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The O'Reilly Factor

How the Fox host used raw corporate power to crush a critic

By Terry Ann Knopf

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Whenever they say "it's not about the money," it is about the money.?

- Fred W. Friendly

It was a balmy Saturday—a perfect night for champagne toasts. Some 450 people from the local television industry gathered in the Grand Ballroom at the Boston Marriott Copley Place, many of the men in tuxedos, the women in strapless gowns. The occasion was a dinner ceremony on May 10, 2008, to announce the local Emmy-award winners. Lieutenant Governor Tim Murray was on hand, as were bigwigs from the Boston/New England chapter of the National Academy of Television Arts and Sciences.

The evening's highlight was to be the presentation of the prestigious Governors' Award to Bill O'Reilly, the host of Fox News Channel's The O'Reilly Factor. The award, voted on each year by a local board of NATAS governors, recognizes achievements in the television industry and is typically given to individuals with roots in the New England area. According to Timothy Egan, then the president of the academy's local chapter, "Bill O'Reilly was selected because he hosted the top-rated talk show on cable seven years running. He worked at TV stations in Hartford and two in Boston. He wrote for The Boston Phoenix. And he holds master's degrees from Boston University one from [Harvard's] Kennedy School of Government. He is someone who understands New England's journalism industry and honed his skills here.?"

To some participants, though, O'Reilly was an odd choice. For all his success as a media superstar—cable TV host, newspaper columnist, and best-selling author—O'Reilly has long been dogged by critics turned off less by his conservative politics than his inflammatory rhetoric and bullying tactics.

Barry Nolan was one. Then the host of the CN8 cable program Backstage with Barry Nolan, produced at the time by Comcast out of Brookline, Massachusetts and carried on its cable outlets from Maine to Virginia, Nolan was particularly taken aback. A month before the event, he fired off a couple of e-mails to the academy's governing board, urging the members to reconsider their decision. Next, he went public. "I am appalled, just appalled," he told the Boston Herald's gossip column, Inside Track, calling O'Reilly "a mental case" who "inflates and constantly mangles the truth."

Interestingly, Nolan had some support within Comcast and within the twenty-plus-member local Emmy board. At least two board members, Roger Lyons, national trustee and former president of the local NATAS chapter, and Ken Botelho, an engineering executive with Comcast as well as a board member, had second thoughts after considering Nolan's e-mails. O'Reilly is "a well-known TV personality and has a large following," Lyons wrote in an e-mail to his fellow board members. "But his indiscretions, inaccuracies, and prejudices disqualify him for such a lofty honor." Minutes later, Ken Botelho, a board member and, equally important, Comcast's vice president of engineering and network operations, e-mailed Lyons back. "Very well said, and I agree," he wrote. "If we do not reverse course there will be a backlash from others in the industry seriously questioning the integrity of this award—it will be a ticking time bomb if we set this in motion. The groundswell is already beginning." But the vote stood.

Rumors spread that Nolan might try to disrupt the ceremony or even bring to the event, as his guest, MSNBC's Keith Olbermann, O'Reilly's liberal nemesis. (Nolan admits sending an e-mail and a letter to Olbermann, but says he never got a reply.) Five days before the awards, Eileen Dolente, Nolan's supervisor, traveled from Comcast's Philadelphia headquarters to Boston and warned Nolan not to make a scene.

He didn't, really. But Nolan was determined to take a discreet but public stand. On the night of the awards, he deliberately dressed down. "I own a tuxedo, but I wanted to wear something that was socially appropriate, but minimal," he recalls. "For me this was not a special evening. I think I wore a blazer and slacks." En route to the event, he stopped at a Kinko's to run off 100 copies of a six-page handout he had drawn up featuring what Nolan thought were some of O'Reilly's more outrageous quotes—such as, "I just wish Katrina had only hit the United Nations building, nothing else, just had flooded them out"—as well as excerpts from an infamous 2004 sexual harassment lawsuit filed against O'Reilly and later settled out of court, complete with details about "loofah" and "falafel."

Arriving at the Marriott Copley, Nolan dropped off his handouts in the lobby, where partygoers were having drinks, and on tables in the Grand Ballroom. He refrained from plopping any on the guest of honor's table. "My grandmother would not want me to be unnecessarily rude," he explains.

In the lobby area he was approached by Timothy Egan, who recalls telling Nolan that it was

?impolite? to be distributing his handout at the ceremony. (Egan concedes that Nolan was not creating a disturbance, and that the conversation was held ?in a quiet place.?) Nolan remembers telling Egan that he thought a gathering of journalists was precisely the forum in which to air his views.

During dinner, he complied with a request from a security person to stop passing out his literature. When it was announced that O'Reilly was about to receive his award, the guest of honor drew some boos from the audience, according to numerous eyewitnesses. Nolan remained silent. At that point, he says he turned to his son Alex, then twenty-three and his guest at the event, and said ?Let's get out of here.? The two left, and that was about it. There was nothing about the incident on the local newscasts that night, or in the next day's papers.

Two days later, on May 12, Nolan got a call at work from his boss, instructing him to go home. The next day, he received a formal letter notifying him that he had been suspended for ten days without pay. A week later, on May 20, he was fired. ?The call came about 11 in the morning while I was in my basement surfing on my computer. It was Eileen Dolente, calling to inform me my contract and employment at Comcast had been terminated. I said, ?Okay? and then hung up,? recalls Nolan. ?I couldn't get off the phone fast enough because I didn't want to say all the things I was thinking.?

After working in television for nearly thirty years, Nolan had lost his \$207,000 Comcast salary and, one month shy of his sixty-first birthday, was out of a job. Six months later, he filed a \$1.2 million lawsuit against Comcast for wrongful termination, charging that his First Amendment rights ?to speak freely? had been violated. In court documents, Comcast countered that Nolan had engaged in ?insubordinate actions? and was in ?material breach? of his contract for such transgressions as publicly protesting O'Reilly's receipt of the Governors' Award and for ?repeatedly? failing to follow ?clear directives? from Comcast. The suit is pending.

Many an employee has been fired for saying too much, too loudly, to the wrong people, at the wrong time. Still, some in Boston's media community remained suspicious about Nolan's termination. ?There was something unseemly about a small player like Nolan being forced out by a giant like Comcast,? says Dan Kennedy, a former Boston Phoenix media critic and an assistant professor of journalism at Northeastern University. ?It made me wonder if they were afraid O'Reilly would go running to Rupert Murdoch. But what was Murdoch going to do? Take American Idol off Comcast??

It turns out, however, that such suspicions were well grounded. Documents filed in federal court as part of his suit show that beyond Nolan's mouthing off publicly against O'Reilly, there was another factor at work—the mutual business interests of two media giants, Comcast and the Rupert Murdoch's News Corporation, which owns the Fox News Channel.

On May 12, 2008—two days after the Emmys—O'Reilly went on the offensive against what he called Nolan's "outrageous behavior" with a carefully worded, lawyerly letter to Brian Roberts, the chairman and CEO of Comcast, which distributes Fox News and entertainment programming, to its subscribers. The letter was written on Fox News stationery and was copied to Fox News CEO Roger Ailes.

Pointedly, O'Reilly began by noting their mutual business interests. "We at The O'Reilly Factor have always considered Comcast to be an excellent business partner and I believe the same holds true for the entire Fox News Channel. Therefore, it was puzzling to see a Comcast employee, Barry Nolan, use Comcast corporate assets to attack me and FNC." Telling the Comcast CEO that Nolan had attended the Emmy Awards "in conjunction with Comcast," O'Reilly apologized for bothering him but let him know he considered this "a disturbing situation."

Consider for a moment the weights of the players in this episode. News Corp. ranks second in the latest Fortune 500 list of the world's largest entertainment companies, right behind the top-rated Walt Disney Company. And if Murdoch is the visionary behind the News Corp. and Fox News CEO Roger Ailes is the driving force behind the Fox News Channel, Bill O'Reilly stands as the channel's most visible face, which gives him significant clout. Indeed, this year, O'Reilly was voted one of the "10 Most Powerful in TV News" (tied with Glenn Beck for seventh place) by NewsPro, an industry trade publication—the sixth time O'Reilly has made the list. (Ailes was number one this year.)

By contrast, Barry Nolan is small potatoes. He had stints on two schlocky nationally syndicated TV shows, co-hosting Hard Copy in the 1990s and reporting for Extra in the early 2000s, and he continues to appear on Says You! , NPR's witty word game. In Boston, he was best known as the co-host, with Sara Edwards, of TV's Evening Magazine—but even that was more than twenty years ago.

Comcast Corp., Nolan's former employer, meanwhile, is the country's largest cable operator and residential Internet service provider. Last December, in a \$30 billion deal, Comcast announced plans to take over NBC Universal, which includes everything from NBC Nightly News and Jay Leno, to cable channels such as such as MSNBC, Bravo, USA, and Telemundo, the Spanish-language broadcast network.

The joint venture, pending before the Federal Communications Commission, has already faced criticism from public interest groups like the Center for Digital Democracy, which calls the proposed merger "the equivalent of Godzilla swallowing Rockefeller Center."

And indeed, when power meets power, the little guy had better look out, especially when the interests of media heavyweights intersect. Cable providers (like Comcast) pay fees to networks (like Fox) to

distribute content (like The O'Reilly Factor) to their cable subscribers, with the cable companies negotiating multiyear contracts with the networks. With tens of millions of dollars at stake, negotiations can be bruising affairs. Thus, it's in the two Goliaths' interest to keep relations harmonious.

And in this case, though O'Reilly's usual in-your-face rhetoric was absent from his May 12th letter, the message was clear: Hey, Comcast, don't forget which side your bread is buttered on.

O'Reilly's letter and Nolan's suspension letter went out on the same day—May 12—but because no telephone logs are among the court documents, it's not possible to draw absolute conclusions about the connection between the two. Other documents, however, filed in connection with Nolan's lawsuit strongly suggest that O'Reilly's letter to Roberts was a key factor in his firing. Once Comcast was in receipt of the O'Reilly letter, e-mails, talking points, and memos went flying from one jittery Comcast executive to another. Should they call O'Reilly? Who should call? Should they send a letter? Who should draft it? Who should sign it? And don't forget to CC Roger Ailes. Roberts himself was very much in the loop, but waited until May 22—two days after Nolan's firing—to send O'Reilly an apology letter of his own. (Except for Nolan, none of the other parties would agree to talk for this story. Comcast issued the following statement: "As a matter of policy we do not comment on litigation or on other legal matters, but stand by our actions and intend to defend this lawsuit vigorously.")

In December 2009 Comcast executive vice president David L. Cohen insisted to Matea Gold, a Los Angeles Times reporter, that Nolan wasn't fired for speaking his mind, and affirmed the importance of journalistic independence. "Professional journalists need to have the right to express their opinions without fear of correction or retribution from a corporate parent," he said.

Perhaps he should have added—except when it involves the corporation's business interests. Documents, filed with the court, reveal that Comcast and Fox were involved in "ongoing" contract talks at the time, with Comcast fearing Nolan's protest "jeopardized and harmed" its business dealings with Fox. In response to a question posed by Nolan's attorneys in his lawsuit, Comcast's written response, dated Aug. 5, 2009, states:

"Mr. Nolan's protest at the NATAS Award Ceremony and of William O'Reilly as the recipient of the Governor's Award jeopardized and harmed the business and economic interests of Comcast in connection with its contract with Fox News Channel, and its contract negotiations with Fox News that were ongoing at the time.

Barry Nolan's demise is not without larger significance. Notes Josh Silver, president and CEO of Free Press, a nonprofit media reform group based in Washington, D.C. "All Barry did was use the

words of Bill O'Reilly and distribute them. He spoke truth to power, but the truth was outside the range of Comcast's acceptable discourse.

Truth, of course, is harder to define than raw corporate power. What's clear is that over the past twenty years or so, thanks in part to government deregulation, the number of companies owning or having a dominant influence over our news and information outlets has dwindled from about thirty to just a few—Walt Disney, News Corp., Time Warner, Viacom—and, if the FCC approves, Comcast-NBC Universal. Such media consolidation means reduced competition and greater shareholder pressures and, possibly, attention to profits over the public interest. Indeed, some critics argue that such concentration of power is dangerous to our democracy, leading to a less vigilant news media and what one business journalist has called "a more muted marketplace for ideas."

Recent examples abound. Take the case of Cablevision, the nation's fifth largest cable operator. Two years ago, at a time when it owned the New York Knicks and New York Rangers, Cablevision purchased Newsday for around \$650 million. By April of this year, The New York Observer was reporting complaints of "rank censorship" in the sports department's coverage. "There's a general resignation to it all here," said one Newsday insider. "It just feels like another blow to the integrity of the paper. The other shoe finally dropped. Cablevision bought us, and now it's finally happening."

Or, take this year's Masters tournament, which marked the return of Tiger Woods in the aftermath of his well-publicized sex scandal. More than a few sports insiders were struck at the way CBS Sports, which had paid a hefty sum to the Masters for the broadcast rights for the tournament, soft-pedaled its coverage of Woods. Bryant Gumbel, host of HBO's Real Sports, was blunt. A recent AP story had him noting that CBS and the Masters were profit-seeking partners. "Do you really think when we watch the Masters that Jim Nantz is going to harp on Tiger Woods's troubles? I think not," he said.

In hindsight, the Comcast firing is less about two warring TV personalities than about the corrosive influence of over-concentrated corporate power. It was never a fair fight. Think Nolan at 5-foot-9 inches up against O'Reilly at 6-foot-4—with two giant media conglomerates behind him. Think Dustin Pedroia, the little Red Sox second baseman, up against the whole New York Yankee lineup.

Nolan has landed a communications job with the Joint Economic Committee of Congress and commutes weekly from Washington to his Newton home. His show Backstage on CN8 is no more; plagued by low ratings, Comcast discontinued the CN8 brand last year. To date, Nolan says he has incurred \$100,000 in legal fees.

But he is still in a fighting mood. "I don't think they had the F-ing right to tell me what I'm allowed to say. In the end, I think they were trying to suck up to Roger Ailes and Rupert Murdoch and Bill O'Reilly in a way that's spineless and appalling for a company [Comcast] that aspires to run a major

network news operation [NBC]. What happens when Keith Olbermann goes after O'Reilly? I think that's scary.?