. I never had difficulty drawing upon America's best minds.

To be fair, it's not the staff's fault that there is likely to be more research, tight reasoning and intellectual content in an opinion that Supreme Court justices and their clerks have leisurely labored over for a month or more than one a low-level FCC civil servant has worked on for a day while attending meetings, handling phone calls, and answering congressional correspondence.

But the failure to be analytical and precise, to cite serious research, books, articles, and court opinions, is motivated in part by the staff's awareness that commissioners don't want to make ringing declarations of principle that might bind their flexibility in future cases. Some of the Commission's irrational opinions are the product of an affirmative effort to create obfuscation and flexibility.

Long opinions may be unnecessarily so; higher quality work could have been done in shorter space and time. For example, when I requested a brief pamphlet to explain our voluminous cable television rules to the small cable operators and public, the commissioners and staff refused to prepare it. (The staff lawyers who had created the lengthy document soon left the Commission and began charging cable operators legal fees for explanations.)

Another issue is the regularity with which major FCC decisions are reported in the trade press days before they are announced to the public. This can affect stock prices, constitute violations of law and good administrative practice. It stands in stark contrast to the Supreme Court's control of leaks and throws into question the propriety of the FCC's process.

From the Supreme Court I went to the faculty of the University of California at Berkeley ("Boalt Hall") for three years. I wrote the major law review article expected of all new professors ("Producer Rate Regulation in Natural Gas Certification Proceedings: Catco in Context," Columbia Law Review (1962)), created a casebook of teaching materials (unpublished), and was put through teaching the usual potpourri of courses: administrative law, administrative law seminar, business associations, corporations, equity, and oil and gas law.

Boalt Hall was and is by any standard one of our country's best law schools in terms of faculty and student body. It was yet another opportunity to be associated with first-class minds and serious research – in the law school and throughout the University. Dean Bill Prosser (torts) headed the school when I was hired, but I won't go through the names of all the faculty – many of whom are well-known nationally and internationally within the academy. My principal interest soon focused on administrative law, and that meant a chance to work with the energized Renaissance man and newly-chosen Dean Frank Newman.

For most people, most of the time, "law" means what some civil servant is requiring them to do: pay taxes, pass driver's license tests, qualify for a beauty shop license, zoning permit, license to sell alcohol, or pay the regulated telephone rates. The success of our legal system is dependent upon the fair and efficient functioning of our administrative agencies.

This revelation provided a logical melding of my interests in political science and law and proved to be an insight into things to come. I spent one summer studying the California Public Service Commission and came to know and work with others in the administrative law field such as Ken Davis, Walter Gellhorn, and Louis Jaffe. But I soon came to realize my academic studies of administrative law were not adequate for what I

wanted to research, write and teach. I needed to add the hands-on experience of practicing administrative law.

Covington & Burling, where I had spent the summer of 1957 as a law student, had flattered me with repeated offers – after graduation, the clerkship with Judge Brown, the clerkship with Justice Black, and while at Boalt Hall. Their interest was such that they were willing to take me on leave from Berkeley for two years to work on administrative agency matters. It was the largest firm in Washington and had an extensive administrative practice. It prided itself on the number of former Supreme Court law clerks working there, and partners who would go in and out of government. So much so that it was sometimes jokingly referred to as “one of the larger government agencies.”

Much has been written about Covington & Burling by those who study the large corporate law firms in Washington and New York, At the time I worked there (1963-64) it was still housed in the Union Trust Building at 15th and H Streets in downtown Washington. (The firm later succumbed to the lure of modern office buildings and moved down the street to the new Motion Picture Association of America Building – a couple blocks from the White House, near the AFL-CIO building, Lafayette Park and Hay Adams Hotel.) The halls were dark, furniture and rugs were old, offices were small and hard to find, and dictating equipment had not yet arrived. The 100 or so lawyers wore vests and short-cropped hair and preferred 30-second bursts of phone conversation to five-minute office visits. They made millions of dollars for themselves and probably billions for their clients.

The apocryphal story is told of how large legal fees began. In the very early days of the firm the new young lawyers (now senior partners) were trying to decide how much to bill a corporate client for some litigation and drafting of legal papers. They finally screwed up their courage and asked the secretary to prepare a bill for $5,000. Anxiously awaiting whether it would be protested or paid, they were surprised when the return mail produced a check, not for $5,000 but for $50,000. Upon inquiry, they found the secretary had inadvertently added an additional zero and they were $45,000 richer. They have been adding an additional zero ever since and have seldom if ever received a complaint.

They are, quite simply, the best lawyers in the business – “lawyers’ lawyers” they’re called. They seldom become involved in a case until some other firm has made a mess of things, comes to them for advice, or a corporate client is in over its head.

Such clients are occasionally engaged in somewhat less than savory practices. They want to go on manufacturing the drugs that the Food and Drug Administration says are hazardous to health; advertise in ways the Federal Trade Commission says are false and misleading; dump waste products into rivers the Environmental Protection Agency says they’re polluting; drill offshore after they’ve spilled oil on beaches; build the Alaskan Pipeline; strip mine for coal and clear cut for timber; raise permitted airline rates from the Civil Aeronautics Board; and lower taxes from the Internal Revenue Service. It takes very good lawyers to obtain permission for their clients to engage in these highly profitable practices.

In the 1950s and early 1960s representing corporate clients in such ventures did not create the moral conflict for lawyers that it tends to today. What we today call the consumer or environmental movements didn’t exist. Now there are at least small activist organizations, academic literature and small circulation magazines. Then a lawyer might never be confronted with a question of conscience, his (it was almost never a her) impact upon the Earth and the life it sustains. There was professional pride in the quality of one’s work, regardless of substance or impact; a satisfaction in the skillful use of one’s talents. If the issue of propriety was ever raised, there could always be the lawyer’s response: every client deserves the best representation available. There was reverence for process, and pride in one’s ideological neutrality. In fairness, during the era of Senator Joseph McCarthy’s communist witch hunts many of these same lawyers were defending, often pro bono (without pay), those whose careers were being destroyed by mere allegations. If pressed they would probably feel a total consistency in their actions. They hung out a shingle to represent whoever came along. Just as some doctors specialize in diseases of the rich while volunteering in free clinics, these lawyers specialize in the legal diseases of America’s wealthiest corporations while occasionally serving the deserving poor pro bono.

In fairness, Covington & Burling and many other law firms are not involved with their clients' political action – though they may prepare legal analyses for documents used by lobbyists. These lawyers do not lobby or carry cash to senators, hold off-the-record meetings with regulatory commissioners about pending cases, or schedule industry price-fixing meetings. The "lawyer-lobbyist" is a special breed in Washington.

Whatever the original intent of those who wrote the Constitution, the net effect has been that the very best legal talent is arrayed on the side of corporations and their wealthy owners. Little is devoted to representing the interests of consumers, taxpayers, television viewers, or other concerns of ordinary citizens. In fairness to the large firms, many have provided the lawyers who were sent out or opted out to establish the public interest law firms. They were among the first to offer lawyers to legal aid clinics. They have fought for small claims courts, court- appointed representation of criminals and other indigents. Many have not opposed the creation of Neighborhood Legal Services or the Consumer Protection Agency even though their clients might.

The fact is that most of the efforts of consumer, environmental and other public interest organizations are directed at undoing what large law firms have done on behalf of their clients. And because the law graduates recruited by the large firms are, by definition, among the brightest and best educated young men and women our nation can produce, many of whom like to think of themselves as liberal to radical, they must confront the inherent conflict between their ideals and their jobs.

Some resolve the problem by adopting the entire corporate lifestyle (expensive clothes, country clubs, vacation homes, travel). Some salve their conscience by returning each evening to their former lives of long hair, bell-bottom jeans and pot. A few insist on spending significant portions of their time (and firm's resources) on pro-bono cases, fighting the very class of clients (though not the same clients) the rest of the firm is defending. Those unable to resolve the conflict leave for public interest law firms, government jobs or teaching.

When I joined the firm for a two-year term I had no more sophistication and social conscience than other attorneys. The firm was representing tobacco

companies the lawyers called “the cancer lobby,” though I did not do so. The companies sought to avoid governmental inhibitions on the sale of cigarettes: the Surgeon General’s warning (“cigarette smoking is hazardous to your health”), the ban on advertising, or a possible ban on sales. I did not smoke and was even less inclined to start once learning all the young attorneys working on the cancer lobby account had quit smoking by the time I left the firm. I did not want to work on that project and would not have done so. But my lack of sophistication about the role of American corporate power was such that many accounts struck me as ethically and morally neutral. Today their negative influence would be more obvious.

What I primarily ended up working on (in addition to representing the small airline Panagra, and the Venezuelan government regarding a ship seized in Philadelphia) was antidumping legislation. Businessmen tend to praise the theory of competition but use pejoratives to describe its practice when it threatens to move in next door. For example, the Bell Telephone Company referred to any competitor’s telephone equipment as “foreign attachments.” Similarly, our clients, American manufacturers of steel and cement, referred to the ultracompetitive pricing of steel or cement from abroad as “dumping.”

There is some rationale for antidumping laws. “Dumping” is defined as selling goods in a foreign market below the price in the manufacturer’s domestic market, sometimes even below the cost of manufacturing. Usually this is done to obtain a larger market share, or even drive some competitors out of the market. But it is a complicated matter indeed to settle upon a fair price when there is a dispute. And antidumping laws can be abused as a means of driving out all foreign competition.

Our clients retained Covington & Burling to represent their interests with regard to the importation of steel and cement from Japan and elsewhere at prices believed by them to violate the antidumping laws.

Donald Hiss was the partner handling the account, and it was a pleasure to work with him. He was an extremely able lawyer with a sense of humor well above the average for the firm.

As the brother of Alger Hiss, he had a commitment to civil liberties and liberal causes, and my wife, Karen, had worked with Don's sister, Anna, at the University of Texas.

What attracted me to the case was the possibility of creating an administrative procedure act for antidumping cases. Administrative law was my field, and the prospect of studying the process the Treasury Department and Tariff Commission used in an esoteric area of the law like antidumping was my idea of getting paid for a good time. The bureaucratic maneuverings and relative insensitivity to rather elemental principles of due process were fascinating. Drafting a new administrative procedure act to be introduced in Congress and possibly become law was heady stuff for a 28-year-old administrative law professor.

The possibility my effort to import due process into the procedure might create an increase in the price of steel and cement in this country, lessen two basic industries' need for rapid technological innovation, and misdirect economic resources from relatively more competitive industries were matters of little concern at the time. My experience in studying the California Public Utilities Commission would have real world impact in the cause of fair procedure. It seemed to me a worthy and educational undertaking.

On November 22, 1963, I heard at lunch the news that President John F. Kennedy had been shot. ABC News maintains a window on Connecticut Avenue, and I watched the television report for a while. I asked the partner with whom I'd had lunch and been working that morning (not Don Hiss) whether we would take the afternoon off. He thought there was entirely too much sentimentality about the assassination and that it ought to be treated like any other work day. We walked back to our 15th Street office.

There is an emotional hardening that can evolve in those growing up in any profession anywhere. But it seems worse in Washington. Ultimately it got to me, until the reaction burst forth in a book I titled Test Pattern for Living (1972). Whether from necessity or habit, there is a commitment to long hours, rock-hard efficiency, and putting a priority on work and career above family and social contacts. It seems more prevalent in Washington law firms and government agencies than elsewhere.

I was very moved by the assassination of President Kennedy and the events live and televised surrounding it. It intensified my commitment to government service, the American dream, and my desire to participate in some way.

A couple months later I received an indirect indication that a government job might be in the offing.

Chapter Three

At Sea in Washington: The Maritime Administration

It has never been clear to me exactly how my name came to President Johnson's attention – who first suggested it to whom, and why, and what was then done about it. Because my name was Johnson, and I had graduated from the University of Texas, many people assumed I was either a relative or an old-time friend of the President's. Neither was true. Presidential appointees are designated by their home states; my designation was Iowa.

I never met the President until our 1964 meeting in the Oval Office. Nor had I known any senator or member of congress, party campaign contributor, or any of his former or present friends or colleagues.

The story went around, and appeared in some newspapers, that Bill Moyers and I had been roommates in Austin, and that it was he who urged my appointment on the President. The fact is that Bill and I were both married and living with our wives while at the University of Texas and that we never met until after my appointment.

In fact, later reports were that Bill Moyers was the only one on the White House staff who expressed hesitation about the appointment. Bill, a principal advisor to the President at 29, felt the Maritime Administrator's job might be too much for a 29-year-old. Without any comment from him, there is no more reason to believe it true than newspaper stories asserting the contrary.

Bill Moyers did play an unintended role in my appointment. Another story will put it in context.

A fellow called the White House and asked to speak to Jack Valenti, another presidential advisor and assistant. Once the conversation began the caller realized he was talking to the President and apologized, “I’m terribly sorry, Mr. President, I didn’t mean to bother you, I was calling Jack Valenti.” “Oh, that’s all right,” drawled back the President, “Jack’s busy this afternoon and I’m taking his calls.”

There was a phone message on my desk at Covington & Burling one day informing me of a forthcoming meeting with Bill Moyers. Never having been in the West Wing before, I arrived a little early, was ushered through the gate by the guards, and told to wait in a West Wing reception area outside the press offices. It was exciting just to be there watching aides to the President and journalists, some of whom were recognizable from television, going about their tasks.

As time wore on it became somewhat less exciting – fifteen minutes, a half hour, finally an hour slipped by. It was an introduction to the pressures of officials’ schedules, their relative insensitivity to callers, that mark much of official Washington – and into which I would soon find myself sliding.

Suddenly, through the door bounded the bundle of smiles and energy known as Jack Valenti. He quickly introduced himself, asked that I follow him, and we went dashing through corridors of the White House. He opened a door, motioned to me to enter, turned and left.

When I looked up I realized I was in the Oval Office of the President, alone with President Johnson. As if a forecast of things to come, he was watching a television screen in the three-TV console given him by Frank Stanton of CBS – perhaps something taped for him earlier. Apparently President Johnson was not only willing to take Jack Valenti’s calls but Bill Moyers’ visitors as well.

The surrealism of the experience left very little memory of our conversation. We probably talked for fifteen or twenty minutes. He said he wanted to

nominate me as Maritime Administrator, and told me something of the industry, the agency, his plans for it, and how I should go about getting through my Senate hearings. He had an impressive depth of understanding of maritime matters. Throughout subsequent months his grasp of current details whenever we talked – even at social events when he could not have been briefed in advance – continued to amaze me.

The Maritime Administration is not one of the more prominent agencies in Washington. Despite an early interest in government, a political science major, law school course in administrative law, specializing in teaching and practice of administrative law, I had never heard of the Maritime Administration. Even the White House staff confused it with the Maritime Commission, an entirely separate agency focused on freight rates, when addressing parcels to me.

That an agency of the federal government can take roughly $500 million a year from taxpayers and redistribute it to wealthy shipowners and shipyards for thirty years without ever coming to public consciousness is commentary on the ills of Washington and its press corps – discussed at greater length below.

The Maritime Administration offered considerable challenge. During the first weeks in office there was ongoing discovery of additional responsibilities and titles. The Administrator is also chair of a Maritime Subsidy Board, adjudicating disputes between the agency and its beneficiaries. As Commandant of the Maritime Service the Administrator is given three-star admiral rank, a personal flag, and responsibility for a four-year academy at Kings Point, New York – the maritime version of Annapolis and West Point – for training merchant marine officers. It's not clear whether the position of Maritime Administrator still carried the title of Director, War Shipping Authority. In any event, during Vietnam War buildup we worked with the Pentagon's Military Sea Transportation Service (MSTS) and Secretary of the Navy, drawing the Maritime Administration's World War II merchant ships out of mothballs to operate what was the world's largest shipping company. (The Maritime Administration has responsibility for overseeing and removing rust from about 2,000 Liberty and Victory ships in Reserve Fleets around America's seacoasts.) The Administrator also chairs the NATO merchant shipping conference, Planning Board for Ocean Shipping

(PBOS). The agency played a role in shipping surplus grain abroad under the PL-480 program and designed and built fishing boats and other craft for government agencies.

The principal tasks were dispensing hundreds of millions of dollars of subsidy and low-cost loans to American merchant shipping companies and shipyards.

While leaving the White House, following the meeting with the President, I was probably flattered, thrilled and certain to accept – though I cannot recall what I was thinking subconsciously. Later there were doubts about accepting. It was not clear why the President wanted to appoint me to this position. Was it possible some scandal was about to break for which I'd be the fall guy?

It later became more obvious that President Johnson was prescient enough to know, confronted with a short list of 15 or 20 individuals who wanted to be Maritime Administrator, and knowing of the ties between the industry and the agency, that the most important qualification was an individual who did not want the job. That may have been my only qualification.

My plan had been to come to Washington to study and practice administrative law and return to teaching. Government service was quite a departure from that career plan. Moreover, aside from not wanting the job would I have the other qualifications, skills and experience required?

Some questioned the President's choice. Following the President's announcement of the appointment Pierre Salinger, the President's Press Secretary, was asked at his morning press briefing if it was true the young Administrator-nominee was born in 1934. Salinger replied, "There's nothing wrong with 1934. It was a good year, a vintage year." There was no more questioning of my youth.

Objections to appointees usually focus on their lack of knowledge and experience rather than their age. As an Iowa boy my shipping knowledge was zero. As I freely conceded to the Senate Commerce Committee members the President had asked me to call upon, it consisted of a couple unnoteworthy canoe trips on the Iowa River of less than one mile. This

bothered neither them nor me at the time – nor since, when I evaluate the appointment to other positions of those with scant experience.

There are many professions in which one is repeatedly forced to deal with wholly new bodies of knowledge. The law is but one. For example, representation of steel, cement and airline companies at Covington & Burling required cram courses in those industries, as the FCC appointment required quick study of broadcasting, telephone operations, communications satellites, under-ocean cables, and other industries new to me.

Other professions require this ability. Journalists must quickly acquire enough background to understand the story they're reporting. Architects must understand by whom, how, and why their buildings will be used. Economists know more than the financial structure of industries they're studying.

What I needed to know about shipping – enough to ask, and address, questions about the basics – could be learned in a couple weeks of long hours. What seemed more relevant, and went unaddressed by critics, was my total absence of business, management and administrative education and experience.

Management of large public and private institutions requires knowledge and experience often not possessed by those otherwise outstanding in their substantive field; for example, when the best research scientist in the lab is promoted to be the director.

The story is told of a newly-appointed Secretary of State's first day on the job. Two staff assistants found him writing on a yellow pad. Upon inquiry he explained that he was answering the mail. He had been a brilliant practicing lawyer in a small firm used to handling such tasks himself. The assistants patiently explained to him that all cables coming to the State Department are addressed to the Secretary of State, that there are thousands of them every day, and hundreds of people to answer them.

There is almost nothing in the experience of the ablest of professionals to prepare them for the difference between solo effort, or even managing a

secretary, clerk, and half-dozen assistants, and the job of administering an institution with thousands of employees and budgets of millions or billions of dollars.

Moreover, there is no training program for Presidential appointees. The government spends millions of dollars training foreign service officers, military, and civil servants doing virtually every kind of task. But there's a presumption newly-appointed agency heads arrive knowing what to do with no need for training. Maybe career civil servants are aware it is they who are doing it all, it makes little difference who heads the agency, they've outlasted the new guy's predecessors and will outlast this one, and that they will soon enough be asked for their advice.

At that time the Maritime Administration was an agency within the Department of Commerce. A successful businessman and former governor of North Carolina, Luther Hodges, was appointed Secretary of Commerce by President John F. Kennedy in 1961. When I asked, and he told me there was no training program for presidential appointees, I followed up by asking if he had any advice for me. "Yes," he said, "just remember to pee every chance you get."

Feeling not quite fully informed I wrote some acquaintances at the Harvard Business School: "Help, please. I've never administered anything other than a single secretary, and that not very successfully. What should I do?" Back by return mail came a box containing six books and a handwritten note: "Read these books and do what they say." I did. Most observers thought it worked.

President Johnson's Administration advanced some progressive management innovation, such as the systems analysis, cost-effectiveness, and planning, programming, budgeting system (PPBS) of the then Bureau of the Budget. With credit to my new-found tutors, the Maritime Administration was among the first agencies on the civilian side of the Potomac River to adopt the new programs.

But this experience became just one more of my difficulties at the FCC. The principles of good management and administration are sensible, obvious and essential once practiced; for example, some notion of agency

purpose, goals, and means to measure achievement. Such approaches are so totally alien to most government administrators, perhaps especially cabinet officers concerned with congressional testimony and speeches, that perpetual frustration awaits anyone who tries to apply them.

After developing a minimal capacity to deal with the perquisites of office, numerous titles and responsibilities, tasks of administering 2,500 employees, as many ships, and $500 million a year, my thoughts migrated to exploration of the reason for it all.

Conversations with President Johnson left little doubt that he felt the transportation industries generally, and especially the shipping industry could deliver more for the taxpayer's and shipper's dollar. Every economist told me only more confirming details for his judgment.

The maritime industry, once besieged with demands for extinction or reform, contracted an independent economic study. The 1961 book-length report by economists Allen R. Ferguson and others from the Transportation Center at Northwestern University was titled, The Economic Value of the United States Merchant Marine. Maritime industry leaders were confident of their worth and that the study would protect them from attacks on their subsidy programs. The report considered all aspects of shipping's economic impact, such as employment, movement of goods and balance of payments. The economists' conclusion? The last sentence of the last paragraph of the last chapter said, in effect, and thus we find there is no economic value of the United States merchant marine.

OK, the owners said, but how about the defense value of our ships? Defense Secretary Robert McNamara and his staff repeatedly reported that there was nothing gained from these megabuck subsidies that could not be acquired better and cheaper in other ways. If Congress wants to continue them, fine, but the subsidy program is not worth one dollar of defense appropriations.

The details would require another book. But some brief definitions and examples may help.

An American flag ship is one owned by an American company, built in an American shipyard, carries an American crew, and flies an American flag. Each of these requirements costs more than its foreign equivalent, including the flag.

Building a ship in an American shipyard costs roughly twice what it would cost if purchased from a Japanese or European shipyard. The numbers and wages of American merchant seamen double the labor cost of operating an American rather than a foreign flag ship. These differences between American and foreign costs were the basis for Maritime Administration subsidies. American taxpayers were paying the difference between foreign and U.S. costs; a differential subsidy to the shipyards for ships and the shipping companies for union wages. The rationale? It was argued the subsidies bought the country ship building capacity and more control over our imports and exports.

What were Secretary McNamara's arguments? The facts were that shipyard capacity would be retained anyway because the yards were near capacity fulfilling Navy contracts. Second, when rapid, vast increases in ship building capacity were required during World War II we were able to build thousands of low-cost merchant ships in short order. Third, those ships were still available in reserve fleets twenty years later. Fourth, the speed and size of jet planes led Secretary McNamara's analysts to conclude planes were often more cost-effective than ships for moving troops and some cargo during the Vietnam war. Finally, if we ever needed cargo ships we didn't have and couldn't produce there would be foreign shipyards to build them or ship operators willing to lease them.

How about our peacetime economy's need for trained crews and available ships? First, most American imports and exports are traveling on foreign flag ships – about 96 percent. Second, American companies have a ready worldwide market of available shipping services. Third, Americans rent automobiles, fly on airlines' planes, ship on others' railroads and trucks, and see no more need to own ships than the equipment used by other modes of transportation. Even the Defense Department uses foreign flag (American owned but foreign built and manned) ships to haul petroleum products to Vietnam. Fourth, companies that do want their own ships, such as oil company tankers, find foreign flag ships fully adequate.

Many American corporations owned foreign subsidiaries and purchased foreign made goods of all descriptions. The U.S. government sometimes encouraged “buy American” policies if prices were nearly competitive or imposed additional costs, such as tariffs or duties, on foreign goods. But the American flag rule in shipping was an absolute and total ban on importation of foreign built ships under any circumstances, whatever the price.

We manufactured airplanes in the U.S. and sold them to other countries because ours were cheaper and had improved technology. A free trade philosophy would urge that we export what we can produce best and cheapest, such as agricultural products, computer technology, machine tools, and airframes, and import what can best be produced elsewhere, such as pocket transistor radios and ships. Our American flag rules were one of the most glaring exceptions to this policy.

The Maritime Administration programs amounted to little more than taking $500 million in taxes from poor and middle-class Americans and giving it to rich shipping and shipyard corporations. The recipients gave nothing in return, or at least nothing more than Americans would have had without their contribution.

It would have been possible to cut government spending and the burden on taxpayers by a few fractions of a percent by cutting back on Maritime Administration staff or eliminating a ship or two from the budget. But the more basic question was, why are we doing this at all? Chapter One reveals this was a question I first put to the YMCA as a teenager. Now in later life it was a question usefully asked about government programs.

Shortly after my appointment as Maritime Administrator Justice Black’s former law clerks gathered to celebrate his 80th birthday. We all shared a tremendous sense of affection and loyalty towards the Judge and his wife, Elizabeth. We looked forward to family occasions to gather and pay our respects.

Justice Black was appointed by President Franklin D. Roosevelt and maintained a friendship with a couple members of President Roosevelt’s

brain trust, Ben Cohen and Tom “Tommy the Cork” Corcoran, who also attended these affairs.

The Maritime Administration was created in 1936. The first Maritime Administrator was President Kennedy’s father, Joe Kennedy. I thought Mr. Corcoran might have some advice to offer.

He did. He said I should do what Joe Kennedy had done. What was that? Kennedy served for one year during which he prepared a report. He detailed the subsidy programs and their irrationality. He proposed their elimination or at least more rational application, such as rewarding efficiency rather than inefficiency. As Corcoran characterized Joe Kennedy’s report, “The maritime industry is an awful mess. If you will do what I recommend it will get better. Now please give me a different job.”

President Roosevelt had been one of President Johnson’s mentors. Roosevelt selected him at a tender age to head the Youth Administration in Texas. Would President Johnson be open to such an approach? As it turned out he was. But it took two reports and 28 months before my leaving, the second longest Maritime Administrator’s term in history.

The Maritime Administration provided a pleasant tie to my continuing relationship with Judge John R. Brown, the former admiralty lawyer for whom I clerked, and we enjoyed the coincidence. But it also introduced me to what’s wrong with Washington in general and the FCC in particular: the subgovernment phenomenon.

Chapter Five
First Impressions: “There Ain’t No New Post Office Building”

Most presidential appointees end up serving two-year terms. As Maritime Administrator, my 28-month tour of duty was the second longest tenure in the agency’s history. The reasons undoubtedly vary, but the average remains constant.

(1) Maybe there is only the illusion of government. The jobs are so complicated it takes one or two years to accomplish anything. Is there a

grand design to move presidential appointees every two years to insure nothing will get done? Is it safer to leave it in the hands of civil servants?

(2) For some appointees the job requires such a significant cut in pay they can't afford more than two years.

(3) Some are so ambitious to climb the ladder they've never done anything for more than two years.

(4) There is another government appointment they want, and they've figured out how to get it.

(5) Others find they don't like the work; they want out of government.

(6) Some burn out; they're too exhausted to be of much use.

There is another factor at work for a reformer at the Maritime Administration, or other agencies in a subgovernment

Within limits, presidential appointees write their own job descriptions. Mine was to improve the efficiency of America's shipping companies, shipyards, ports, and shipping policy to assist our economy, balance of payments, and welfare of Americans. For a maritime subgovernment very comfortable with how things are, thank you, this was not a shared mission.

My goals took the form of the following.

Shipping subsidies should provide incentives for efficiency rather than inefficiency; ultimately ships and shipyards operating with no need for subsidies.

Upon discovering 90 percent of the cost of moving goods across the ocean is incurred within 10 miles of each port, I proposed container ships – loading semi trucks' intermodal containers onto railroad flatcars and then ships. A trucking operator, Malcolm McLean, was willing to offer such a service across the Atlantic with no subsidy.

Money for research and development could pay dividends. Operating ships above the water's surface cut drag, thereby improving both efficiency and speed. For example, hydrofoil (suspended on underwater foils) and surface effect (suspended on air) ships could offer a cargo service halfway in speed and cost between slow ships and overnight air freight.

Years later many of the proposals were accepted by the industry: larger, faster ships; more automation; ships' officers trained to work as both engineers and deck officers; container ships; barge-carrying ships; phasing out subsidy-laden passenger ships; and efficiencies in shipyards based on Japanese and Swedish experience.

At the time, however, it was too much, too fast; a threat to the maritime subgovernment. There were calls for my resignation every six months. The timing was so regular it was almost as if the industry set up tickler file reminders. President Johnson was supportive through each of these attacks. It was rumored he was offered $200,000 in campaign contributions to move me out and refused the offer. In private word and public act he saw to it the industry understood he did not intend to remove me.

Justice Black took an interest in my work as Maritime Administrator. He had investigated shipping subsidy scandals when a U.S. Senator (1927-1937). During his lifetime he offered me counsel on personal and professional matters. After the first call for my resignation he was all smiles. "I'm relieved," he said. "What do you mean?" I replied. "Well, I always thought you were an honest man, but it's still nice to have a confirmation. As long as they're still after you I'll know you're doing an honest job as Administrator."

President Franklin D. Roosevelt's man, Tommy "The Cork" Corcoran, responded with a longer story. He told me New England fishermen had difficulty keeping their catch alive on the way back to the dock. They tried flushing water through the hold where the fish were kept. They tried ice. Nothing seemed to work. In desperation they tried, and found their answer to be, putting a sea catfish in with the other fish. The catfish would go to the bottom of the hold, squirm around looking for food, and every so often jab one of the other fish with its fin spines. The stung fish would come to life, wiggle, swim through the rest, keeping them moving, and alive. "That's your

job," Mr. Corcoran said. "You're that catfish. You're supposed to keep the rest of those old dying fish alive. Go ahead and poke them. It's good for them."

There were some in the Johnson Administration, the academy, the media and elsewhere who understood what I was doing and its utility. My view was that power is to be used, if used for constructive ends, regardless of the adverse impact on my career.

It was a view shared by the President. The story is told that one of Johnson's aides opposed his push for the Civil Rights Act. "You should not lay the prestige of the presidency on the line," he said. The President reportedly replied, "What's it for it it's not to be laid on the line?" That attitude turned the Civil Rights Bill into the Civil Rights Act of 1964.

But President Johnson used up some good will and prestige of the Presidency with his southern allies over that legislation. And he knew he would. He felt it was worth the price of handing the Democratic Party's South over to the Republicans to provide this improvement in the rights of Negroes.

By the time two years had passed it seemed like a long term. But the President, as much or more than I, did not want my departure to appear to be the result of industry pressure. Maybe it was silly to be concerned. Alan Boyd, a first-rate public servant who served as Chair of the Civil Aeronautics Board, Undersecretary of Transportation, and ultimately first Secretary of the new Department of Transportation, told me to ignore the industry's resignation drives. "They are like a pack of dogs nipping at your heels, Nick," he said. "They are going to keep it up all the time you're in office. One day you'll leave. And whenever it is, and whatever the reason, they'll cry out in unison, 'See, we got him!'"

President Johnson called me about 5:00 a.m. the day he was going to announce Alan Boyd's nomination as Secretary of Transportation. The President wanted to know what I thought of Boyd, whether he would make a good Secretary, and whether there was anything else the President should know about Boyd. I gave the President my approval for Boyd's nomination. It was a great example of the President's attention to detail,

caution, and personal relationships. Why was he calling me, of all people? To get to my name on any list he must have made at least 100 phone calls to others.

About that time the Washington Post's humor columnist, Art Buchwald, described the President's caution and preparations before declaring Mothers' Day. Buchwald wrote the President had called the equivalent of the congressional leadership, AFL-CIO President George Meany, and chair of the Joint Chiefs of Staff to find out the location of the Sixth Fleet before boldly announcing yes, America would again that year celebrate Mother's Day.

The President knew that I was (1) ready and willing to leave at any time, (2) grateful for the opportunity to serve, (3) anxious to get back to practice and then teaching, and (4) owed absolutely nothing by him, least of all another job. The weeks dragged by. Then, one lovely spring morning in 1966 I was summoned to the White House and ushered up to the family quarters.

Bill Moyers was talking to him while he shaved. A guard waited outside the bedroom. A band played in the Rose Garden, where a crowd gathered. Presumably the President was supposed to speak there at that moment.

He emerged from the bedroom, took me across the hall to a small dining room and ordered a cup of Sanka for both of us. He was relaxed and in good spirits. He thanked me for my work at the Maritime Administration, and said he understood I wanted to leave government. However, it was his view, shared by several advisors, that I should not be permitted to leave.

He then launched into a knowledgeable, detailed commentary about the impact of communications on our society including, among other things, the educational potential of broadcasting, a computer revolution, and prospects for communications satellites. He believed this was the most important area of our lives and our government, and he wanted me to serve as an FCC commissioner.

This created a problem. I'd really had enough of government. I was tired and wanted a return to law practice and teaching. The family was feeling the strain of my long hours and professional obligations. At the same time,

given my upbringing it was difficult to say no to the request of any president – so long as it would not require anything immoral or illegal. Moreover, my relationship to President Johnson, along with his reputation for persuasiveness, made it impossible to say no to this president. Weighing it in the balance for a moment, I accepted.

Did the President know what he was doing? The speculation persists that he was surprised by my performance as a Federal Communications Commissioner. I don't think so. He felt the pressure that flowed from my term as Maritime Administrator. He not only had the option, but my request to resign.

As the years wore on beyond 1968, and I became one of the very few Johnson appointees still in office, it seemed increasingly likely that I might be the last remaining bit of evidence that Lyndon Johnson did, after all, have a sense of humor.

Of course, he not only had a sense of humor, he also had a very lucrative television station in Austin, Texas. He was sensitive about it. Senator Barry Goldwater, his Republican opponent in the 1964 presidential campaign, was a private pilot. Goldwater was fond of saying he could always identify Austin, Texas, from the air because it was the only city in America of that size that had only one television tower. It was rumored that his position in the Senate (elected Majority Whip, 1951; Minority Leader, 1953) played a role in Lady Bird Johnson's acquisition of the KTBC-TV license in 1952.

I wasn't around then and don't know the facts. But many TV station licensees in the late 1940s and early 1950s, including in cities even larger than Austin, returned licenses to the FCC during those years when television's financial future looked bleak. It took a lot of money and business sense, or perhaps foolishness, to keep a television station license at that time. Lady Bird, often credited as the smarter business person of the two, ran a profitable radio station in Austin. And there didn't appear to be any competitors for the license when they got it.

The FCC established an allocations policy that gave a few TV stations high power and therefore extensive signal coverage, rather than many more low-power stations. Stations were clustered in large cities; in Texas this

included Waco, San Antonio and Houston surrounding Austin. To avoid electronic interference the number of stations located in any geographical area is a function of their power, location, channel, and power of neighboring stations. The FCC may have been mistaken; America might have been better off with neighborhood TV stations. But it's unlikely those policies were adopted solely to give a Texas senator a television station monopoly in his hometown.

Whatever the facts may be, there was competition for KTBC-TV in Austin during my term on the FCC (1966-1973) from both over-the-air stations and cable TV. President Johnson has now died (January 22, 1973) and the station has been sold. But while he was President and I was on the Commission, he was extremely sensitive about any contact between him or his staff and anyone at the FCC.

Once he left the presidency we were free to reestablish communications. My last conversation was by phone, when he was in Acapulco and I wanted his best political judgment regarding the request of some Iowa Democrats that I run for U.S. Senate.

The independent regulatory commissions are sometimes called an arm of Congress; they are not executive branch agencies reporting to the president. President Johnson followed this understanding, this norm, and should be commended for doing so. But at least a portion of his motivation regarding the FCC, was his desire to avoid rumors he used untoward influence over an agency with regulatory responsibility for KTBC-TV, held in trust for him and his family.

After my FCC appointment was announced by the White House one of my first trips was a taxi ride from my Maritime office to the Commission. I had visited the FCC years before but couldn't remember where it was. Government agencies don't have street addresses, just zip codes: "Federal Communications Commission, Washington, D.C., 20554." That wasn't much help to a taxi driver who doesn't know the building. A directory identified the location as "New Post Office Building," but still no street address.

I told the driver I wanted to go to the FCC. He didn't know where it was. "It's in the New Post Office Building," I replied, knowingly. "Mister," he shot back without turning around, "there ain't no New Post Office Building." He was right.

We ultimately found the building, a 1930s effort at 13th Street and Pennsylvania Avenue. FCC offices were in the attic. The spill-over was a couple blocks away, over a delicatessen on 12th Street.

The dingy yellow hallways had burned out lightbulbs and stacks of file boxes along the walls. It turned out the FCC has more cubic feet of paper per employee than any agency in Washington. The Commission's seal, a bird and some wires stretched between towers, did little more to suggest the world of television and communication satellites the President had told me about. Even then-Chairman Rosel Hyde, a kindly man not noted for his dry but well-hidden sense of humor, once wondered out loud whether the bird might be a carrier pigeon.

The late Len Weinles, an able public information officer whom I'd recruited in a nationwide search, couldn't stand the seal. But the legal hurdles to changing it were beyond the creative abilities of the FCC's lawyers. Len finally substituted an "fcc" logo of his own design one day, no one complained, and it remains the de facto official seal today.

Having found the building, I next went in search of Senator Warren G. Magnuson, Chairman of the Senate Commerce Committee. Chairman Magnuson's Committee had jurisdiction over the Maritime Administration as well as the FCC. He had taken the full force of the maritime industry's heat over my performance. "Do you think there will be any difficulty getting approval for the FCC nomination?" I asked. "Not over that appointment," he laughed. Apparently he assumed it impossible I could create more ire in the broadcasting industry than I had left behind in the shipping business.

The nomination was quickly approved, and the FCC borrowed a reception room from Postmaster General Larry O'Brien where my mentor, Justice Hugo Black, agreed to perform the swearing-in formalities. Because my father had died in the fall of 1965, at the age of 59, he was not present. As much as he and Mother enjoyed the Maritime Administration White House

swearing-in, given Dad's professional career in general semantics and communications of another sort he would have taken special delight in the FCC appointment.

During June and July of 1966, the first two months, I attended the commissioners' meetings, carefully listened and observed, but did not actively participate except for an occasional question. While settling into a new office and recruiting staff it seemed best to show the deference to my colleagues appropriate for a young, inexperienced new commissioner.

There are seven commissioners, each appointed to a seven-year term, staggered to provide one appointment a year. If a commissioner leaves before his or her term expires the president can nominate a replacement commissioner to fill out the remainder of that commissioner's term.

E. William Henry had been Chairman of the FCC. He retired in May of 1966 after serving four years, leaving a three-year remainder to his term. Commissioner Rosel Hyde's seven-year term expired June 30, 1966. Thus, President Johnson had two positions to fill at the FCC. Rather than renewing Commissioner Hyde's service with another seven-year term as commissioner, the usual practice, he selected Hyde as Commission chair, gave me his seven-year term, and Hyde the remainder of Henry's term.

Former Chairman Henry's office was vacant. Unpretentious Rosel Hyde, entitled to it by right, did a quick benefit-cost analysis and concluded the benefit of a more prestigious and spacious office was outweighed by the burden of having to move. He didn't want it. Nor it turned out did any of the other commissioners, whose claims turned on their seniority on the Commission. So it fell to me.

Before I got there, however, most of the furniture had been stolen, or at least moved elsewhere. The standard executive furniture from the government's warehouse, the General Services Administration (GSA), is not only heavy, ugly and unimaginative, it is also very expensive. So, rather than order from GSA we worked with an able White House interior decorator. We ended up with a selection and arrangement that was bright and colorful, totally functional, very relaxed and warm, incredibly cheap,

and totally out of character for the FCC. But at this point she could help me no more. The FCC procurement staff would have to place the order.

The comedy of errors which followed is worth a book of its own. The long and short of it was that it took months for the furniture to arrive, minor changes had to be redone numerous times despite the closest supervision, and several things were lost, including my diploma-sized official commission of office from the President, signed by Secretary of State Dean Rusk. An FCC employee took it to be framed and it was never seen again. If it was a plot to remove me from office it didn't work. Undersecretary of State George Ball later kindly signed a duplicate.

Much of what was accomplished during the FCC years must be credited to my exceptional staff. I brought with me from Maritime my first two assistants, both in their early twenties: Bob Thorpe and Mary Ann Tsucalas. Both stayed for the full seven and one-half years. Bob developed a popular following and strong professional reputation of his own in Washington, earned an M.A. in economics and law degree during that time, and is now associated with the prestigious Washington law firm Arnold & Porter. Mary Ann developed a reputation as one of the best office managers in government, married, and is still doing some freelance work. John Macy, Chairman of the Civil Service Commission, helped me find the very able and personable Doris Coles. When I left Commissioner Ben Hooks hired her, and she was still with the FCC as of this writing. A couple years later we acquired Bonnie Herbert from within the FCC for our permanent staff. Her ability earned her a position on Commissioner Glen Robinson's staff after I left. My first recruitment drive for a legal assistant produced Robert Bennett, a brilliant lawyer now a professor at Northwestern Law School in Evanston.

Justice William O. Douglas demonstrated the possibility of flexibility in staff so long as one stayed within budget. Because of his voluminous writing, instead of two law clerks he had one and used the additional money for secretaries. A quick story will illustrate.

In August of 1959, before Court opened in October, he was in the State of Washington Cascade Range, not just horseback riding, hiking and camping, but writing. Justices would often utilize, in varying degrees, their

law clerks' initial evaluation of the thousands of petitions for certiorari (parties' requests the Court hear their appeal). Justice Douglas did his own. Regularly his clerk, Steve Duke, would receive packages from the Justice. The packages contained the Justice's notes evaluating the petitions, plus the manuscripts for three, that's right, three, books: a work on the Pacific Cascade (My Wilderness: The Pacific West (1960), as part of a multi-volume My Wilderness series), a child's biography of John Muir (Muir of the Mountains (1961)), and what I understood to be an academic study of the constitution of India (which may never have been finished and published, or may be his contribution to In Search of India (1960)).

My clerkship experiences with Judge Brown and Justice Black, for the traditional one year each, had been such that it seemed worthwhile to provide my own version of that experience to other young law graduates. Following Justice Douglas' example, I took the money other commissioners used to hire a relatively permanent engineering assistant and legal assistant and used it to hire two legal assistants for what were usually one-year terms. We also provided experience for summer interns, part-time volunteers, for-credit students, and seminar students. All told we gave over one hundred young people a taste of working in an FCC commissioner's office.

By the time Doris arrived, the office was still a shambles, but we had put together makeshift furniture in the legal assistant's office where I could sit to work. Since we still had no supplies Doris and I decided we would pay a visit to the keepers of the supply room. It proved to be not only a nice gesture toward some friendly employees seldom recognized by commissioners, but a revealing introduction to FCC management practices.

We began by asking for items sure to be on hand in any agency consuming as much paper as the FCC: paper clips and number two pencils. The FCC was out of paper clips and had been for some time we were told. Pencils? No one seemed to know where they were. Doris suggested we look in some metal cabinets. Her instincts were good but the supplies were incomplete. There were number one, three and four pencils, but no number two.

Upon inquiry it turned out they had never been instructed to maintain inventories or automatic ordering procedures and that they quite often ran out of stock. About three weeks later Commissioner Jerry Wadsworth stormed into a Commission meeting shouting at all of us, “Do you know we don’t have any number two pencils in this agency?” “Yes,” I said; “I know.”

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