

For FSF's Randy May, Free Market Advocacy Is A Life's Work

By Kelcee Griffis

Law360 (June 18, 2021, 4:22 PM EDT) -- Randolph May has seen a lot of changes in the media landscape, from his days of tuning in to Walter Cronkite's nightly broadcasts in his college fraternity house to parsing the finer points of Big Tech censorship disputes today.



Randolph May

May followed his entrepreneurial streak out of BigLaw and into the world of D.C. think tanks to found the Free State Foundation, which promotes free-market communications law policies and is celebrating its 15th anniversary this year.

Law360 recently caught up with May about what drew him to the legal sector, what has kept him in the telecom industry and the challenges of engaging in scholarly debate in the short-form digital age. This interview has been edited for length and clarity.

What originally drew you to the legal profession?

It was an interest from a fairly young age in politics and public policy. I grew up in a family where especially my father enjoyed talking about public policy issues and politics. That wasn't his line of work — he owned an old-fashioned dime store — but that was the environment that I grew up in. By the time I started college at Duke University, I thought I would want to follow that with law school, which I did.

I wasn't especially drawn to business, per se. I wanted to get into the aspects of law that had a heavier dose of public policy elements, rather than, for example, business law.

I followed law school at Duke with a clerkship at D.C. Court of Appeals. At the time, there were just two of us, working for all the judges handling motions and certain other things. I joined Steptoe & Johnson and was there for 4½ years, until I had an opportunity to go to the [Federal Communications Commission] in 1978, initially as assistant general counsel. A year and half later, I became associate general counsel at the FCC.

I was idealistic at that time. I hope I am still. I believe there's always an opportunity to make our world and country a better place, and you do that, really, through public policy.

What motivated you to launch your own think tank, and what was that transition like?

I'd always had an academic bent in the sense that I enjoyed researching, writing and publishing. And again, I always wanted to be involved in changing public policy. When you put those two things together, it made me focus on a career change and led me to the think tank world. I first joined the Progress and Freedom Foundation, and then started FSF in 2006.

Three things were the impetus for doing that. After being in large law firms and the government, places that had all the pre-existing infrastructure in place, I got to the point where I just wanted to start something myself. The second impetus was the academic bent: I wanted to research, write and publish, and lead others into doing that.

The third catalyst is the most important. I'd come to believe over time that the communications laws and policies going back to 1975 were not really keeping up with the marketplace developments. There were still too many legacy regulations in place even though, in a general way, there was considerably more competition. I thought the 1996 Telecommunications Act — a landmark piece of legislation, as you know — hadn't been implemented in a sufficiently deregulatory way.

I wanted to create an organization that would advocate for free market policies in a consistently principled way. That was really the impetus.

What are your biggest challenges at the FSF today?

There's so much coming at people these days, so much noise. In today's environment, so much advocacy takes place in shorthand with soundbites or tweets.

Of course, we tweet now and write short blogs, but it's a challenge to keep striving to write what we believe are well-researched, scholarly pieces and also to bring fresh approaches to some of the issues.

Another challenge, frankly, is that a lot of the communications issues seem to go on and on for years. Sometimes the names or the labels attached to them change, but the issues go on, like net neutrality, which we've been a leader in opposing.

While you're focusing on old battles, you don't want to let that get in the way of looking ahead at new issues or looking at old issues in a new way.

How has technology policy and regulation changed over the course of your career, and where do you think it's heading now?

Every night when I was at Duke University, a group of us used to gather around the television at our fraternity house and watch the "CBS Evening News" with Walter Cronkite. That was one of three TV networks at the time.

Obviously, today it's much different. Yet we still have media ownership regulations that are still in place, that were developed 25 to 30 years ago for a much different environment. That's a great example of the tendency for regulation to lag behind marketplace developments.

I'm concerned about the power that the Big Tech companies exercise now, and I think it's appropriate to examine that power and to consider whether there should be any public policy responses. I'm concerned about the moderation practices of social media companies, but I'm not at all sure whether there's a public policy response — at least right now — that would not be worse than the problem.

--Editing by Orlando Lorenzo.