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Adventures of a Quixotic Professor

How One Man's Lifelong
Passion for Social Justice
Bristles Bureaucracies and
Sparks a Landmark
Free Speech Ruling



A
Social
Memoir

David Demers

Foreword by Dr. Gary D. Rhoades

“Scholar, professor, author, former newspaper reporter, maverick, and an advocate of First Amendment rights David Demers has written a ... highly readable and thought-provoking book.” –*Lucy Heckman, St. John’s University Library, Jamaica, NY*

“[Sociologist] C. Wright Mills defined sociology as the study of intersections between biography and history. By Mills’ definition, this book is sociology *par excellence*. ... By tracing and reflecting on his personal initiatives and activities ... , Demers powerfully illuminates the direction of American society.” –*Dr. Kenneth Westhues, professor emeritus of sociology, University of Waterloo, Canada, and expert on workplace mobbing*

“I loved every minute of this piece ... beautifully written and very interesting.” –*Carolyn Walker, book reviewer, Writer’s Digest*

“With an approachable and easy style, Dr. Demers uses his life as a means to examine the history of the various sociological theories and trends that have shaped our culture to this day.” –*Nancy Barthelemy, Archivist, Peabody Institute Library, Peabody, MA*

“This book is ... incredibly well researched and a very interesting, relevant story. ... Demers has a great voice and manages to tell his narrative without sounding holier-than-thou or just someone with a grudge match.” –*Amada Scott, Librarian, Cambridge Springs Public Library, PA*

This book is “part biographical study of his own fight for his First Amendment rights while working as a college professor and part background of social science and its application. ... it was very interesting.” –*Princess of the Library*, <http://princessofthelibrary.wordpress.com>

“[Demers’s] passionate commitment to being a proponent of change emanates off every page as well as his zest for upholding First Amendment issues.” –*Anne M. Miskewitch, Librarian, Literature and World Language Department, Harold Washington Library Center, Chicago, IL*

“I admire [Demers’s] ability to distill some difficult-to-grasp concepts without ‘dumbing them down,’ ... and [I] laugh at [his] jokes.” –*Erin McKnight, senior editor, Kevin Anderson & Associates, New York*

“This was in some ways the most worthwhile manuscript I’ve ever read — the one that should be published as an expose on academic politics.” – *Dr. Cherri Randall, book reviewer, Writer’s Digest*

Adventures
of a
Quixotic
Professor

Also by David Demers

*The Ivory Tower of Babel: Why the Social Sciences
Are Failing to Live up to Their Promises*

The Luminar Papers: A Novel (in press)

History and Future of Mass Media: An Integrated Perspective

*The Rest of the Story: Life and Times of
Arizona State Senate President Leo F. Corbet Jr.*

*How the Mass Media Really Work: An Introduction to
Their Role as Institutions of Social Control and Change*
With Taehyun Kim and Daniel Erickson

*Jelly Beans & Peanuts: Life and Times of Llewellyn Jenkins,
an American Banker, Soldier and Family Man*

The Menace of the Corporate Newspaper: Fact or Fiction?

Global Media: Menace or Messiah?

Adventures
of a
Quixotic
Professor

How One Man's Lifelong
Passion for Social Justice
Bristles Bureaucracies and
Sparks a Landmark
Free Speech Ruling

David Demers

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To my teachers,

Louis Armbrecht
Lee B. Becker
Donald Bird
Hazel Dicken-Garcia
Simon Dinitz
George A. Donohue
Sharon Dunwoody
Richard Lundman
Marco Marcet
Suzanne Nichols
Edward Roth
Rudolph Schmidt
Henry Schulte
Joseph E. Scott
Phillip J. Tichenor

“The reasonable man adapts himself to the world;
the unreasonable one persists in trying to adapt the
world to himself. Therefore, all progress depends
on the unreasonable man.”

—*George Bernard Shaw*

“A nation of sheep will beget a government of wolves.”

—*Edward R. Murrow*

“There may come a time in the career of every
sociologist when it is his solemn duty to raise hell.”

—*Edward A. Ross*

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Foreword by Gary Rhoades

The ... (pending)

Dr. Gary D. Rhoades served as General Secretary of the American Association of University Professors in Washington D.C. from 2009 to 2011, when the free speech lawsuit *Demers v. Austin* (Washington State University) was filed in federal district in Spokane, Washington. He is a professor of Educational Policy Studies and Practice at the University of Arizona and previously served as Director of the Center for the Study of Higher Education and head of the Department of Educational Policy Studies and Analysis from July 2012 to July 2020. His books include *Managed Professionals* (SUNY Press, 1998), and *Academic Capitalism and the New Economy* (with Sheila Slaughter, Johns Hopkins University Press, 2004). His recent book projects include *Organizing Professionals': Academic Employees Negotiating a New Academy*.

... Gary's Foreword continued on this and subsequent pages

Author's Note

When I presented a controversial plan in 2007 to improve my academic program at Washington State University, administrators tried to fire me.

I was not alone.

More than one million professors and K-12 school teachers at public institutions have been fired or reprimanded during the past century for saying things their administrators didn't like.¹ Among the recent list of victims were two engineering professors, one from Idaho who tried to save his department from an internal merger and another from California who condemned the hiring of too many part-time faculty.²

Many faculty who are targets of administrative "workplace mobbing" quit their jobs and spend years in therapy.

A few commit suicide.³

Some, like me, fight back and file free speech lawsuits.

Most lose.⁴

I was fortunate.

In 2014, the Ninth Circuit Court of Appeals issued a landmark ruling in *Demers v. Austin* that extended constitutional protection to on-the-job service-related speech, sometimes called "shared governance" speech.⁵ Federal courts have long held that private (off-the-job) speech and speech in the classroom and in scholarship at public universities deserve broad protection.⁶ But this was the first time in history a court has protected faculty speech uttered outside of the classroom on issues of public concern related to teaching and scholarship, which includes comments about the structuring of academic programs. The two professors mentioned above likely would have won their cases had they been adjudicated after *Demers*.

The ruling, however, only covers nine states in the West.⁷

As of this writing, the other 41 states have no constitutional protection for service-related speech.⁸ This means faculty at public university and K-12 school systems can be fired for simply raising concerns about administrative policies.⁹ Tenure cannot protect them, because the U.S. Supreme Court ruled in 2006 that

public employees are not entitled to free speech while on the job.¹⁰

One of the goals of this book is to increase awareness of the lack of free speech protection for these 41 states. My hope is that federal courts in those jurisdictions will follow the precedent set in *Demers*. A democracy cannot thrive if its teachers are muzzled, especially when it comes to issues of public concern related to teaching and scholarship.¹¹

In addition to covering the legal issues surrounding *Demers v. Austin*, this book examines five more social problems: workplace mobbing, the bureaucratic bandwagon effect, anti-Enlightenment trends, the adverse effect of bureaucracies on democratic processes, and the political impotence of social scientific research. (See table on next page.) Each of these problems could be a book unto themselves, but all five are explored together here, because each played a role in the personal, social, and historical conditions that led up to the *Demers* ruling.

This social memoir draws its legitimacy in part from the late sociologist C. Wright Mills, who argued that “no social study that does not come back to the problems of biography, of history and of their intersections within a society has completed its intellectual journey.”¹² He called this the “sociological imagination,” which explores how culture and social and historical events and conditions influence the personal choices of social actors (individuals and organizations), and how those choices in turn influence (or not) other social actors.

My decision to file a free speech lawsuit against WSU stems in large part from the values, ideals and principles I acquired from teachers in my Lutheran elementary school and from my college professors, who also emphasized the ideals of free speech and the Age of Enlightenment.

I confess that I carried into adulthood a quixotic view of the world — one that shares some common ground with Cervantes’s fictional character Don Quixote, who embarks on a mission to restore chivalry and goodness to Spain. Quixote’s idealism (or madness) leads him into a number of misadventures, including battles with imagined rather than real adversaries (hence the phrase, “tilting at windmills”).

As a newspaper reporter and journalism and mass media sociology professor, I, too, embarked on a few missions to protect and advance ideals associated with free speech and civil liberties — ideals that I thought were widely shared among journalists and academics. I was surprised, though, to encounter a fair amount of backlash or indifference from editors, university administrators and professors, people who typically embrace free speech and Enlightenment ideals. I attribute much of this backlash to two factors.

The first is rule-driven structural constraints of bureaucratic systems, which need compliant employees rather than those who raise concerns about the wisdom of administrative decisions and policies. The second is an administrative lack of

Issues and Social Problems Examined in This Book

1. *Demers v. Austin*. This Ninth Circuit Court of Appeals case is the first in the nation to provide constitutional protection for faculty speech outside of the classroom. It protects shared governance on issues of public concern. In other words, faculty are allowed to criticize administrative policies and decisions without fear of reprisal, with the exception of criticism that severely disrupts the organization's ability to achieve its educational goals.

2. *Workplace Mobbing*. Public universities and school systems are highly susceptible to workplace mobbing, because tenured faculty have a right to due process and that makes it difficult to fire them.¹³ But workplace mobbing is not unique to the field of education. Any organization — large or small, public or private — can engage in mobbing, which is characterized by attempts to harass workers or members until they quit or are forced out. Although I have no formal training in the study of workplace mobbing, I have a lot of personal experience, and I'll review some of the research in this growing field of study.¹⁴

3. *Bureaucratic Bandwagon*. I also have a lot of experience with what I call the "bureaucratic bandwagon effect." This condition appears when people with high moral standards suspend their beliefs to support an organizational goal or an elite position that contradicts those beliefs. The bandwagon effect is so strong that I've seen First Amendment scholars — people who have defended free speech ideals all of their lives — actively work to deny faculty and students free speech rights. Organizational rewards, such as pay increases and promotions, often play a role in co-opting such people. But an even stronger factor, I believe, is the need to be loved and accepted. People fear social isolation in the workplace.

4. *Anti-Enlightenment Trends*. Despite the *Demers* decision, there is a growing anti-Enlightenment trend in America that poses a major threat to the core values that defined this country, which include free speech, democracy,

due process, and equality. This trend is driven in large part by anti-intellectual and reactionary political movements in America, which embrace social control over social tolerance and call for the infusion of dogma into politics. But university administrators also are partly responsible. They are monetizing their institutions, which means downsizing or eliminating nonprofit-generating units that historically have played key roles in defending and promoting Enlightenment ideals. The most vulnerable disciplines are housed in the humanities, social sciences, and the library sciences. This includes journalism, English, philosophy, history, sociology and foreign languages. Enrollments, degrees, and number of faculty and programs have declined in either actual or relative terms or both over the past two or three decades.¹⁵

5. *Anti-Democratic Bureaucratic Problem*. The growth of the bureaucratic form of organization also is driving the anti-Enlightenment trend, because it discourages democratic processes and individual initiative. Bureaucracies can be democratized, but the leaders of such organizations — which includes scholarly administrators who teach the value of democracy in their classes — have shown little interest in decentralizing power.

6. *Political Impotence of Social Science*. Although social scientists have been very effective in generating knowledge about society, they have had a very limited impact on the public policymaking process, according to a large body of research in public policy administration.¹⁶ Policymakers routinely ignore such research unless it supports their policies or interests. I have characterized the political impotence problem as an "ivory tower of babel."¹⁷ A major goal of universities is to produce knowledge that solves social problems, but ironically they usually do not reward faculty who produce scholarship that attempts to influence the public policymaking process. My personal experience reinforces this.

commitment to free speech, civil liberties and democratic ideals.

In the end, Quixote regains his realism (or sanity) and dies without achieving his goal of reforming a corrupt world. The “jury” is still out on the question of whether any my actions have produced any lasting social change and whether I am better characterized as quixotic nutcase or a progressive reformer (or perhaps a little of both). You, the reader, are free to judge.

In the final chapter of this book (Chapter 50), I provide a list of lessons that I have learned from my experiences. These are meant to be generalities, not laws. Every situation has a different set of conditions that may or may not lend themselves to these expectations. What I’m trying to say is this: Be careful before you challenge a powerful bureaucracy or group.

The Appendix contains an “Essay on the Future of The Enlightenment.” My position might be described as taking the middle ground between the highly optimistic view of Harvard University professor Steven Pinker (author of *Enlightenment Now*) and the semi-pessimistic anomie-driven concerns of cultural theorists. In my view, the deleterious effects of the Enlightenment would be eased substantially if public policy were driven more by knowledge than by the avaricious demands of political and economic elites and special interests.

Although various theories and scholarly ideas are explored in this book, my goal was to minimize the jargon in order to appeal to an audience larger than my scholarly colleagues. I have argued elsewhere that social scientists have spent too much time in the ivory tower, which has adversely affected their ability to influence citizens and the public policymaking process.¹⁸

Thus, the primary markets for this book include these eight groups: (1) faculty and administrators at public universities and K-12 school systems, (2) sociologists and their students, (3) journalists and mass communication scholars and their students, (4) lawyers and legal scholars, (5) free speech advocates and civil libertarian organizations, (6) political scientists and historians, (7) librarians, and (8) readers who are curious about what happens when one individual stands his ground against billion-dollar bureaucracies (the so-called “individual v. collective problem”).

ALL INDIVIDUALS associated with controversies identified in this book were mailed or e-mailed earlier drafts of this manuscript and were invited to provide criticisms and comments. Their responses are printed verbatim at the end of this book. Pseudonyms are used for some individuals. Real names are used for public officials and public figures.

Author's Note Endnotes

1. No precise estimates are available, because faculty are often reprimanded behind closed doors and without their knowledge. But if each of the 1,600 public universities and 98,000 public schools in the United States had only one case during each decade in the 20th century, the total number of cases would exceed one million. A list of prominent free speech cases in which professors were targeted for dismissal can be found under the "Academic Freedom" listing at Wikipedia <https://en.wikipedia.org/wiki/Academic_freedom#The_Lane_Rebels>. Communication Professor Steve Martin of Ripon University in Wisconsin has compiled a list of 36 cases involving university professors that, along with the two mentioned in this Preface, made news in their communities. For every case that makes news, there no doubt is another ten or hundred that never do.

2. *Hong v. Grant*, 403 Fed. Appx. 236 (9th Cir. 2010). Juan Hong was a professor of chemical engineering at the University of California, Irvine.

3. Conservative criminology professor Mike Adams of the University of North Carolina in Wilmington committed suicide in 2020 after he was forced to retire over a controversial tweet. Adams had tweeted about the statewide Covid-19 crackdown on dining as he ate and drank with six men: "I almost felt like a free man who was not living in the slave state of North Carolina." He added, "Massa (Governor Roy) Cooper, let my people go!" More than 60,000 people signed a petition asking the university to fire him for his tweet. Adams previously had published two books criticizing political correctness on campus. The university tried to fire him once, but he sued and the courts ruled that his speech was private rather than job-related (see *Adams v. University of North Carolina–Wilmington*, 640 F.3d 550 (4th Cir. 2011)). He was granted tenure and back pay. For details on his suicide, see Ian Miles Cheong, "Woke Media Celebrates Suicide of Professor Who Was Fired for Controversial Tweet," *The Post Millennial* (July 26, 2020), retrieved September 22, 2020, from <<https://thepostmillennial.com/woke-media-celebrates-suicide-professor-fired-controversial-tweet>>.

4. Popular culture extols the virtues of individualism in America, but the reality is that collectives, such as bureaucracies and corporations, have tremendous power over individuals. The courts historically have been very reluctant to second-guess public bureaucracies when it comes to employment matters. *Demers v. Austin* is the exception rather than rule.

5. *Demers v. Austin*, 746 F.3d 402 (9th Cir., January 29, 2014). This ruling replaced the original ruling of the panel, which was handed down on September 4, 2013. The major difference between the rulings is that the final one cited the 7-Step Plan in more depth. The panel apparently was trying to clarify how the Plan dealt with issues related to "teaching and scholarship."

6. Private universities, like private employers in general, are not constitutionally prohibited from terminating professors for their speech, but most do offer contractual protection (through faculty manuals) for speech related to teaching and scholarship. Some also protect speech that criticizes or challenges university administrators.

7. The states within the Ninth Circuit include Alaska, Arizona, California, Idaho, Hawaii, Nevada, Montana, Oregon, and Washington. Also included are the territories of Guam and Northern Mariana Islands.

8. Those states are governed by *Garcetti v. Ceballos*, 547 U.S. 410 (2006), which held that public employees have no constitutional protection for on-the-job speech. To date, faculty in those areas have only won federal court cases when their speech was determined to be private, not on-the-job. A detailed analysis of *Garcetti* is provided later in this book.

9. Of course, most administrators tolerate dissent from faculty. Some even welcome such criticism. But there are many exceptions to the rule. And there are lots of ways for administrators to punish faculty without a formal accounting of their actions.

10. *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

11. The third principle of the National Education Association is democracy. “We believe public education is the cornerstone of our republic. Public education provides individuals with the skills to be involved, informed, and engaged in our representative democracy.” Retrieved from the NEA website October 5, 2020, at <<https://www.nea.org/about-nea/mission-vision-values>>.

12. C. Wright Mills, *The Sociological Imagination* (New York: Oxford University Press, 1959), p. 6

13. Four states have abolished tenure for public school teachers: Florida, Indiana, North Carolina, and Kansas. But union contracts with school systems often provide due process for teachers.

14. I will examine the research of Dr. Kenneth Westhues, professor emeritus of sociology, University of Waterloo, Canada. See Chapters 31 and 42.

15. Alex Berezow, “Humanities Enrollment Is in Free Fall,” *American Council on Science and Health* (July 31, 2018), retrieved October 21, 2020, from <<https://www.acsh.org/news/2018/07/31/humanities-enrollment-free-fall-13243>>; James S. House, “The Culminating Crisis of American Sociology and Its Role in Social Science and Public Policy: An Autobiographical, Multimethod, Reflexive Perspective,” *The Annual Review of Sociology*, 45: 1-26 (2019), retrieved November 2, 2020, from <<https://www.annualreviews.org/doi/pdf/10.1146/annurev-soc-073117-041052>>; and Andrew Albanese, “Are Public Libraries in Decline? In The Freckle Report 2020, Tim Coates offers a sobering, data-driven view of the state of public libraries in the U.S. and the U.K.,” *Publishers Weekly* (April 3, 2020), retrieved November 2, 2020, from <<https://www.publishersweekly.com/pw/by-topic/industry-news/libraries/article/82925-are-public-libraries-in-decline.html>>.

16. Much of this research is summarized in David Demers, *The Ivory Tower of Babel: Why the Social Sciences Are Failing to Live Up to Their Promises* (New York: Algora Publishing, 2011).

17. Ibid.

18. Ibid.

Part I

Free Speech Dilemmas

Definitions

Quixotic

Exceedingly idealistic, unrealistic and impractical

Academic Freedom

A scholar's freedom to express ideas without interference

Civil Liberties

Freedom from interference in one's pursuits, such as freedoms of expression, religion and assembly, and due process

The Enlightenment

A broad philosophy of thought that embraces freedom (over collectivism); reason (over dogma, superstition and traditionalism); civil liberties, including freedom of the speech, press, and religion; political equality; economic equity; progress; separation of church and state; democratic decision-making; decentralized power; due process; and governmental accountability

Workplace Mobbing

Physical or emotional abuse to force someone out of the workplace through intimidation, humiliation, discrediting, and isolation

Chapter 1

Grumpy Judges and Professors

Friday, November 7, 2012

Seattle, Washington

The morning of my appeals court hearing has arrived, and I feel like barfing.

I've got that god-awful acidic taste in my throat, which means I'm one step away from the painful involuntary stomach convulsions and the surge of clumpy porridge that brings on the sense of asphyxiation.

Normally I can handle a lot of stress.

But this morning isn't normal.

The hearing in Seattle before a three-judge panel of the Ninth Circuit Court of Appeals will determine whether the First Amendment protects a 7-Step Plan I created to improve the quality of the Edward R. Murrow College of Communications at Washington State University, where I teach. If the court denies protection, then professors and school teachers in nine Western states will have no constitutional protection for speech that questions, among other things, the wisdom of administrators' policies and decisions.¹

The hearing also will determine whether I, a tenured journalism professor and mass media sociologist in the Murrow College, will be forced out of my job and into bankruptcy. I have accumulated more than \$350,000 in legal fees, which is five times greater than my annual salary.

How will I support my family if I lose?

I am so stressed that I pop a beta blocker to block the flow of adrenaline and the emotional state commonly called "stage fright." A colleague once told me that blood-pressure medications are more popular than sex among artists, musicians and actors. I find that hard to believe, because most of the performing artists I know are sex fiends, and a beta blocker is the foe of a good stiff one. I know these things, because I'm a social scientist with participant-observation experience.

I brush my teeth, shave, and shower.

The beta blocker is working.

My heart rate is down.

The butterflies are resting.

I'm more confident but not cocky enough to put on a multi-colored progressive

tie that could offend the three elderly white male judges presiding over this hearing. I play it safe and don a conservative navy-and-red-striped tie and match it with a light blue Oxford shirt, tan slacks and a snappy dark blue sport coat.

Not too rich looking; not too poor.

J. C. Penney right.

It's raining and 43 degrees as I make the short drive from my hotel in downtown Seattle to a parking garage near the William K. Nakamura Courthouse. Court opens at nine, seventy-five minutes from now. I'm meeting my attorney, Judith Endejan of Graham & Dunn, for breakfast at Tulio, an upscale Italian restaurant located on Fifth Avenue, adjacent to the courthouse.

Judy arrives right on time in a dark blue pantsuit — garb that is sure to keep the judges' minds on the case and not her attire. We begin our conversation with complaints about the weather, because that's what people in Seattle do all winter long. Then she gives me a copy of her prepared notes, printed on a yellow legal pad.

"Is the organization of this presentation okay?" she asks, looking at me through radiant azure eyes that convey a gentle but surefooted manner. Judy is about my age, 59, though I think she's smarter than me. I often feel that about other people, but it doesn't bother me. What bothers me are smart people who fail to use their intelligence. Judy's not one of them.

"You might want to reduce the background information a bit in case the judges cut you off," I suggest. Although I'm no expert on how to argue a case before an appeals court, I have watched a lot of courtroom TV dramas.

"Good suggestion," she says, adjusting her reading glasses. "Did we miss anything?"

"I don't think so. Nice job."

"You nervous?" she asks.

"Of course. And you?"

"No," she declares.

But I suspect she's a little nervous, too. After all, it's not every day that a First Amendment attorney has the privilege of appearing before the second-most powerful court system in the land, second only to the U.S. Supreme Court.

I can tell she's excited.

That calms me.

We walk half a block through the drizzle and enter the 10-story courthouse, which was built just before World War II. The floors are polished starburst-patterned terrazzo with shades of brown and beige. The walls are surfaced with turquoise, mustard and salmon terra cotta panels. Stepped coffers accent the ceilings. The architecture is art deco, a style that symbolically reflects an unwavering faith in social progress. My free speech lawsuit is a form of social progress, too — a call for

decentralization of political power, because it asserts faculty have the right to criticize administrators' policies, a process commonly known as "shared governance."

Judy and I ride the elevator to the second floor, and shortly after entering the courtroom, the defendants' state-appointed assistant attorney general, Kathryn M. Battuello, greets us with a professional smile and handshake. I smile, too, but am disingenuous. It's hard for me to respect attorneys who oppose free speech rights, especially in the name of the state.

The legal brief she filed with the court maintains that I do not deserve First Amendment protection because my 7-Step Plan was penned in my role as a public employee, not as a citizen. The Plan recommended, among other things,² that the Murrow College seek national accreditation for the print journalism and other mass media programs and remove the communication studies program from the college.

To back up the university's argument, the brief cited a 2006 U.S. Supreme Court decision in which the 5-4 conservative majority held that public employees have no free speech rights on the job, even when they find corruption among supervisors.³ The plaintiff in the case was a prosecuting attorney who learned that police had fabricated information to obtain a search warrant. When his boss refused to correct the problem, the attorney filed a lawsuit. The high court basically said that it is better to control governmental employees than to root out government corruption. A bad decision.

Although Battuello's legal strategy casts the university and her four WSU administrative defendants as foes of free speech, a federal district court judge in Spokane followed precedent in June 2011 and threw my case out of court.⁴ Today's hearing will determine whether that judge's decision was constitutional and whether I am entitled to collect damages and attorney fees if I win.

Promptly at nine the three black-robed judges enter the courtroom from a door that blends into the wall behind their seats. Three or four other court cases are scheduled before mine. Time drags, giving me another chance to perseverate on the wisdom of my decision to file the lawsuit three years ago.

"You're crazy," some colleagues and attorneys advised me at the time. "The university is too powerful. It will destroy you and your career."

"Even if you win, you may not even be able to recover your legal costs. How are you going to support your daughter?"

"Who really cares about your case? Twenty years from now, no one will care."

I console myself with advice offered by Izzy Stone, an investigative reporter and champion of civil liberties who uncovered corruption and abuse of power in American political and business institutions from the 1940s to the early 1970s: "The only kinds of fights worth fighting are those you are going to lose, because somebody has to fight them and lose and lose and lose until someday, somebody who believes

as you do wins. ... You mustn't feel like a martyr. You've got to enjoy it."⁵

Very reassuring words except that, to be honest, I wasn't having much fun. I'd rather win now than become a *de facto* member of the Joan of Arc club.

When my case is called,⁶ Judy leads me to the left side of the inner court area, where I sit in one of the chairs in front of a railing that separates the inner court area from the gallery. Battuello sits at a table on the right side. None of her four administrative-defendant clients show up. This surprises me. Did they feel confident they would win and, thus, their presence would do little to help their case? Or were they ashamed to show up at a hearing in which their lawyer takes a position opposed to free speech rights for faculty?

The three judges avoid any eye contact with me. I wonder if they are ever haunted by the eyes of those they rule against.

Judy speaks first, because I am appealing the lower-court ruling.

She gets off to a great start.⁷

"This case is not about a petty personality conflict instigated by a lazy disgruntled professor, as the administration would have you believe. Rather, this case is about a professor with a deeply felt view that the First Amendment should protect a professor's speech." She adds that I deserve protection because I submitted the 7-Step Plan as a citizen, on my personal business stationery,⁸ not in my role as a government employee. But our legal brief argues that my speech is protected even if I submitted it as an employee.

Several minutes later, the lead judge, William A. Fletcher, interrupts Judy.

My heart skips a beat.

"I have trouble — speaking only for myself — treating that 7-Step Plan as cleanly private speech," says Fletcher, who was appointed to the court by Bill Clinton in 1998. "[I]t originates when he is a member of a committee. It's clearly undertaken in tight relationship to his job and the things that he cares about in his job. He is suggesting an important restructuring of two departments. I mean, I have trouble seeing that as purely private speech."

Fletcher's demeanor is pleasant, somewhat out of step with what he just said.

"Your honor, might I address that?"

"Yes, please."

"Well, first of all, your honor, the question of whether it is part of his job duties, as this court has said in at least five cases, is a mixed question of fact and law that should be reserved for the trier of fact." She argues that only one part of my 7-Step Plan — removing the communication studies program from the Murrow College — was connected to my work on a college committee. The other six suggestions were unrelated to the committee's work and, therefore, are private speech.

"You know, I disagree with that," Fletcher strikes back. "The 7-Step Plan ... is

a thoughtful proposition for restructuring how journalism is taught, how the faculty is organized, how money is raised. All of that has to do with running of the institution in a very important way.”

My heart skips a couple more beats.

Battuello then presents the university’s side of the case, asserting that my 7-Step Plan also does not deserve First Amendment protection because, among other things, it fails to address an issue of public concern. After all, she points out, I never accused the university of wrongdoing. She is correct.

Does anyone have a defibrillator?

“Obviously he (Demers) is not accusing the university of stealing money,” Fletcher responds, knocking down her argument and restarting my heart. “We’re not talking financial malfeasance. But it (7-Step Plan) is very clear that it (Morrow program) is managed in a way that it shouldn’t be managed, and he has an important suggestion for improvement.”

I appreciate Fletcher’s comments, of course. But they don’t cheer me up much, because he implies at one point that even if the First Amendment protects my speech, I may not be able to recover damages from the university because of “qualified immunity” — a doctrine that shields government officials from monetary damages if they did not violate “clearly established” law. In simple language, if the courts or the legislature do not clearly spell out what kinds of actions violate the Constitution, the offenders can’t be punished.

“But if victims are denied compensation when offenders violate the Constitution, where’s the fairness in that?” I want to add, but don’t, because even plaintiffs like me don’t have a free speech right to speak during such hearings.

After the hearing, Judy and I ride the elevator to the first level and sit on a bench in the hallway. I stare at the terrazzo floor for several seconds before revealing my thoughts: “I’m 99 percent certain we will lose the case, because Fletcher clearly thought my 7-Step Plan was job-related speech.”

I was hoping Judy would dispute my prediction, but she doesn’t. She simply says: “You never know until a court issues its ruling.”

She is trying to cheer me up, of course.

That’s part of her \$345-an-hour job.

Chapter 1 Endnotes

1. Virtually all public universities have faculty manuals that purport to protect professors when they criticize administrators and their policies; however, these contract-based protections rarely stop administrators from firing or reprimanding faculty, nor do the courts.

2. The Plan urged administrators to (1) separate the mass communication program from the communication studies program (create two separate units); (2) hire a director of the Murrow School who has a strong professional background; (3) create a center for media research that conducts joint research projects with the professional community; (4) give outside professionals an active role in the development of the schools' curriculum; (5) give professional faculty a more active role in the development of the curriculum; (6) seek national accreditation for the mass communication programs; and (7) hire more professional faculty with substantial work experience. If the university adopted these changes, I agreed to donate \$100,000 to the program. See Chapter 33 for more details about the Plan.

3. *Garcetti v. Ceballos*, 547 U.S. 410 (2006). The decision in this case is controversial because it denies free speech protection to whistleblowers. In fact, the defendant in the case was an assistant district attorney who discovered that police has fabricated evidence to obtain a search warrant. More details on this case and others will be provided in later chapters.

4. *Demers v. Austin et al.* (2:09-cv-00334-RHW), U.S. District Court for the Eastern District of Washington (June 2, 2011).

5. Quote retrieved from <https://www.azquotes.com/author/14178-I_F_Stone>.

6. *Demers v. Austin*, 746 F.3d 402 (9th Cir., Jan. 29, 2014). This ruling replaced the original ruling of the panel, which was handed down on September 4, 2013. The major difference between the rulings is that the final one cited the 7-Step Plan in more depth. The panel apparently was trying to show university administrators that the content of the Plan dealt with issues related to "teaching and scholarship," speech that it declared is protected by the First Amendment.

7. The hearing was tape recorded. A copy of the recording can be obtained from the website for the Ninth Circuit Court <<https://www.ca9.uscourts.gov/opinions>>.

8. I founded Marquette Books, a book publishing company, in 2001. It has published more than 150 academic and trade books since then.

Chapter 2

The Long Drive Home

*Friday, November 7, 2012
I-90, Between Seattle and Spokane*

The drizzle feels colder as I lumber back to my seven-year-old Volvo XC-90 for the five-hour drive back to Spokane, where I live. Drivers heading east on I-90 who share the road with me are oblivious to my anxiety, as I am of theirs.

Psychiatrists and clinical psychologists often blame individuals for their stresses and usually prescribe solutions that require individuals to change their behaviors or thought patterns. But many individual problems, such as depression, stem from the demands or constraints created by social phenomena, including laws and rules. Many salaried workers, for example, are expected or forced to work long hours, because 40 hours is simply not enough time to their jobs. Studies show that nearly two-thirds of Americans are ready to quit their jobs because of workplace stress, and job stress is a major cause of depression.¹

Americans love to think of themselves as rugged individualists, but the reality is that organizations exert a lot of control over their lives. The “collective” is always there, like the hellhound in Robert Johnson’s 1937 blues tune, which is now playing on my Sirius radio.²

*I got to keep movin’ ... blues fallin’ down like hail ...
Umm-mm-mm-mm, blues fallin’ down like hail,
... And the day keeps on worrin’ me;
there’s a hellhound on my trail ...*

My hellhounds don’t have glowing red eyes or mangled fur or even a foul smell. But they, as administrators of a public university with a half-billion-dollar annual budget, are no less lethal. With the stroke of a pen or a tap on a keyboard, these administrative demons can take away raises, promotions, prestigious appointments, prized teaching assignments and careers.

I know these things, because this isn’t the first time my passion for free speech and civil liberties has gotten me into trouble.

In the late 1970s, I interviewed a hockey coach who confessed that he had

molested some of the boys on the team, but my editor, at the request of a county sheriff, deleted that quote from the story. Two years later, another editor killed a story I was researching about cancer rates in Midland, Michigan, after representatives of Dow Chemical Company, the largest employer in town, complained.

In 1989, the Minneapolis Police Department refused to give my journalism students access to routine reports about crimes committed by police officers, so I was forced to file an open records lawsuit. The case reached the Minnesota Supreme Court, which released some of the data — enough to show that evidence of racism existed in the police department nearly three decades before the death of George Floyd.³

In the mid-1990s, I helped journalism students publish some controversial stories and file an open records lawsuit to obtain access to student evaluations of faculty at the University of Wisconsin–River Falls. Administrators tried to fire me.

And, after I filed the lawsuit at Washington State University, four journalism deans who visit campus refused to publicly condemn the university's attempt to squelch faculty speech. One of those deans, who was a First Amendment scholar, also actively opposed on his own campus an effort to provide free speech protection to all students and faculty.

I have many more stories like this, but my point is this: If university administrators, journalism faculty, and journalists fail to defend and protect free speech and other civil liberties, how can society expect other organizations and citizens to embrace them?

America was the first nation in the world to create a federal constitutional republic — one that embraced not only free speech but democracy, due process, right to fair trial, political equality, rule of law, and freedom of religion, assembly and the press. But is America abandoning these ideals? Are they no longer relevant in a free-market system that critics say increasingly emphasizes wealth and technology as the only primary symbols of success?⁴

Or are my experiences simply aberrations — outliers, unrepresentative of the whole of experiences involving civil liberties on or off campus? Am I tilting at windmills? Is it even possible that I am the problem? After all, many administrators and colleagues saw it that way. They called me lots of names, including troublemaker, rabble rouser, agitator, rebel, a professor with a hidden agenda, and, my favorite, sociopath.

Me? A sociopath?

Okay, I confess that when I was about seven years old I threw stones at a small window in the back of a semi-trailer parked in a field. I had no guilt or remorse — until a sheriff deputy yelled out, “We’ve got your bike.”

I knew then that I had committed a crime, so I put my hands up and turned

myself in. The deputy was eight-feet tall, or so he seemed to me. He threatened to throw me in jail but decided he'd rather talk to my parents.

"They're working," I said, asserting a half-truth. My mother was at home.

Fortunately, I didn't have to go to jail. "I'll be keeping my eye on you, Dave," the peace officer said. "Now be careful on your ride home."

I learned an important lesson that day.

Never throw stones at trucks unless my bike is at my side.

But in hindsight perhaps the real lesson was "never throw stones at powerful institutions." No one understood this proposition more than Voltaire, the 18th century French philosopher who spent much of his life on the run from the French authorities. He extolled the virtues of free speech but also warned of the folly of thinking that science and progress can eliminate injustice and wickedness. His timeless novel, *Candide*, chronicles the adventures of a young man whose optimism and idealism are swept away by the harsh realities of the real world.⁵ At the end of the book, *Candide* concludes that the best course of action is to "tend one's own garden" — to stop trying to make the world a better place because humans are too flawed.

I may not have been a sociopath, but was I a *Candide*?

Should I have just kept my mouth shut when I perceived an injustice?

These questions and others swirl around my stress-weary mind as my SUV meanders through the Cascade Mountains east of Seattle, across the mighty Columbia River, and through central Washington's high and dry rolling plains just west of Spokane. When I arrive home, my wife, Theresa, and 12-year-old daughter, Lee Ann, tame my angst with hugs and kisses.

"I missed you, Dada," Lee Ann says.

"I missed you more, honey," I respond, giving her a big hug.

These simple words remind me again that family and relationships are the real wealth in life. This is my garden.

Yet even familial wealth is not untethered from the political, economic and social institutions that rule this land. When the government or corporations fire workers or deny opportunities or assistance to disadvantaged groups, familial relationships are often harmed and sometimes destroyed. In an interdependent world, we all depend upon each other to achieve our goals. Voltaire's book fails to acknowledge this, perhaps because he could not see the social and economic dependencies that French sociologist Emile Durkheim identified in his famous 1893 book, *The Division of Labor in Society*.⁶ (Voltaire died a century before.)

That evening, after tucking my daughter into bed, I head to my office in the basement to write and distribute via e-mail a news release to several hundred colleagues and news organizations across the country. I've been distributing updates on the free speech battle at WSU since it began six years earlier.

Although local newspapers in Moscow and Lewiston, Idaho, and the *Chronicle of Higher Education* covered the story intermittently,⁷ the two newspapers that I thought would have most thoroughly covered the story — the Spokane *Spokesman-Review* and the WSU campus student newspaper, the *Daily Evergreen* — devoted little space to the lawsuit, despite its obvious man-bites-dog newsworthiness: a journalism professor suing a journalism program for violations of the First Amendment.⁸

My objective in writing the news release is to soften what I perceive to be the coming disaster. In the world of politics, losing often leads to de-legitimation of good principles and ideas — at least in the minds of outsiders or the public. And de-legitimation, in turn, makes it more difficult to overcome injustices. Don't take my word for it, just ask any civil rights leader.

Although my news release cannot stop an adverse appeals court ruling, it might blunt de-legitimation and prepare other free speech advocates for future battles, as Izzy Stone no doubt would have agreed.

J-PROFESSOR PREDICTS U.S. APPEALS COURT WILL DENY FACULTY RIGHT TO CRITICIZE ADMINISTRATORS

A journalism professor who filed a free speech lawsuit against four administrators at Washington State University is predicting the Ninth Circuit Court of Appeals will rule that university professors, as employees, do not have the right to criticize administrators and their policies.

“If I am right, it means the balance of power at universities in Washington state and eight other Western states will be radically altered,” said David Demers, an associate professor of communication in The Edward R. Murrow College of Communication at WSU. “The decision will undermine shared governance, a centuries-old principle in which professors share power with administrators when it comes to making decisions that affect university budgets and programs. ... “

The Appeals Court panel didn't say when it would hand down its decision in my case. Judy estimates three months to two years. I wish for three months. It took 10.

By then, I was teaching a mass media law class in the Walter Cronkite School of Journalism and Mass Communication at Arizona State University.

Judy calls me 20 minutes before class.

“Dave,” she says in a tone of voice that fails to give away the outcome. “I've got good news and bad.”

Chapter 2 Endnotes

1. A list of studies is available at The American Institute of Stress, retrieved November 11, 2020, from <<https://www.stress.org/42-worrying-workplace-stress-statistics>>.

2. For a brief history of the song and its historical significance, see Ted Gioia, *Delta Blues* (New York: Norton Paperback, 2009 ed., originally published in 2008), pp. 181–182.

3. David Pearce Demers, Mark Engebretson, Jeane Fitzsimmons, and Darcy Dennison, “The Color of Justice: White People Are Almost Twice as Likely to Prevail in a Complaint Against a Minneapolis Police Officer — and Critics Claim Racism Is the Reason,” *Twin Cities Reader* (March 25-31, 1992), pp. 8-11. This study is discussed in Chapter 19.

4. Jacques Ellul, *The Technological Society* (New York: Vintage Books, 1964; translated from the French by John Wilkinson). Ellul argues that technology and the drive for efficiency are leading people to lose sight of the things that are truly important in life: family, freedom, and morality.

5. Voltaire, *Candide*, 2nd edition (New York: W. W. Norton, 1991; translated by Robert M. Adams; originally published 1759).

6. Emile Durkheim, *The Division of Labor in Society* (Glencoe, IL: Free Press, 1960), first published in 1893 as *De la Division du Travail Social*, and Ferdinand Tonnies, *Community and Society: Gemeinschaft und Gesellschaft*, translated and edited by Charles P. Loomis (Lansing, MI: The Michigan State University Press, 1957; first published in 1887).

7. Peter Schmidt, “Legal Dispute Pits Washington State U.’s Journalism School Against Free speech Groups,” *The Chronicle of Higher Education* (March 1, 2012), retrieved September 2, 2020, from <<http://chronicle.com/article/Legal-Dispute- Pits-Washington/130979>>.

8. The snubs may have stemmed from a series of commentaries I wrote three years earlier that criticized the owners of the *Spokesman-Review* for refusing to publish commentaries and letters to the editor that were critical of the newspaper’s controversial financial and political affairs in the community (see David Demers, *The Media Essays: From Local to Global* (Spokane, WA: Marquette Books, 2003). The WSU faculty adviser to the *Daily Evergreen* told me he thought the free speech lawsuit was newsworthy, but he never mentioned the matter to the student editors. I never approached the student editors because I did not want to interfere with their editorial independence.

Part II

Free Speech Bullies at UW-RF

Chapter 3

A Flag Burning and Cockroaches

Twenty Years Earlier
University of Wisconsin-River Falls

Political science professor Jeffrey Gerson had just told his students that flag burning is legal and now he was leading them outside to burn one.

It was March 11, 1991.

Forty-two degrees.

Chilly.

But Gerson's mind was on the day's lesson, not the weather.

He was hoping the demonstration would "put a fire under the students and get them thinking."¹ That was not an easy thing to do at the University of Wisconsin-River Falls. A survey of full-time students showed that half of them spent fewer than six hours studying per week.² That was about 24 hours less than professors usually recommend.³

Poor study habits bothered Gerson. This was his first year at UW-RF,⁴ and he was determined to make education a meaningful experience for his students.

So, to set the stage for a vibrant class discussion, he divided the students into two groups. One would take a position in opposition to the Persian Gulf War and the other in support.

Gerson gave a short lecture on the U.S. Supreme Court decision in *Texas v. Johnson* (1989), which held that flag-burning was speech protected by the First Amendment.⁵ He escorted his class outside of South Hall, struck a match, and carefully ignited a four-by-six-inch American flag, which swiftly burned.⁶

"All of a sudden I hear banging," Gerson told me 18 years later.⁷ "Two or three people in the basement of the building banged on the window. They were angry that I burned the flag, and they opened the window and yelled, 'You could have set the building on fire — we have chemicals down here.' Then one of them went to the telephone. When we got back to the classroom, campus security came to the door and said, 'Are you the one who burned the flag?' I told him I was and then he went on to comment that 'you created a dangerous situation.'"

The accusations were absurd, of course.

"They were just angry about me burning a flag," Gerson said. "This was their

way of expressing it.”⁸

A short time after the flag burning, Gerson told a newspaper reporter at the *St. Paul Pioneer Dispatch*: “It was a good class. I think people really got into the discussion on both sides. I think it was an effective teaching tool.”⁹

Some of his students agreed.

“Once he burned the flag, people started talking about it,” one student told the reporter. “I think it was a very effective teaching method. It did spark discussion.”¹⁰

Another said, “Most people thought he had a right to do it, and the others didn’t seem to be able to convince him he shouldn’t do it.”¹¹

At least one student thought the flag burning was wrong. She called her father, a county government official, who complained to the UW-RF’s top administrator, Chancellor Gary Thibodeau, who was aware of the controversy.

“If this guy wants to go burn a flag someplace, that’s certainly his right,” C. W. King, director of community programs for Chippewa County, told a reporter after contacting Thibodeau. “But, in his role as a professor, to force students to witness this kind of thing is an abuse of his position.”¹²

Thibodeau, a biology professor with a flat-top haircut, issued a written statement condemning Gerson for using “extraordinarily bad judgment in his choice of illustrations” and “offensive and insensitive” teaching methods.¹³

Gerson disagreed.

He said administrators “should be encouraging faculty to take chances and not try to stifle them.”¹⁴ A nonscientific telephone survey of 200 faculty by the UW-RF student newspaper seemed to agree: Six of ten supported Gerson’s right to burn the flag.¹⁵

Gerson had planned to burn another flag in a separate class three days later, but he changed his mind after more than 200 students showed up to protest outside of his classroom. They recited the “Pledge of Allegiance,” sang the national anthem, and chanted “U-S-A.”

“Everyone was just out showing their true colors,” one student protestor said. “There was a lot of patriotism today.”¹⁶

In a letter to UW System President Kenneth Shaw, state Sen. Marvin Roshell (D-Chippewa Falls) said four of his constituents complained about the flag burning. Roshell suggested that “Gerson be returned to wherever he came from and not be invited back.”¹⁷ Roshell later questioned “whether academic freedom is the best thing we have” and described Gerson as “inept at his profession.”

Gerson was stunned.

He — a presumed expert in politics — had misjudged the politics of some of his students and their parents. Many were from rural areas or small towns in Wisconsin and Minnesota, where conservative values run deep.

The law was on Gerson's side, of course.

But that didn't matter.

A month later, Gerson was informed that his one-year teaching contract would not be renewed and that he would not be a finalist for a permanent position in the department.

The head of the political science department later said the decision not to renew Gerson's contract was unrelated to the flag-burning incident. But he conceded that he could "probably not convince a lot of people of this."¹⁸

I would become one of them.

"HEY, DAVE, WHAT DO COCKROACHES and professors have in common?"

I was waiting to make copies of an exam when my new academic colleague and friend, *Jimmy Whittier*, a University of Wisconsin-River Falls business professor, asked me that question in October 1991.

"They are both disgusting?"

"No, but nice try," Jimmy replied as he collected copies from the machine's tray. "They are the only two species that consume their own kind."

I laughed, of course.

Self-deprecating jokes, whether applied to a person or profession, are almost always funny. They are a way of telling others that "we are not too big for our britches," even if we know we are.

I was thirty-eight years old and into my second month of teaching in the journalism department at UW-RF. I was ABD—All But Dissertation, which meant I had completed all of the requirements for a doctorate in mass communication at the University of Minnesota except the dissertation. I would finish that in a year.

Like most scholars starting their first jobs in academia, I was flush with energy, hope and pride. I was going to change the world, or at least part of it.

I also was scared to death.

To obtain tenure, I would have to publish refereed journal articles and get good teaching evaluations over the next six years. We new professors had heard stories of faculty who had been "terminated" before and at the end of that time period. We pitied them, of course. But not as much as we pitied ourselves. We were just starting the tenure gauntlet and had so much anxiety that even sex took a back seat.

"Would you like to make love tonight?" one of my recently graduated Ph.D. friends said his girlfriend asked him the evening before he was scheduled to teach.

"I'm sorry, honey," he told her. "I've got to review Karl Marx's conflict theory."

"I've got a conflict theory of my own," she retorted.

"What's that?"

“Your studies are going to ruin your sex life.”

Two months later, she left him.

She was one helluva theorist.

My commute from Shoreview, a St. Paul suburb, to River Falls — a city of 10,000 residents located six miles east of the St. Croix River — took about forty-five minutes. During that time, I listened to rock ‘n’ roll, blues and jazz, especially Ray Charles, Queen, Stevie Ray Vaughan and Steely Dan. One of my favorite songs was Charles’ “If It Wasn’t for Bad Luck,” which tells the story of a man whose “woman” leaves him, is kicked out of his house and is wrongly accused of committing a crime.

*That’s why if it wasn’t for bad luck, sugar
Oh, I tell everybody if it wasn’t for bad luck now, now
I believe, I believe I would have no luck at all
I just wouldn’t have no luck at all!*⁹

I loved that song even though I didn’t believe in bad luck. Bad luck is a euphemism for “I screwed up, but I don’t want to blame myself.” I know there is no such thing as bad luck because there is no such thing as good luck. People always praise themselves, not luck, when they do something right.

When I started teaching at UW-RF, I was unaware of the Gerson flag-burning controversy, which occurred about six months earlier.²⁰ I learned about it from Peter, another UW-RF professor shortly after I heard the cockroach joke. He said no faculty publicly supported Gerson.

“That’s a shame,” I responded, shaking my head.

“So, you’re saying Chancellor Thibodeau was wrong?”

“Depends. He certainly had the right as a citizen to disagree with Gerson’s decision to burn the flag. But free speech advocates could point out that Thibodeau, as an administrator, should have defended Gerson’s right to burn the flag. UW-RF even has a rule specifically protecting professors’ rights to free speech. Why didn’t more faculty criticize Thibodeau?”

“Don’t know,” Peter said, shrugging. “Fear maybe. Why should faculty risk their careers and the well-being of their families for an abstract principle like free speech? It doesn’t pay the bills, nor does it advance your career.”

“But if all faculty felt like that, who would defend free speech rights on campus?”

“Hey, Dave, as a media sociologist, you know that there is no such thing as absolute free speech on campus or anywhere else. Information and knowledge are highly controlled in all societies. There’s no protection for people who shout ‘fire’ in a theater that isn’t burning. And what parent wants his or her children to cuss like a

sailor?”

Peter had a good point. No constitutional right is absolute.

“But too much regulation can deny society access to new ideas,” I passionately countered. “Gerson’s teaching method might have been unorthodox, but it appears to have succeeded in stimulating a good intellectual discussion among his students. Isn’t that a goal of education?”

Peter rolled his eyes.

“Should a criminologist shoot someone to teach students that murder needs to be outlawed? All faculty must make choices about what kind of content is appropriate in their classes. You know that.” Peter pauses and shakes his head. “You sound like a hopeless idealist.”

He was half right.

I was an idealist, but hopeful, not hopeless. A bit naive and temerarious, too.

I acquired some of these traits while working as a newspaper reporter in the late 1970s. Questioning and challenging government authorities was part of the job. I was never afraid to ask tough questions, because my sources had no power over me. My job was to get the news.

In fact, when I took the job at UW-RF, the thought never crossed my mind that it might have been inappropriate for professors to criticize university administrators. After all, the principle of shared governance required professors to speak up when administrators made bad decisions or violated rules or laws.²¹ Administrators are supposed to share power with faculty. It’s even in the Faculty Handbook, which I reviewed during my first week on the job.

Journalism professors like me also have an extra responsibility to safeguard free speech rights, both in and out of the university community. Most people have a poor understanding of the First Amendment. They say they support free speech, but many are not willing to defend the right of communists, fascists, and anarchists to speak out on issues in their communities. The corrective for evil or bad speech isn’t censorship, as a U.S. Supreme Court justice once said, but more speech.²²

Idealistic?

You bet I was.

As the weeks passed, though, I quickly forgot about the flag-burning incident. Like other professors, I came to see it — or perhaps wanted to see it — as an outlier, not as an indicator of a leadership or systemic problem.

MY FIRST THREE YEARS at UW-RF were pleasant.

I taught courses in reporting, editing, media law, public opinion and media history — four per semester. This was a heavy teaching load for faculty who were also

expected to conduct research. But I didn't mind. I loved both teaching and research.²³

Although teaching was the No. 1 priority at UW-RF, as it is at most non-doctorate granting institutions, I was hired to help meet the scholarship and research criteria required for national accreditation of the journalism program. The other three faculty members in the journalism program did not have a doctorate and, hence, were not expected to conduct research. Without a scholar in its ranks, the UW-RF journalism program would lose its national accreditation.²⁴ And if it lost accreditation, there would be two big consequences.

The first would be a loss of prestige and status for the program. The quality of a program affects its enrollments. Students are drawn to programs that are accredited, because there is the assurance that it is being managed properly and that they will graduate with a high-quality degree.

The second consequence of losing accreditation is loss of funding for the program. Accreditation keeps the funding flowing in, because to maintain accreditation the program must meet a number of quality checks, including offering courses that will achieve the goals of the program. Accreditation helps deter administrators from cutting funding to a program, because no administrator wants to be labeled as the one who caused a program to lose accreditation.

The UW-RF students were very likable.

But Gerson was right: Most were not very serious about their studies.

I attributed this problem mainly to the lax enrollment requirements at UW-RF. Although the Admissions Office looked at a variety of criteria when reviewing applications, for all practical purposes the only formal requirement was a high school grade-point average of "C" or better. In the early 1990s, this meant the university accepted more than 85 percent of the students who applied.²⁵

UW-RF was not alone. Most of the 7,000 colleges and universities in the United States have easy entrance requirements. That's partly by design. In America, education is expected to be the great equalizer. If everyone is given access to an education, then everyone has an equal opportunity to climb the social and economic ladder.²⁶ Economic equality, in turn, is expected to produce a stable, democratic society.

That's the theory.

In practice, the higher education system in America does not operate on a level playing field. Students from privileged socioeconomic backgrounds still have a much higher probability of attending more elite educational institutions, such as Harvard, Princeton, Yale and Stanford, where admission standards are much tougher. In contrast, students from less privileged backgrounds have a much higher probability of attending community colleges and smaller public baccalaureate institutions like UW-RF.²⁷ Studies show over and over again that the highest paying jobs in society

go to those who attend the elite institutions.²⁸

Although UW-RF faculty often griped about students who failed to take their studies seriously, there were some bright, talented students among the 4,900 enrolled.

Nevertheless, like Gerson, I felt an obligation to make education meaningful to all my students, not just the brightest. My approach, to get them to study more, was to give challenging tests and quizzes.

I confess that I cannot say to this day whether this “stick” approach ever worked. But I can say with certainty that my pedagogy did not endear me to all my students.

“Your tests are unfair,” some would complain. “They are too difficult.”

“But even if they’re unfair,” I would respond, “everyone in class is subjected to the same level of unfairness. So, on a relative basis there is no bias. And that’s how I distribute grades. I grade on a curve. I always give out some ‘A’s in my classes.”

Of course, my pedantic explanation did not mollify them.

In terms of teaching evaluations, my students rated me slightly above departmental and college-wide averages. I thought I deserved better. I attributed the ratings to my difficult tests, but I had no evidence to back this up and no one has ever told me that I am a charismatic teacher.

Although I had a heavy teaching load, I was a productive researcher. By my third year, I had published one scholarly book and eight refereed journal articles.

The director of our program, *John Smith*, was pleased. He gave me high ratings in my annual reviews during my first three years. At the beginning of my third year, he planned to support my request to go up early for promotion to associate professor, which would be effective in my fifth year. Normally faculty are promoted in their seventh year, at which time they also receive tenure.

I appreciated John’s support.

John was an amiable man and well-liked by students and faculty, including me. He had worked in broadcasting for a short time before earning his master’s degree and becoming a professor.

He wasn’t a social scientist, but he was a good writer. He had written some books on paranormal phenomena that sold more than 200,000 copies.²⁹

He had been at UW-RF for nearly two decades and played the lead role in securing national accreditation for the journalism program.³⁰ This was not easy to do. The standards for accreditation were, and continue to be, high. The UW-RF program had the distinction at that time of being the smallest accredited journalism program in the United States.³¹

The program served about 150 majors in print journalism and radio broadcasting. The other two full-time faculty included Casandra, who taught mostly print journalism courses, and Paul, who taught broadcasting courses.

Although my long-term goal was to get a job at a research university and work

with graduate students, I was grateful to be teaching at UW-RF. My spouse at the time, Mona, had a good job as a market researcher at a major financial institution in Minneapolis.

Life was pretty good.

Chapter 3 Endnotes

1. Telephone interview with Jeffrey Gerson, November 29, 1999.
2. Students were asked to indicate how much time they spent “preparing for class (studying, reading, writing, rehearsing, and other activities related to your academic program).” A total of 1,368 students completed the College Student Experiences Questionnaire March 1-5, 1993. Source: Unpublished report prepared by Roger A. Ballou, Dean of Students, University of Wisconsin–River Falls (April 1993). With permission of Ballou, I shared the results of the survey with students in my classes.
3. Professors usually recommend two hours of study for every hour in class. The normal course load is 15 hours per week in a semester system, which equates to 30 hours of studying per week, or 4.3 hours per day. Since the 1990s, the amount of time college students in general spend studying has apparently declined even more. See Jeffrey R. Young, “Homework? What Homework? Students Seem to be Spending Less Time Studying than They Used to,” *The Chronicle of Higher Education*, 49(15): A35 (December 6, 2002), and Daniel de Vise, “College Students Spending Less Time Studying,” *The Washington Post* (May 23, 2012), available online at <<http://bangordailynews.com/2012/05/22/news/nation/college-students-spending-less-time-studying>>.
4. Gerson had a one-year appointment at UW-RF while the university searched for a permanent hire. He was one of the applicants for that permanent position.
5. Here is a summary of the facts of *Texas v. Johnson*, 491 U.S. 397 (1989): Gregory Lee Johnson was protesting Reagan Administration policies outside of the Republican National Convention in Dallas, Texas, in 1984. When Johnson and others reached Dallas City Hall, he doused a U.S. flag with kerosene and set it on fire while demonstrators shouted, “America, the red, white, and blue, we spit on you.” Johnson was convicted of desecrating a venerated object, which was a crime under Texas state law. He was sentenced to one year in prison and fined \$2,000. He appealed and the Texas Court of Criminal Appeals overturned his conviction, saying the state could not punish him because the burning of the flag was expressive conduct protected by the First Amendment. The state appealed the decision and in 1989 the U.S. Supreme Court, on a 5-4 vote, upheld the decision of the Texas court.
6. Gerson forgot to take a flag, so he went back to the political science office to get a small one. Some students brought their own flags, but only Gerson burned one.
7. Quote obtained during a telephone interview on January 6, 2009.
8. Ibid.
9. Bill Gardner, “Prof’s Flag-burning Ignites Controversy,” *St. Paul Pioneer Press Dispatch* (March 13, 1991), p. 1A.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.

15. Student journalists telephoned more than 200 faculty. They also surveyed students, who, by a 6-to-4 margin, said the flag burning was an inappropriate teaching tool. Source: Associated Press, “Faculty Back Professor Who Burned Flag,” (March 24, 1991), p. 4C.

16. Ibid.

17. Ibid.

18. Bill Gardner, “UW-River Falls Professor Who Burned Flag Loses Job,” *St. Paul Pioneer Press Dispatch* (April 27, 1991), p. 11A. For academic treatments of the flag-burning incident at UW-RF, see Robert Justin Goldstein, *Burning the Flag: The Great 1989-1990 American Flag Desecration Controversy* (Kent, OH: Kent State University Press, 1996), p. 356, and Michael Welch, *Flag Burning: Moral Panic and the Criminalization of Protest* (New York: Walter de Gruyter, 2000), p. 84. Gerson eventually earned tenure at the University of Massachusetts at Lowell.

19. Charles wrote the song with Jimmy Le in 1959. ABC records released it as a 45 single in 1969.

20. I conducted an archival search of the *Star Tribune* website on July 29, 2012, but could find no references to the 1991 flag-burning incident at the University of Wisconsin–River Falls.

21. Shared governance is the process by which the members of a university community, including administrators, faculty, students and staff, share responsibility for reaching collective decisions on matters of policy and procedure, including curriculum and budgeting.

22. The anti-censorship, more-speech argument was part of Justice Louis Brandeis’ concurring opinion in *Whitney v. California*, 274 U.S. 357 (1927). The U.S. Supreme Court case examined whether an anti-communist California law was constitutional. Brandeis wrote: “Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. *If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.*” [emphasis added]

23. One common misconception about faculty is that they are lazy. I usually worked about 70 hours a week. Many of the younger faculty I knew did the same.

24. Journalism and mass communication programs are accredited through the Accrediting Council for Education in Journalism and Mass Communication. In 2012, only 109 of the 500-plus journalism programs in the United States were accredited. The UW-RF program gave up its accreditation status after UW-RF university officials decided not to seek re-accreditation.

25. The typical UW-RF student scored better than 59 percent of the students taking the SAT, a standardized entrance test. As a point of comparison, the average for students at the University of Michigan, which is rated the 23rd best national university, was 77 percent. Source: *America’s Best Colleges 1998* (Washington D.C.: U.S. News & World Report, 1997), p. 94. Prior to 1997, UW-RF officials refused to answer the magazine’s annual survey of colleges.

26. About two-thirds of high school graduates in the United States attend college. But in 1992, students were far less prepared than they were in 1972. SAT verbal scores dropped about 60 points between those two decades. An increased emphasis on math may have caused part of the decline.

27. Stacy Dickert-Conlin and Ross Rubenstein (editors), *Economic Inequality and Higher Education: Access, Persistence, and Success* (New York: Russell Sage Foundation, 2009).

28. Scott Jaschik, "College Selectivity and Income," *Inside Higher Education* (August 22, 2016), retrieved October 22, 2020, from <<https://www.insidehighered.com/news/2016/08/22/study-finds-graduates-most-selective-colleges-enjoy-earnings-payoff>>.

29. He wrote ghost stories, interviewing people who believed their homes were haunted.

30. Journalism programs are accredited through the Accrediting Council on Accreditation in Journalism and Mass Communication. The purpose of the accreditation process is to enhance the quality of journalism and mass communication education.

31. In 2012, the program was no longer accredited.