

## BOOK REVIEW

**A Practitioner's View of Broadcaster Power**

*Speak Softly and Carry a Big Stick: How Local TV Broadcasters Exert Political Power*, J. H. Snider, New York: iUniverse, Inc. 2005, 592 pages.

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For the past eighteen years, I have worked for CBS. My current title is Assistant General Counsel, and I represent the CBS-owned television stations. As such, I was fascinated by the title of J. H. Snider's *Speak Softly and Carry a Big Stick: How Local TV Broadcasters Exert Political Power*.<sup>1</sup> Since on a daily basis I represent our local TV stations, I was curious about Dr. Snider's views.

What I learned is that *Speak Softly* is an attack on Congress' award of a second channel to broadcasters for high definition television in the Telecommunications Act of 1996 ("1996 Act"). Dr. Snider makes no secret of his disdain for this spectrum award: "I lamented that broadcast TV—whether in high or standard definition—was a gross misuse of spectrum and that it would be much better used for either mobile higher powered licensed services or lower powered unlicensed services."<sup>2</sup>

According to Dr. Snider, the spectrum award was not in the public interest.<sup>3</sup> Therefore, he concludes that the only reason broadcasters received this additional spectrum must have been because Congress was

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1. J. H. SNIDER, *SPEAK SOFTLY AND CARRY A BIG STICK: HOW LOCAL TV BROADCASTERS EXERT POLITICAL POWER* (2005).

2. *Id.* at xix–xx (citations omitted). Throughout *Speak Softly*, the author has a habit of citing to earlier articles he wrote to support positions that he takes. This brings to mind the adage about a lawyer who is his own client.

3. Dr. Snider even titled Part II of *Speak Softly*, which makes up the majority of the book, "Case Study: The Great Spectrum Giveaway."

afraid of the broadcasters.<sup>4</sup> *Speak Softly* consists of Dr. Snider's attempts to find support for his conclusions.

*Speak Softly* is divided into three parts. In the first part, Dr. Snider examines the relationship between local TV broadcasters, the viewing public, and politicians. He uses a political science model of principal-agent theory. Using this model, Dr. Snider posits that the viewing public is the principal, broadcasters are the agents, and politicians are the targets that broadcasters are supposed to be watching.<sup>5</sup> Dr. Snider contends that agents occasionally have interests that conflict with the interests of their principals. The agents then have to hide their conflicting interests from their principals. *Speak Softly* examines different theoretical interests, types of conflicts, and relationships.

In the second part of *Speak Softly*, Dr. Snider attempts to apply the theories discussed in Part I to explain why broadcasters received additional spectrum for high-definition television. Dr. Snider theorizes that if the principal/public had known that its agents/local broadcasters were trying to get this additional spectrum, the public would have wanted to make a profit off of the deal and would not have just given it away. This becomes Dr. Snider's conflict for purposes of his principal-agent theory. As a result, *Speak Softly* claims local broadcasters hid their desire for the spectrum. The broadcasters went to the party it was supposed to be watching—the politicians—to get the spectrum. For reasons unknown, the politicians were afraid of the broadcasters and gave them the spectrum they wanted behind the public's back.

The final part of *Speak Softly* contains Dr. Snider's proposed resolution to his perceived principal-agent conflict, among other things.

A major problem with Dr. Snider's theory is that *Speak Softly* offers no proof that politicians were afraid of broadcasters. *Speak Softly* calls the politicians' fear of broadcasters "the Allegation—the alleged link between broadcaster control of news and broadcaster political power regarding telecommunications policy."<sup>6</sup> In other words, broadcasters can report negative stories on politicians, so politicians do not want to upset broadcasters.<sup>7</sup>

In support of the Allegation, *Speak Softly* offers one anecdote and

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4. *Id.* at 203.

5. *Id.* at 5.

6. *Id.* at 234. *See also id.* at 202–03.

7. This fear of negative coverage presupposes that politicians have done something to warrant a negative story since even Dr. Snider does not contend that broadcasters broadcast false news reports. If Dr. Snider believes that all politicians have such skeletons in their closets, his opinion does not reflect well on politicians. Also, it would seem to have to be a very serious skeleton to warrant voters remembering it at election time.

unsupported assertions that politicians' fear of broadcasters exists. The anecdote involves a letter given to Senator Bob Dole by Nick Evans, a broadcaster in Senator Dole's state, during the debate about awarding additional spectrum to broadcasters as part of the 1996 Act. The letter threatened to tell viewers that Senator Dole's plan to auction the additional spectrum to broadcasters would destroy free over-the-air television. Senator Dole eventually backed down from his plan and the 1996 Act passed. As *Speak Softly* notes, it is not clear what the threat was in the Evans letter,<sup>8</sup> and it may have been an insignificant factor in Senator Dole's decision.<sup>9</sup>

In addition to the anecdote above, *Speak Softly* next tries to find circumstantial evidence that politicians are afraid of broadcasters. Among others, Dr. Snider presents the following unsourced analogies: "Human [sic] don't walk into the cages of lions because they know they would be eaten alive. Similarly, members of Congress may not poke sticks into the eyes of their local TV broadcasters out of fear that they, too, would be eaten alive."<sup>10</sup> Similarly:

During my interviews regarding the Telecom Act of 1996, when I would hear somebody make the Allegation, I would ask: "do you have any hard evidence?" In response, the interviewee would often look at me as though I were an idiot (some even expressed open contempt) because the question revealed to them that I understood nothing about politics or human life. They felt that the threat of broadcaster news bias was obvious but that no broadcaster would be stupid enough to provide me with a verifiable case study.<sup>11</sup>

However, Dr. Snider acknowledges that he has no proof that politicians have any such fear: "The lack of concrete and verifiable evidence to back up the Allegation was also one of the most noteworthy features of my interview feedback."<sup>12</sup>

Another curious postulation in *Speak Softly* is that the public did not know about the broadcasters' desire for additional spectrum. However, this claim is belied by the sheer number of news reports that objected to the broadcasters' spectrum desire, as cited in the book. These included editorials in the *Wall Street Journal* and *New York Times*;<sup>13</sup> articles on the subject in newspapers including the *Washington Post*, the *San Diego Union-Tribune* and even the *Associated Press*;<sup>14</sup> articles in magazines

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8. SNIDER, *supra* note 1, at 471.

9. *Id.* at 472. That does not stop Dr. Snider from saying without support: "It is reasonable to think he took the Evans letter seriously."

10. *Id.* at 114.

11. *Id.* at 251 (emphasis added).

12. *Id.*

13. SNIDER, *supra* note 1, at 99.

14. *Id.* at 221-23.

including *The Nation*, *The New Republic*, and *Wired*,<sup>15</sup> and even reports on CBS<sup>16</sup> and on ABC's *Nightline*.<sup>17</sup> I do not know if all of these articles and reports treated the spectrum proposals with equal depth, but the volume alone indicates that the issue was available for the public to scrutinize.

Another troubling issue in *Speak Softly* is its misuse of quotations. There are two instances of individuals being quoted for a proposition, only to indicate in a footnote that the quotation had nothing to do with the propositions. For example, in discussing the valuation of the spectrum sought by broadcasters, *Speak Softly* offers the following Al Franken quotation: "The sad thing is all the members of Congress who were lied to. . . . For some reason, it doesn't seem to bother them. I don't know. Maybe they want to make sure they can get on TV."<sup>18</sup>

The problem is that the footnote accompanying this citation states the following: "Franken's comment was about the 1995 fight over fin-syn but is equally applicable to the spectrum giveaway, which happened at almost the same time."<sup>19</sup>

So if readers do not read all the way through the footnote, they would not know that Franken was not discussing valuation—the quotation had nothing to do with the issue being discussed. *Speak Softly* similarly uses a quotation from Jim Goodmon of Capitol Broadcasting on one subject to support a premise it did not apply to,<sup>20</sup> but objects to the National Association of Broadcasters putting together two separate events and showing them as one.<sup>21</sup>

Moreover, given the extensive footnoting contained in *Speak Softly*, Dr. Snider adopts a troubling number of positions with limited support or no support whatsoever. Dr. Snider claims neither experience working for local television stations on the management side nor employment in a newsroom.<sup>22</sup> This does not stop him from discussing the dynamic between news departments and management—belittling the firewall separating local television station newsrooms from sales departments—without any

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15. *Id.* at 226–29.

16. *Id.* at 99.

17. *Id.* at 230–31.

18. SNIDER, *supra* note 1, at 307.

19. *Id.*

20. *Id.* at 349.

21. *See id.* at 376.

22. Dr. Snider does claim journalism experience by osmosis, as he says: "I have also looked at the press through the eyes of journalists. Over the years, I have been a member of the Society of Professional Journalists, The Radio-Television News Directors Association, the National Press Club and the Authors Guild. I am married to a former journalist." *Id.* at xxv.

support.<sup>23</sup> *Speak Softly* also repeatedly claims that newsrooms hire private detectives to do dishonest things to get stories so that the stations can claim they knew nothing about this practice. There are no examples provided of this behavior—only citations to three 1999 articles written by the same author in the *New York Times*.<sup>24</sup>

*Speak Softly* at times confuses its subject matter. It discusses malfeasance by print journalists to support the proposition that local TV reporters are not committed to “journalistic norms of truth-telling.”<sup>25</sup> Then, it discusses the violation of journalistic ethics of faking events—and uses as an example inserting virtual ads in sporting events.<sup>26</sup> What is the connection between what happens in a stadium and a newsroom? *Speak Softly* does not provide an answer. Additionally, *Speak Softly* purports to be about the power of local broadcasters—but the book focuses on the lobbying prowess of the National Association of Broadcasters, not individual TV stations. *Speak Softly* also uses 20/20 hindsight. It criticizes decisions made in 1996 based on technology that would allow a different result today, but not available then,<sup>27</sup> and complains that cost estimates in 1996 were higher than the costs are today.<sup>28</sup>

In the final part of *Speak Softly*, consistent with Dr. Snider’s views on broadcast television use of the spectrum, *Speak Softly* proposes that broadcasters completely give up their entire spectrum.<sup>29</sup> Broadcasters should do this because Dr. Snider believes that “The future of TV is TV delivered over the Internet.”<sup>30</sup> Among other benefits cited by *Speak Softly*, giving up their spectrum would save millions of neotropical birds killed each year by broadcast towers.<sup>31</sup> *Speak Softly* also wants the FCC to get out of the spectrum management business with anyone allowed to broadcast. Interference would be handled by each consumer’s equipment. Dr. Snider states:

If a consumer buys a TV set that is too dumb to coordinate sharing the broadcast band underlay with other devices within the home, the conflict is not for the FCC to decide by, as the broadcasters demand,

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23. For example, “In reality, however, general managers often act like news directors and news directors as general managers, so the precise placement of the ethics firewall, when defined in terms of persons, rather than functions, is ambiguous.” SNIDER, *supra* note 1, at 355. *See also id.* at 359, 361–62.

24. *See id.* at 127, 140, 176, 375.

25. *Id.* at 373–75.

26. *Id.* at 375.

27. *See, e.g.*, SNIDER, *supra* note 1, at 309, 317.

28. *Id.* at 336–37.

29. *Id.* at 514.

30. *Id.* at 515.

31. *Id.* at 516.

banning anything but a TV set from using the broadcast underlay within the home.<sup>32</sup>

*Speak Softly* also proposes that broadcasters give up their analog channel within eighteen months because that was the schedule used in Berlin, Germany.<sup>33</sup> *Speak Softly* notes that the German government subsidized the purchase of analog converter boxes for low-income consumers, but does not indicate how many people this applied to or what the cost of the subsidy was. Given the comparative size of the German and United States populations, omitting these numbers is somewhat disingenuous. Finally, *Speak Softly* proposes that broadcasters publish their ethics codes on the Web, including, among other things, detailing their agency relationship with the public, having the codes signed by management, acknowledging that conflicts exist, and giving auditing rights to outside parties.

The final chapter of *Speak Softly* contains one other major proposal. Dr. Snider proposes the creation of a “Committee on Candidate Information and Elections.” This “Citizens’ Committee” would be made up of 500 randomly selected voters, under the age of 66, who would have the power “to propose legislation that would go directly to the floors of the House and Senate for a vote.”<sup>34</sup> The Citizens’ Committee would also have the power to approve candidates for governmental agencies nominated by the President, such as the Federal Election Commission, subject to Senate approval, or even nominate candidates itself—although it would have to use search firms to do so.<sup>35</sup> The Citizens’ Committee would also have to turn to outside parties, such as foundations and think tanks, to actually draft legislation.<sup>36</sup>

To this book’s credit, the principals (readers) who read *Speak Softly* will have no doubt where their agent (the book) stands. *Speak Softly* objects to broadcasters receiving additional spectrum. Perhaps there is an academic market for *Speak Softly*, but its claims as to what occurs at local television stations do not match what this Review Author sees on a daily basis. That may not be true at other local television stations, but *Speak Softly* provides no proof to the contrary. From the standpoint of this practicing member of the Communications Bar, *Speak Softly* is of little use.

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32. SNIDER, *supra* note 1, at 512.

33. *Id.* at 513.

34. *Id.* at 505.

35. *Id.* at 506.

36. *Id.* at 507. Coincidentally, Dr. Snider notes in his preface that he is employed by the New America Foundation, a Washington think tank, as a Senior Research Fellow.

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