

Tribute to Tom Whitehead, by Lisa Sockett (9/25/09)

In the summer of 2005 then Assistant Dean Sid Moore from George Mason Law School called me and asked whether I would be willing to co-teach a Communications Policy and Law seminar that Fall with a Distinguished Visiting Professor named Tom Whitehead. Dean Moore explained that Tom wasn't a lawyer and hadn't taught a class at the law school before, so he thought I could help Tom plan and organize the course, since I had already taught Communications Law here as an adjunct.

Thus began one of the most interesting six months of my life, as I came to know, work closely with, and greatly admire Tom Whitehead, a wonderful colleague and a fabulous teacher in the truest sense of the word.

To be honest, I didn't know who Tom was at first – Dean Moore told me that Tom had worked in the Nixon White House as the first director of the U.S. Office of Telecommunications Policy, the precursor to today's National Telecommunications and Information Administration at the Department of Commerce.

As Tom and I began to meet to plan the course, I was intrigued with his vision that he wanted to bring in weekly guest speakers to the class. But these weren't just any ordinary guest speakers – they were some of the most famous communications policy makers around. His line-up included:

-- **Brian Lamb**, the founder and CEO of C-SPAN;

-- **Glen Robinson**, Professor of Communications Law at the University of Virginia Law School;

-- **Richard Wiley**, Managing Partner of Wiley, Rein & Fielding, and former General Counsel and Chairman of the FCC;

-- **Dale Hatfield**, Professor of Telecommunications at the University of Colorado and former head of the FCC's Office of Plans & Policy and Office of Engineering and Technology, as well as former Deputy Administrator of NTIA;

-- **Don Baker**, founding partner of Baker & Miller and former Assistant Attorney General for Antitrust;

-- **Henry Geller**, former General Counsel of the FCC and former Director of NTIA;

-- our own Professor of Law and Economics **Tom Hazlett**, former Chief Economist at the FCC;

And, of course . . .

-- **Supreme Court Justice Antonin Scalia**, former law professor and former General Counsel of the White House Office of Telecommunications Policy.

How did Tom know all these people, and how did he manage to get them all to agree to come to our small, fifteen-student seminar here at George Mason law?

Well, some of Tom's magic was due to serendipity. When Tom started the first Office of Telecommunications Policy at the White House, he managed to hire a young law professor named Antonin Scalia as his General Counsel, and a young journalist named Brian Lamb as his media and congressional expert. He obviously could spot talent.

But as I heard more of Tom's story, I realized that he himself was a telecommunications pioneer. During the 1970's Tom used his White House position to advocate for more openness and competition in the telecommunications industry. Among other things, he succeeded in getting the FCC to adopt an Open Skies policy allowing for multiple, non-governmental satellite communications providers. Many credit this policy with revolutionizing the television industry by enabling cable operators to provide programming on a nationwide basis.

During this critical period, Tom was working with all these other telecommunications pioneers at the FCC and later at NTIA and elsewhere in the government. They all formed strong bonds of friendship through their desire to change telecommunications policy to make openness and competition the norm.

So when Tom asked these pioneers to show up in our classroom, they did! And that made for a very special experience that Fall. The students – and I – got to hear behind-the-scenes stories from Dick Wiley about his tenure as the head of the FCC's digital television committee; and from Don Baker about the AT&T breakup. We heard two spectrum experts – Dale Hatfield and Tom Hazlett -- give policy advice seemingly from two ends of the spectrum!

And, of course, we heard great insights from Brian Lamb about starting the cable channel -- C-SPAN – to bring the inner workings of Congress to the American people in an unfiltered way, whether we like what we see or not.

I was most touched by the time we spent with Justice Scalia. As I rushed to class that morning, I realized that we had forgotten to ask the students to dress in something other than baggy jeans and a t-shirt. To my relief, when I entered the class, all fifteen students – without prompting – were wearing courtroom attire appropriate for Justice Scalia’s visit. Tom and I were very proud of them that day.

I will never forget Justice Scalia’s willingness that morning to engage the students in legal discussions about the government’s ability under the Constitution to regulate indecency over the airwaves – always a hot topic – and whether the FCC had the authority to deem cable broadband an information service under Title I of the 1934 Communications Act.

During our discussions, Justice Scalia spoke about his concern about the coarsening of our society’s morals. I often wonder when I’m reading his opinions to what extent he is responding to those concerns.

At Tom’s request, both Brian Lamb and Justice Scalia also spoke to the entire law school after visiting with our class, and both gave talks that were very well received. I was so impressed with how generous they were with their time. And, I realized, it all came down to Tom. They did it for him.

The phrase I use to describe Tom is that he was the consummate gentleman. He was always dressed impeccably, on time, and prepared. He was very respectful of my opinions and the opinions of our students.

What made it really fun to be around him is that he was always eager to engage in rigorous intellectual discussions about communications issues as well as the issues of the day. He seemed to enjoy life to the utmost, and he also really enjoyed teaching the class. He was energized by being around the students, sharing his knowledge, and allowing them to be a part of his unique circle of friends, who also happened to be titans in the world of communications and law.

I believe that teaching that course was, in a way, a culmination for Tom of a lot he had achieved in his life regarding communications policy. I think it was a highlight for him – I know it was highlight and a privilege for me and for our students.

Thank you very much for allowing me to share my experiences and memories of Tom Whitehead with you.

Clay T. Whitehead Tribute By Thomas W. Hazlett  
Delivered at the Telecommunications Policy Research Conference  
George Mason University School of Law  
Arlington, Virginia  
September 26, 2009

*H.L. Mencken once said:*

*The liberation of the human mind has never been furthered by ...  
dunderheads; it has been furthered by gay fellows who heaved  
dead cats into sanctuaries and then went roistering down the  
highways of the world, proving to all men that doubt, after all,  
was safe. . . .*

*- Prejudices, Fourth Series*

Clay T. Whitehead, who we always knew as Tom, was a great American – and by Mencken’s reasoning, a gay fellow. I am honored, but not delighted, to tell you a little bit about this man, who passed away July 23, 2008. Tom was teaching a communications course with Lisa Sockett when I arrived here at George Mason in 2005. I came to know him, and his utterly remarkable story. I cannot possibly do justice to it today.

But because it demonstrates the stunning impact a single person can have, what telecommunications policy analysis can achieve, and because my friends on the panel will do the heavy lifting, the program committee thought they’d give it a go. And for one more reason: Tom Whitehead is why we’re all here at TPRC this year, or any other. Tom Whitehead is the person responsible for starting this annual conference 37 years ago.

Tom Whitehead, with an E.E. Master’s and an Economics Ph.D., both from M.I.T. (where Paul Macavoy was his thesis chair), headed for Washington D.C. after a stint at the RAND Corporation. In 1970 he became the head of a new institution – the Office of Telecommunications Policy. It’s home, the Nixon White House.

Dale Hatfield, an eye witness, is going to tell you about the OTP. I can tell you just a bit. Tom opened the satellite industry to private competitors, a reform known as the “open skies” policy. Well before there was phone competition, cellular, cable TV entry to challenge broadcasters – when natural monopoly was the operative assumption

everywhere in the sector – and particularly so in the high fixed cost satellite industry – Tom Whitehead developed, pushed, and won FCC adoption of rules to permit multiple firms to offer satellite communications. That was huge. It created the means for cable TV program network distribution; competition was soon unleashed to broadcasting. Voice and data services were next. More importantly, it established the idea that monopoly was not inevitable. Competition was a bargain. The dead cat had been tossed.

Tom Whitehead was then instrumental in breaking up AT&T. David Gabel, whose father worked with tom, filled in fascinating details for me just last night. When the antitrust case had been teed up by the US DOJ, Secretary of Treasury George Schultz told the White House, “If you’re going to file the suit, please hold off until the Treasury gets past its next T-Bill sale. AT&T was floating more debt than the U.S. government, and the suite would roil markets. Tom Whitehead saw things with a new clarity – if the U.S. government had to tip toe around Ma Bell, maybe it was time to act. Tom, with the telecom policy portfolio, gave the high sign: the suit would go forward.

Leaving government, Tom went on to a spectacular career as an entrepreneur, founding a subdivision of Hughes that revolutionized cable network distribution, slashing costs for systems and programmers. Then, in 1985, he launched satellite services from Luxembourg that broke open the tightly controlled European video market. Today SES Astra serves over 120 million households, scores of cable TV systems, and has partners all over the world. Open skies have circled the planet.

What more could Tom do? Well, this whimsical engineer-economist proudly challenged – and overturned – an 1892 District of Columbia law that banned kite flying in Washington. And then he did something truly important. Tom Whitehead created the Telecommunications Policy Research Conference in 1972. I give you the story as told by Bruce Owen, now of Stanford, then an economist working for Tom at OTP:

TPRC got started in 1971 because Tom Whitehead requested and received a \$2 million budget for "research" at OTP. Then he asked me to help find ways to spend the money.

It was necessary to spend the money because otherwise OMB or Congress might not give us the same amount next year. It is remarkably difficult to find responsible and risk-free ways to spend \$2 million of research funds, or at any rate so it was back

in 1971. We found several projects that could be and were done by "beltway bandits." The results were not uplifting.

Each of the research contractors kept asking what result we wanted them to find. We explained to them that, if we knew the answers, it would not be necessary to do the research. The contractors were asea. Finally, they did their best to guess what answers we wanted and sent in their reports.

Tom asked whether there was not a better approach. I told him that academic researchers might do better, at least in coming up with their own answers, but that academic researchers often found it difficult to produce useful research in response to short-term contracts. Tom suggested that we should explain out needs to researchers, and listen to what they were working on, and perhaps that would make it easier to spend this money in the future.

And so TPRC was established, essentially, as a way to spend research money more responsibly. Just don't ask how Tom came up with the \$2 million figure for the research budget in the first place.

Bruce M. Owen  
Stanford University: Gordon Cain Senior Fellow,  
Stanford Institute for Economic Policy Research;  
Morris M. Doyle Centennial Professor in Public Policy

*INTRO: Lisa Sockett.*

*INTRO: Margaret Whitehead.*

*INTRO: Dale Hatfield.*

*CLOSING: Tom Hazlett.*

Brian Lamb, the founder and CEO of C-SPAN, among the first basic cable networks, and a man who worked with Tom Whitehead at the OTP, describes the situation this way:

Just to give you an idea, in those days, if I needed time to get to all the cable systems in the United States it would have cost, we figured, about 15 million dollars [an hour] for me to have a

transmission system that I would buy from AT&T – that was about your only choice – to get to all these cable systems.

[That was the effect of COMSAT – the sole authorized U.S. satellite service, 50% owned by AT&T. Lamb notes that the cable industry was stifled by this monopoly bottleneck. The way out began when FCC Chairman] Rosel Hyde said to Tom Whitehead – a 31 year old guy talking to a guy twice his age – “We want to launch a domestic satellite system and we want to make it a single entity. We want to get everybody together in one little company – ABC, NBC, CBS, Hughes, RCA, AT&T – all together and we’ll form a board and all that stuff the same as with COMSTAT, and we’ll have one company launching the satellites and we’ll get on with it,” Tom, at that age, said “Huh uh. That is the dumbest thing ever. This country is a competitive country, a competitive environment, and the marketplace decides.” He single-handedly, with all the people that he worked with, put together a policy called Open Skies. Without Open Skies, we would not have been a network.

Open Skies was proposed by the White House to the Chairman of the FCC, Dave Birch, who took over after Rosel Hyde left, and they adopted the Open Skies policy... Western Union put up the first domestic satellite in April of 1974; RCA put up a satellite that began operating in 1975; Hughes Corporation; GTE [] put one up – there were six in the beginning. . . . Six is a pretty good number. . . . I could buy [at] 100 dollars an hour. But if young Tom Whitehead hadn’t come along and said, at the point when Rosel Hyde, who was a Republican and should have been a marketplace guy at the time – you can see how labels get turned upside down in this town. . . . [I]f Tom hadn’t been there, no one else was paying attention in the White House.

Brian Lamb  
Founder and CEO of C-SPAN

Yes, Tom was paying attention to the details, and yet never lost sight of the grand strategy of policy reform. It wasn’t a game to him. He was a future that eluded so many others, and was just brave and crafty enough to get there.

A visionary who challenged the monopoly model in the sanctuary, who spoke truth to power, Tom Whitehead truly shifted paradigms, and then went roistering down the highways of the world,

literally launching disruptive technologies that proved to all mankind that doubt, after all, was safe, and delivered really cool new services.

My deepest gratitude goes to Tom Whitehead for that amazing contribution. And, by the way, for TPRC. My deep appreciation right now goes to my colleague Lisa Sockett, and to long-time friend Dale Hatfield, who has himself mentored so many scholars in this room and around the world. Their wonderful remembrances are very special. I especially wish to thank Margaret Whitehead for picking up the baton, working tirelessly to make Tom's treasure trove of insight and historical documentation of the telecommunications policy process available for serious academic research.

This concludes our session.