

Legal History

JFK in the Second Circuit (Almost)

By C. Evan Stewart

There were few things in the political arena that Jack Kennedy took personally. At the 1960 Democratic National Convention, for example, Lyndon Johnson called Kennedy's father an appeaser of Hitler (when Joseph P. Kennedy had been U.S. ambassador to England in the 1930s); JFK sloughed it off and a few days later named LBJ as his vice presidential running mate (Bobby Kennedy, on the other hand, was infuriated and never forgave Johnson).

JFK was very sensitive on one subject, however: his authorship of the book *Profiles in Courage*, for which he won a Pulitzer Prize in 1957. When his Harvard classmate Blair Clark kidded him about it at the 1956 Democratic Convention ("Jack, I'm going to deny forever that I wrote [JFK's first book] *While England Slept*"), Kennedy became enraged.

The Mike Wallace Interview

The authorship issue reached a head when ABC television broadcast an interview in December, 1957, between Mike Wallace and powerful Washington journalist Drew Pearson. The relevant part of the interview was as follows:

Pearson: Jack Kennedy is ... the only man in history that I know who won a Pulitzer Prize on a book which

was ghostwritten for him, which indicates the kind of public-relations buildup he's had.

Wallace: Do you know for a fact, Drew—

Pearson: [speaking over Wallace] Yes, I do—

Wallace: ... that the book, *Profiles in Courage*, was written for Senator Kennedy—

Pearson: I do.

Wallace: ... by somebody else—and he has never acknowledged that fact?

Pearson: No, he has not. You know, there's a little wisecrack around the Senate about Jack, who is a very handsome man, as you know. Some of his colleagues say: "Jack, I wish you had a bit less profile and more courage."

The Senator and His Father

On Monday, Dec. 9, 1957, Jack Kennedy called his lawyer (and Washington power-broker), Clark Clifford, and asked for an immediate meeting. Arriving shortly thereafter in Clifford's office, JFK told Clifford about the Wallace/Pearson interview and said: "I cannot let this stand. It is a direct attack on my integrity and my honesty." As Kennedy and Clifford were discussing the pros and cons of various legal strategies to deal with the problem (which in-

cluded filing suit in New York against Wallace, Pearson and ABC), the phone rang. It was Ambassador Kennedy; he wanted to speak to his son.

Clifford would later describe listening as "the old man screamed at Jack." After a while, JFK "calmly" handed the phone to his attorney, saying: "I will let you talk to Clark, Father." Before Clifford could even clear his voice, he heard Joseph P. Kennedy's distinctive voice: "I want you to sue the bastards for fifty million dollars. Get it started right away. It's dishonest and they know it. My boy wrote the book. This is a plot against us." Clifford, who had just finished advising JFK against such a tack, replied that he was instead planning "to go to New York and sit down with the people at ABC."

The elder Kennedy's response was blunt: "Sit down with them, hell! Sue them, that is what you have to do, sue them!" Clifford responded to these shouted (and repeated) demands by telling the ambassador that "we may have to do that, but first we want to try to see if there isn't some other solution."

JFK watched this interchange "with a faint air of amusement." And when the call ended, he evenly said to Clifford: "Well, that's just Dad. Let's deal with this thing." As his client and he were now on the same page on how best to proceed, Clifford started to work.

Dealing With This Thing

Clifford tasked Kennedy with pulling together everything he could that would prove the provenance of the book. He then contacted ABC's chairman, Leonard Goldenson, and set up a meeting for

Thursday (Dec. 12) in New York City.

On that day (in the midst of a snowstorm and citywide subway and bus strikes), Kennedy and Clifford schlepped over to ABC's offices. They first met with Goldenson, but were quickly passed on to ABC's lawyers and other ABC personnel. To this latter group, Clifford made his presentation of proof, which included:

- JFK's handwritten drafts.
- A statement from the book's editor, Evan Thomas (son of the famous socialist, Norman Thomas, and father of Washington journalist and historian, Evan Thomas). He affirmed that he had "personally [seen] Mr. Kennedy writing parts of the manuscript in longhand ..."
- A statement from Arthur Krock (*New York Times* columnist and long-time Kennedy family retainer). Krock avowed that he had seen JFK (recovering from back surgery in Palm Beach) "lying flat on his back on a board with a yellow pad on which he was writing the book." He further attested that he "had read enough of those pages at the time to know that the product was his own."

Upon finishing his presentation, Clifford demanded that ABC issue a retraction on Wallace's next show. The ABC officials' response was to pick up the phone and call Drew Pearson in Washington. Pearson did not back down, but instead named the "ghostwriter": JFK's closest aide, Ted Sorenson. Kennedy and Clifford were prepared for this moment and responded as follows:

- The preface of the book in fact acknowledged JFK's "greatest debt" to Sorenson "for his invaluable assistance in the assembly and preparation of the material upon which this book is based."
- JFK revealed that Sorenson had received \$6,000 in royalties directly from the publisher. [Clifford quickly chimed in that this was not an admission as to Sorenson's authorship.]
- Clifford had Sorenson standing by at a nearby hotel, and offered to have him submit a sworn affidavit denying authorship. The ABC officials asked instead to meet with Sorenson; that request was quickly agreed to, and Sorenson affirmed to the ABC lawyers that he was not the author of *Profiles in Courage*.

At this point, Clifford reiterated his earlier demand: an immediate, televised retraction, or the Kennedys "would be obliged to start legal proceedings." After huddling amongst themselves, the ABC team caved. Clifford then drafted out in longhand the retraction language, which (with only minor tinkering by the ABC lawyers) was what was read at the beginning of Wallace's Dec. 14 broadcast:

This company has inquired into the charge made by Mr. Pearson and has satisfied itself that such charge is unfounded and that the book in question was written by Senator Kennedy. We deeply regret this error and feel it does a grave injustice to a distinguished public servant and author and to the excellent book he wrote, and

to the worthy prize that he was awarded. We extend our sincere apologies to Senator Kennedy, his publishers, and the Pulitzer Prize Committee.

Dealing With Pearson

In the course of the negotiations, Clifford had told ABC that the Kennedys would not hold the network accountable for Drew Pearson; they would deal with him separately.

Given the columnist's prominence (and, in Clifford's words, his "dangerous and influential sting"), JFK's attorney advised him to allow things to cool down a bit and then see if he could work some of the senator's "dazzling personality and charm" on Pearson. It was good advice. On Jan. 14, 1958, the two met at JFK's office. And a month later Pearson put a small item in his column acknowledging Kennedy's authorship of *Profiles in Courage*. Pearson's diary entry on the meeting shows the persuasive power of JFK one-on-one:

Talked to [Kennedy] for about an hour. He showed me his original notes, and unquestionably he did conceive the idea of his book *Profiles in Courage* Sometimes I'm a sucker for a nice guy who presents an appealing story. He didn't ask for a retraction, but I think I shall give him one. He got a whale of a lot of help on his book. I'm still dubious as to whether he wrote too much of it in the final draft language But he showed enough knowledge of the book, had lived with the book, made the book so much a part of him,

that basically it *is* his book "Ted [Sorenson] did an awful lot of work," he said.

Who Wrote *Profiles in Courage*?

There is no doubt that the idea for the book germinated in JFK's brain sometime in 1954, just as the Senate was grappling with the fate of Joe McCarthy. The young senator was interested in Senate history, and intrigued with legislators who had made "hard and unpopular decisions necessary for our survival." It also appears he was influenced by Herbert Agar's *The Price of Union*, as well as by his wife's American History course at Georgetown with Jules Davids.

With input from various sources as to the individuals to be featured, Sorenson contacted Davids to see if he would work with Sorenson and Kennedy to put the project together for a modest fee. Sorenson, by this point, was spending long hours on the project, taxing the resources of the Library of Congress, and engaging the services of several clerical assistants.

By 1955, with Kennedy recuperating from back surgery in Florida, a book contract had been inked with Harper and Brothers, and Evan Thomas had signed on as the book's editor (possible titles at this time were "These Great Men," "These Brave Men," and "The Patriots"). Draft chapters, critiques, and suggestions were actively solicited and offered by various academics (professors Landis, Schlesinger, Johnson, Burns, Nevins, Holcombe), in addition to the ongoing work being done by Sorenson and Davids.

While Kennedy was in Florida, Sorenson often shuttled back and forth from Washington. Flat on his

back, JFK would (in Sorenson's words) "take all the material, mine and his, pencil it, dictate the fresh copy in his own words, pencil it again—he never used a typewriter."

By the time Kennedy returned to Washington, the book was mostly done. At that point, JFK's focus was on polishing the first and final chapters. Working titles now included: "Men of Courage," "Eight Were Courageous," "Call the Roll," and "Profiles in Courage." Ultimately, Harper chose the last one.

As Joe Kennedy was critiquing the book's prose as lacking polish, Sorenson was going through it one more time—to Thomas's satisfaction: "[T]his book reads like Jack Kennedy, and damn good, too."

Herbert Parmet, in his book *Jack: The Struggles of John F. Kennedy*, has done the most comprehensive (and undisputed) work on the provenance of *Profiles in Courage*. His conclusion is as follows:

[Kennedy] served principally as an overseer or, more charitably, as a sponsor and editor, one whose final approval was as important for its publication as its birth. At the working level, research, tentative drafts, and organizational planning were left to committee labor, with such talents as Professor Davids making key contributions. But the burdens of time and literary craftsmanship were clearly Sorenson's, and he gave the book both the drama and flow that made for readability.

Postscripts

- Although publicly rebutting Pearson's charge was very im-

portant to JFK's long-term plan to become President (as he later informed Clifford), it did not completely put the matter to bed during Kennedy's lifetime. When JFK, as President-Elect, met with Robert McNamara to talk about his becoming Secretary of Defense, for example, the threshold issue for McNamara was: "[D]id you really write *Profiles in Courage* yourself?"

- Almost 50 years later, Mike Wallace remains bitter about ABC's capitulation to the Kennedys. In his memoir, *Close Encounters*, Wallace called the retraction "a craven gesture and an insult to Pearson." ABC, he wrote, should have had the "fortitude to call [JFK's] bluff."
- One mystery that has never been successfully solved is why and how JFK was awarded the Pulitzer Prize. Nowhere among the five books recommended for the "Biography" prize by a distinguished panel of historians was *Profiles in Courage*. And yet the Pulitzer Advisory Board ignored their recommendations. Why? There is evidence that Arthur Krock aggressively lobbied some of his friends on the advisory board. There is much speculation (but no evidence) that the heavy hand of Joseph P. Kennedy reached into the deliberations. Least convincing, but the publicly released explanation, is that one member of the board announced to his colleagues that his 12-year-old grandson had been "absolutely fascinated" by the book, and it was that anecdote that turned the tide in Kennedy's favor. It

seems we will never know the true story. But when the award was announced, Torby MacDonald—one of JFK's oldest and closest friends, and a Democratic congressman—sent a telegram: "Congratulations. Understand the committee in charge of running the Irish Sweepstakes has named you winner. And recently discovered land grant deeds to the states of Texas and California show you to be the rightful owner. More coming."

- Much of the foregoing story, as it relates to communications between the Kennedys and Clifford and their legal strategy, is drawn from Clifford's memoir, *Counsel to the President*. And while it is fascinating history, query whether Clifford was violating his professional responsibility vis-à-vis his obligations to client confidentiality. See *Swidler & Berlin v. U.S.*, 524 U.S. 399 (1998). ♦