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Floyd Abrams

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# Keynote Speaker

## A Transcript Featuring the 1999- 2000 Oliver Wendell Holmes Lecturer—Floyd Abrams

*PROFESSOR BLUMOFF:* Can I get your attention a minute? Thank you. I don't do this well in a class.

Let me welcome you to the 1999-2000 Symposium—Oliver Wendell Holmes Devise Symposium and Lectureship. And I think it's appropriate before I start that a few thank yous go out. First, and she's not here because her daughter was in an accident yesterday, to Yonna Shaw. I have seen—known Yonna for years and years just passing her in the hall and nodding and saying hello. I didn't realize until the last couple of months, until I actually worked with her, what a resource she is for the Law School. Her energy and her ability to keep eight thousand balls in the air at any given time is fantastic. Her sense of humor is wonderful. And although she's not here, I can tell you without Yonna's incredible attention to detail, this would not have happened. So I certainly thank her for helping me and the rest of us bring this about. I'm just sorry she's not here.

I want to thank Elizabeth Brown and the Law School, the Law Review people who have helped all the way through to organize this. And I

hope that the program itself is as valuable as the help I received preparing this.

Let me give you a little background to the Holmes process. About two years ago, the Dean stuck a flyer in my mailbox, I guess. It was a call for proposals to sponsor the Holmes lectureship. For those of you who don't know, Justice Oliver Wendell Holmes died about almost seventy years ago and left his money to the United States Government. Now, nobody does that these days. They immediately took the money, Congress did, and appointed a committee, headed by the Librarian of Congress, to figure out what to do with his legacy. The first thing they did was produce a multi-volume history of the United States Supreme Court by Charles Fairman, which is still routinely cited as a dispositive history of the United States Supreme Court.

And then beginning sometime in the '40s they started sponsoring an annual lectureship. It went on for about twenty years, and for some reason that I really don't know, in the mid '60s it stopped, and it stopped for about twenty years. Sometime in the mid '80s, and I suspect it was with a new Librarian of Congress, they started up the lectureship again.

And I want to say that we are in a distinguished line of schools who have been awarded this lectureship. And when we made the proposal, and then sometime later told them who we were bringing to speak, they were delighted. The Librarian of Congress and the Trustees who administer the program were very happy, so we are really pleased and honored to have the people with us who will be speaking this weekend.

The topic of the symposium is *The Marketplace of Ideas in Cyberspace*. The marketplace of ideas is a metaphor that came from a dissent in an opinion by Justice Holmes as a dissenter in 1919 called *Abrams v. United States*.<sup>1</sup> And I'll leave some of the nuances aside and just point out that the whole notion of a marketplace of ideas was to replace government regulation as the way ideas get tested. And, so, he—his proposal was rather than putting this, as he put it, poor puny socialist in jail, let's let his ideas be tested in the marketplace. The idea being government should not regulate speech. Now that's—it was a development for Holmes because as Judge Hand put it, for a very long time Justice Holmes didn't get it. He didn't understand that the First Amendment occupied a preferred position, that it was not just a right, but, in fact, a necessary, as Meiklejohn put it, a necessary inference from a democracy. We have to be able to speak.

At the time that I wrote this proposal, I was teaching the general First Amendment class, and at the same time Congress was beginning serious

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1. 250 U.S. 616 (1919).

regulation of the Internet. So the two ideas came together obviously and immediately. Does this notion of a marketplace of ideas make any sense in this age of technology? And some might say it makes more sense now than it did twenty years ago.

For some the marketplace of ideas is the fulfillment of the million ideal that we simply leave people to make up their own minds. It's clearly a libertarian idea. To others who have written in the last twenty years or so, it's an oxymoron because, in an age in which money determines access, the notion of a marketplace of ideas is one which is so tilted in favor of the haves that it no longer makes any sense. The metaphor doesn't make any sense. And I think that's what we will be asking and talking about this weekend—is testing it.

Let me introduce some of the people who will be speaking, especially tomorrow, because I'm going to leave for Dean Dessem the introduction of tonight's speaker. And this is really in order of the way they will appear. The first speaker tomorrow morning at 9:00 or 9:30, I think 9 o'clock, will be Greg Lefevre, who is sitting over there. He is the CNN Bureau Chief in San Francisco. And, so—he sits just above Silicon Valley watching what's going on in this new generation of electronic media and will present, I think, an overview of some of the big issues that we will be tackling this weekend.

Following Greg Lefevre will be Margaret Chon from the University of Seattle, a graduate of Cornell and the University of Michigan Law School, who writes about intellectual property and in general about access to this new media that seems to be taking over our lives.

Following Margaret Chon will be Daniel Jaffe. Dan is a graduate of Princeton and the University of California. He is the Executive Vice President for Governmental Relations for the Association of National Advertisers. Every time you see one of those little banners on your AOL or whatever else you're using for accessing the Internet, you can be looking probably at one of Dan's clients. So clearly he has a—the people he represents has a great stake in the kinds of regulation that will be coming in the near future and that which is already upon us.

And, then, finally, Liza Kessler, a graduate of Smith and the University of Wisconsin Law School, who is a counsel for the Center for Democracy and Technology, a think tank in Washington, D.C., who has spent the last couple of years in dealing in large part with privacy issues. So I think all of these issues are the kinds of things that the whole metaphor of the marketplace of ideas raises for us, and I am extremely happy to have all of you with us for this weekend.

Keeping all of it together will be Sheri Lewis, whom most of you know, Northwestern and NYU Law School, our Associate Librarian for Research. And as most of you know, research, in fact, all of you know,

research these days is about technology. Legal research is about technology. So she has been in it from our point of view.

With that, let me bring up Dean Dessem to introduce our keynote speaker.

*DEAN DESSEM:* Before I do that, I want to recognize and thank the one person who wasn't thanked thus far, and that is Professor Ted Blumoff, himself. As you will discover over this weekend, he has put together and crafted a masterful proposal that was enthusiastically welcomed by the Librarian of Congress, and you're going to see an outstanding symposium this weekend as a result; so thank you, thank you, Ted.

It is now my pleasant task and great honor to introduce this evening's keynote speaker, Mr. Floyd Abrams. It's a great honor for us to host the 2000 Oliver Wendell Holmes Devise Lecture and Symposium, on which Professor Blumoff and the Mercer Law Review have worked for quite some time. It will be a very special weekend for us here at Mercer, and we are honored by the fact that Floyd Abrams will present this evening's Oliver Wendell Holmes Devise lecture.

Mr. Abrams is a graduate of Cornell University and the Yale Law School. He's a partner in the New York firm of Cahill, Gordon and is the William J. Brennan, Jr. Visiting Professor of First Amendment Law at the Columbia School of Journalism. In addition, Mr. Abrams has been a visiting lecturer at both Yale and Columbia Law Schools, and he is a Fellow of the American College of Trial Lawyers.

Floyd Abrams is the leading First Amendment attorney in the United States, having argued more than one dozen First Amendment cases in the United States Supreme Court, more than any attorney in American History. He served as co-counsel in the *Pentagon Papers*<sup>2</sup> case in the 1970s, and since that time he has represented the *New York Times*, ABC, NBC, CBS, *Time* magazine, and various other print and electronic media and media groups in precedent-setting First Amendment litigation. Right now he represents CBS in litigation with the family of Martin Luther King, Jr. in connection with a copyright infringement suit filed by the family due to CBS's use of footage of Dr. King's "I Have a Dream" speech in a documentary on the Civil Rights movement. In addition to this First Amendment work, Floyd Abrams has handled at least one ERISA case, has argued capital punishment cases in the United States Supreme Court, and, just recently, represented Pepperidge

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2. *New York Times Co. v. United States*, 403 U.S. 713 (1971).

Farms in a trademark infringement case against RJR/Nabisco—charging Nabisco with copying Pepperidge Farm's Goldfish cracker design.

The list of special awards that Mr. Abrams has earned and received over the years is long and impressive. Perhaps even more impressive, however, are the First Amendment precedents that he has helped to establish through his advocacy over the last forty years. The cases in which he has served as counsel truly define the First Amendment for all courts and the protection of the First Amendment for all citizens during the later portion of the Twentieth Century. These cases include *The Pentagon Papers*<sup>3</sup> case, *Branzburg v. Hayes*,<sup>4</sup> *Nebraska Press Ass'n v. Stuart*,<sup>5</sup> *Landmark Communications v. Virginia*,<sup>6</sup> and *Metromedia v. City of San Diego*.<sup>7</sup> These are the cases that establish the First Amendment protections that we all enjoy and that will guide courts and legislatures as we enter the Twenty-First Century.

Mr. Abrams, you honor us with your presence tonight. Our Oliver Wendell Holmes Devise lecturer, Mr. Floyd Abrams.

*MR. ABRAMS:* Thank you. It's good to see you all. It's a great honor to be invited here to talk to you, to talk with you, about, as I view it, Justice Holmes, the First Amendment, the Internet and the relationship of it all to each other.

I gave a talk a few weeks ago in New York at a church about various First Amendment issues. We had a question period afterwards, and the first question was what shall we do about John Rucker? I said, "Well, we really don't have to do a whole lot about John Rucker." I said, "But if you really want a First Amendment answer, put aside it's not the government, if you want a First Amendment answer, why don't we really try it in the old fashioned First Amendment way. We can boo. We can leave him to his teammates' wrath." But, I said, "It does seem to be getting a little bit out of control, I mean, sending him to psychiatric wards." And then I said, "I'll tell you what I'll do, I'll go to Macon. I'll do a personal investigation and I'll get back to you, and if there's anything else to be done, I'll let you know." So I haven't learned anything yet. There are no statues on the street.

I want to start by talking a little bit about Justice Holmes. It's,—I can't tell you what a treat it is for a practicing lawyer, even one who gets to do a good deal of First Amendment related work; and, therefore,

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3. *Id.*

4. 408 U.S. 665 (1972).

5. 427 U.S. 539 (1976).

6. 435 U.S. 829 (1978).

7. 453 U.S. 490 (1981).

gets to write sometimes, not very often, in a style that lawyers can't use too often, at least, gets sometimes to quote Supreme Court Justices saying the sort of things that they don't say when they deal with the Internal Revenue Code or certain other areas of law.

There are two passages of Justice Holmes' that have always struck me with particular force. The first is this irresistibly solicitous and absolutely First Amendment destructive phrase by Justice Holmes, one of his best known, most repeated and most harmful, and that is, quote, "the most stringent protection of free speech would not protect a man in falsely shouting 'fire' in a theater and causing a panic."<sup>8</sup>

That's one of the best known phrases in American legal history. You may not remember it quite the way I read it to you because I read it to you correctly. Usually the word "falsely" is dropped completely from the articulation. The causing of panic language is rarely cited. And sometimes the word "crowded" is added as in the "no right to cry fire in a crowded theater." Abby Hoffman, I thought, the great scholar of the 1970s put it best when he said, "freedom is the right to cry theater in a crowded fire."

But it seems to me that the phrase is not only so quotable that it's often misquoted, but so entrancing that it is used to justify just about any restriction on free speech that happens to come to mind. And Justice Holmes bears some responsibility for that.

The phrase was used in a case in which what was at issue was the distribution of what we would now think of as a rather inoffensive political leaflet urging people to join and support the Socialist Party and to oppose conscription in World War I. It led to a conviction for conspiracy to cause insubordination in the Armed Forces. And Holmes, in an opinion written before the full blossoming of his First Amendment views at a time when as has been said he didn't get it, wrote an opinion justifying, affirming lawyers would say, the conviction. And in that context, as Professor Harry Calvin has written, Holmes in a theater line was so wholly apolitical one would have no idea that what was involved was political speech. It not only lacked the complexity for dealing with really serious speech, and the speech was serious speech in the *Schenck* case in which it was used, but the fire in a crowded theater, and now I've added "crowded," phrase did not even involve criticism of government at all, which is what that case was, after all, about. It was a lovely phrase, a telling phrase, a mischievous phrase, but it's just too good to forget.

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8. *Schenck v. United States*, 249 U.S. 47, 52 (1919).

Now, compare that magnificent miss with the dead on hit in the *Abrams*<sup>9</sup>—no relation incidentally—case in which Holmes, with eloquence about the First Amendment that I think no one before or after has really ever matched, said in one paragraph the following: “Persecution,” he said, “for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That,” he said, “at any rate, that is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.”<sup>10</sup>

Now, that was one paragraph of the *Abrams* case. And it’s that unforgettable paragraph that really brings us here tonight and tomorrow. We meet, really, to talk about the continuing relevance of that language in our new cyberspace speech world.

But before we do, and we’ll do more of that tomorrow than I’m doing tonight, return with me for just a moment to the very beginning of Holmes’ great passage because it seems to me that one of the most powerful things he has to teach us is that there is a terrible logic to censorship. That it is undeniable, once you think about it, that if you don’t doubt, in Holmes’ phrase, your premises, that there is an enormous temptation to use power to suppress contrary speech, a temptation that governments around the world throughout the history of the world have often found to be irresistible.

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9. 250 U.S. 616.

10. *Id.* at 630.



I've quoted that passage in talks that I've given around the world, including places where censorship is the norm and not the exception. And my concern has always been, and remains, that the logic of censorship, the appeal of censorship, the temptation of censorship, is sometimes more powerful than any articulation, however eloquent, of its risks.

Let me turn to a few issues involving the Internet and the new legal world arising out of the Internet. New in one sense, but as I will argue at least, not all that new in the First Amendment context.

First, it is a world in which our judges have fallen in love with the Internet. They cannot say a bad word about it so far. Listen to the sort of language federal judges use when they talk about the Internet. This is language from the district court judge in *ACLU v. Reno*,<sup>11</sup> writing on the Internet in 1996 this way. Quote, "It is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen. The plaintiffs in these actions correctly describe the 'democratizing' effects of Internet communication: individual citizens of limited means can speak to a worldwide audience on issues of concern to them. Federalists and Anti-Federalists may debate the structure of their government nightly, but these debates occur in newsgroups or chat rooms rather than in pamphlets. Modern-day Luthers still post their theses, but to electronic bulletin boards rather than the door of the Wittenberg Schlosskirche. More mundane (but from a constitutional perspective, equally important) dialogue occurs between aspiring artists, or French cooks, or dog lovers or fly fisherman."<sup>12</sup> And the judge went on, "true it is that many find some of the speech on the Internet to be offensive, and amid the din of cyberspace may hear discordant voices that they regard as indecent. The absence of governmental regulation of Internet content has unquestionably produced a kind of chaos, but as one of plaintiffs' experts put it with such resonance at the hearing: '[w]hat achieved success was the very chaos that the Internet is, the strength of the Internet is that chaos.' Just as the strength of the Internet is chaos, so the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects."<sup>13</sup>

And then when the case went to the Supreme Court,<sup>14</sup> Justice Stephens, writer for the Court, said, "Through the use of chat rooms, any

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11. 929 F. Supp. 824 (E.D. Penn. 1996).

12. *Id.* at 881.

13. *Id.* at 883.

14. *Reno v. ACLU*, 521 U.S. 844 (1997).

person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups the same individual can become a pamphleteer.<sup>15</sup> According to Justice Stephens, “[the Internet] provides relatively unlimited low cost capacity for communication of all kinds.”<sup>16</sup> It is a “vast democratic fora.”<sup>17</sup> And I agree with all of that.

But I must express at the start a few qualms, some of which are of a sort of personal nature. As you may have heard from my biography, at least if you tone down the compliments and ask, well, what does this man do for a living—a lot of what I do is representing newspapers, journalists, broadcasters and the like. And I must tell you that I am just a tad put out that my clients don’t fare as well when I come to court as the Internet does when lawyers comes to court representing it. I just can’t help but think that many judges are far more comfortable with the notion of citizen Internet users than of trained editors or writers on the Net or off. Sometimes it seems to be counter-intuitive. I mean it can’t really be, can it, that we should honor Matt Drudge more than Dan Rather, or Pierre Salinger, with his TWA plane hundred fantasies, over the *New York Times* news gathering operations? Yet it does seem to me that some of the judicial rapture over the Internet sounds that way. And I think it can lead to some interesting and perhaps troubling problems.

The first arises out of one of the most attractive features of the Internet. It is that the low entry barriers allow everyone to be a publisher. The good side of that is obvious. Is there a less good one? Let me offer you the perspective that I usually do when I’m in court representing my clients of the press. When a prosecutor or defense counsel seeks to require a journalist to reveal their confidential source of information, I usually turn to a state statute, if there is one, which protects the relationship of journalist and source. Or if there is none, or the statute is too narrow, or the statute is inapplicable, as in Federal Court, very often I will turn to the First Amendment itself. And I argue the press can’t gather news if it cannot promise confidentiality to its sources. The public will suffer, I and my colleagues who make these arguments make, if newspapers and broadcasters and journalists and the like can’t meaningfully promise people confidentiality in return for information.

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15. *Id.* at 870.

16. *Id.*

17. *Id.* at 868.

This is the way the great Yale law professor, Alexander Bickle, argued the need for First Amendment protection of this sort in a brief submitted on behalf of many newspapers and broadcasters in the only Supreme Court case yet to pass on this, *Branzburg v. Hayes*.<sup>18</sup> Bickle wrote, "reporters are able to get much indispensable information only on the understanding that confidence may be reposed in them because they can and will keep confidences. Such indispensable information comes in confidence from office holders fearful of superiors, from businessmen fearful of competitors, from informers operating at the edge of the law who are in danger of reprisals from criminal associates, from people afraid of the law and of the government, sometimes rightly afraid, but as often from an excess of caution, and from men and women in all fields anxious not to incur censure for unorthodox or unpopular views, whether their views would be considered unorthodox and be unpopular at large or merely in their own group or subculture."

"The assurance of confidentiality," Bickle wrote, "elicits valuable background information in important diplomatic labor negotiations and in many similar situations where disclosure would adversely affect the informant's bargaining position. Public figures of all sorts, including government officials, political candidates, corporate officers, labor leaders, movie stars, baseball heroes who will speak in public only in carefully guarded words achieve a more informative candor in private communications."

Well, now, in the *Branzburg* case itself, the Supreme Court, in a five to four ruling, required journalists to reveal their sources, at least in a grand jury context, where the grand jury was investigating possible criminal misconduct.<sup>19</sup> In later cases, particularly but not exclusively, in civil cases, significant First Amendment protection had been found present for the purpose of protecting confidential journalistic sources. And a three-part balancing test has generally been applied which is hard to beat.

Journalistic work product itself has also been often held to be privileged under the First Amendment, even when it's not contextual, the notes journalists take when they interview people, so as to protect what one recent ruling called the paramount public interest in the maintenance of a vigorous, aggressive and independent press.

The Department of Justice has adopted guidelines which it follows and which require the personal approval of the Attorney General herself, and these were adopted first under Attorney General John Mitchell under President Nixon, incidentally, but have been reaffirmed as part of the

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18. 408 U.S. 665 (1972).

19. *Id.* at 708.

Department of Justice practice ever since—personal approval of the Attorney General before any attempts are made to cause journalists to respond to compulsory process by the Department of Justice. First, you have to go to alternative sources, nonjournalists. Then, you have to have a really compelling need for the information. The guidelines say, quote, “freedom of the press can be no broader than the freedom of reporters to investigate and report for the news.”

Now, all these First Amendment protections, for confidential and nonconfidential materials alike, are rooted in the special needs of the press, and the special role of the press in American lives.

Question—Will the same protections be afforded to each and every publisher who has a Web site, or to put the question more narrowly, will everyone who has a Web site be treated the same as every reporter with regard to the matters that I’ve been talking about?

Now, I am concerned about this topic, whatever the answer to that question. If, as I doubt, Internet publishers are provided less right than newspaper publishers, can that be justified? But maybe worse yet, suppose the law is said to be the same for all, quote, “publishers”: unquote, Internet, newspaper, whatever, what level of protection will that law provide?

Thus far those of us who have practiced in this area have sought to justify First Amendment protection for journalists based upon something rather unique that we have argued that they do as fact finders, as fact revealers, in newspapers, on television and the like. We’ve analogized the need for this protection to the need for protection of attorney and client, the need for protection for priests and penitent and the like, but we have never thought, I had never imagined that the courts would ever be persuaded to permit everybody who speaks, everybody that is, to promise everybody else confidentiality. The very fact, then, that everyone can be a publisher may leave no one to be treated as a matter of First Amendment law the way publishers have historically been treated.

Let me offer another example. Toward the end of the last year, the Court of Appeals for the Third Circuit in Philadelphia decided an interesting case in which the issue was whether the First Amendment precluded the imposition of civil damages for the disclosure of a tape recording of an intercepted telephone conversation.<sup>20</sup> The conversation contained information of public significance. The defendants were two radio stations, their reporter and the person who furnished the tape

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20. *Bartnicki v. Vopper*, 200 F.3d 109 (3d Cir. 1999).

recorder. None of them had anything to do with listening to the conversation.<sup>21</sup>

What happened was a tape recording was made by someone, we don't know who, of a conversation on the telephone between two union leaders who were negotiating on behalf of the teachers union. One of the speakers was the president of the union, the other the chief negotiator. And in their call one said to the other, quote, "If they're not going to [make their offer higher], we're going to have to go to their, their homes to blow . . . off their front porches, we'll have to do some work on some of those guys," unquote,<sup>22</sup> and there was more of the same.

Some unknown person intercepted and recorded the conversation and left it in the mailbox of an association that opposed the teachers' union and the teachers getting more money. He gave it to a radio station. The radio station played it on the air. The lawsuit was brought by the two union officials under Federal and State wire tapping laws that make it illegal to listen to and to reveal such discussions. The legal issue, what about third parties; and, in particular, what about the press when the press in this case broadcast this information that had been made available to them, which they obtained perfectly legally, didn't pay anybody, didn't ask anyone to get it, and then played it on the radio. Could the press, then, or the radio station, be liable for disclosing it?<sup>23</sup>

The Third Circuit held that the statute could not constitutionally be applied to the press.<sup>24</sup> Distinguishing a recent and nearly identical ruling to the contrary by the Court of Appeals of the District of Columbia in Washington on the ground, in part, that the press was not involved in that case, the court held the statute unconstitutional as applied to the press.<sup>25</sup>

Now, I didn't come here tonight to argue about whether that was the correct ruling, although it has its appeal to me. But I do raise with you the same issue I raised earlier. Would an Internet publisher, anyone with a Web site that is, be treated the same; and, if so, what difference does the press status of the defendant make? And, if not, how can we justify the difference?

My own views in this area have been much affected by the writings of former Justice Potter Stewart who frequently urged that the press clause of the First Amendment, quote, "Congress shall make no law abridging freedom of speech or of the press," unquote, that the press words in the

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21. *Id.* at 113.

22. *Id.*

23. *Id.* at 113, 116.

24. *Id.* at 129.

25. *Id.* at 128-29.

First Amendment exist to afford what he called the institutional press with more and somewhat different rights than those set forth in the speech clause of the First Amendment. That position has not fared well with the Supreme Court, although as I have already indicated there is no doubt that in some areas that the press has fared better in court than it would have done simply because of its role in American life. It would certainly be disturbingly ironic if the rapid expansion of the Internet as a means of communication diminished the degree of First Amendment protection of the press; and, thereby, inflicted serious harm to the public.

There's a second area in which the Internet undoubtedly serves us well but I think in which we should think seriously about its consequences. One of the great things about the Net and about all our modern technology in this area is the far greater ease that is now provided to assemble information and to make it publicly available on a wide scale basis cheaply. That result is entirely consistent with the First Amendment. But, paradoxically, the effect of more information being made more available more quickly, more cheaply may be less information being made public in the first place.

Consider the initial response you may have read about last week in the newspaper of the Judicial Conference of the United States to the efforts of an on-line news service to post the information that is set forth in the supposedly public disclosure forms filed by federal judges setting forth their stock holdings and their family assets. This is material which by statute is supposed to be, quote, "public," unquote. And it's been public but hard to get, a pain to obtain. Forms to be filled out. Disclosures to be made by the people who want the information in ways that make it something less than easy to obtain.

Now comes an Internet news service saying to the Judicial Conference, "Just give us all your forms and we'll post them. Thank you very much." To which the initial response of the committee of the Judicial Conference of the United States when confronted with complaints from judges allegedly on personal security grounds, but more plausibly, I think, on personal privacy grounds, was to say, "We're not going to make any of it public to the Internet. No, we'll leave it here. You can come and you can read it and you can write it down with that what used to be called a pencil, but not on the Internet." Now, this is by judges in the face of specific statutory language saying that this is public.

Last Wednesday, day before yesterday, after a rebuke by Chief Justice Rehnquist of a public nature, the Judicial Conference reversed field and agreed to make the information public even to an Internet entity.

Or consider this one, there is what is known as worst case chemical disaster information and there is now legislation about that information. There is a law that is officially now known as the Chemical Safety

Information Site Security and Regulatory Relief Act, which was a response to regulations enacted under the Clean Air legislation that required chemical companies to report worst case scenario information to the EPA, which the agency was to put on the Web by June 21, 1999.

Congressional Republicans asserted fear of the potential for terrorists finding the information on the Web and amendments were made to the disclosure requirements. But look at the amendments. The Act now not only restricts Internet access to information regarded, quote, "the potential threat from hazardous materials stored at an estimated 66,000 companies," but it also prohibits the public from getting worst case scenario data on paper by exempting in toto the public records from disclosure laws established under the Freedom of Information Act. Specifically, the bipartisan compromise, in effect now law, places a one year moratorium on distribution of worst case scenario information to the general public everywhere, not just on the Internet, and requires the Administration to promulgate regulations on the dissemination of worst case scenarios to the public after performing two separate assessments; one, the risk of terrorist activity associated with the posting of information on the Net and the other, the incentives created by public disclosure of worst case scenarios for reduction of the risk of accidental releases. Criminal fines of up to one million dollars have been adopted for willful violation of the Act's information restriction.

There's a somewhat ironic postscript to the Act in that three months after its passage, a public interest group posted summaries of all the worst case scenario information available from the EPA on its Web site. I'll come back a little bit later to the difficulty of stopping information from getting out, whatever legislation you pass.

Other examples of Internet motivated restrictions of public information include an initiative by Massachusetts business leaders to, quote, "make it easier for companies to have information declared a trade secret," unquote, in response to the Massachusetts Department of Environmental Protection, putting previously available chemical companies chemical usage information on its Web site. Proposed legislation in Illinois that would make it a misdemeanor to use the Internet to transmit information about marijuana or other controlled substances knowing that the information will be used in furtherance of illegal activity. And the U.S. Parole Commission's approval of potential restrictions on the use of computers by federal parolees.

None of this, of course, is an argument against more access generally, let alone against the great features of the Net, but have led, however understandably, those who are the subjects of Internet data to seek to avoid the data being compiled at all.

But listen to an editorial published this week by the Reporters' Committee for Freedom of the Press which concluded this, predicted this. Quote, "legislatures nationwide are considering measures that would shut down access to any public record that identifies an individual that is sold to a commercial entity or provided to a mass public." How, the editorial asks. How did this steady erosion of access to public documents happen? Because in the computer age, data held by state agencies that for decades was open to the public suddenly became useful, and once it became useful, people started using it. In coming months, they predict, watch for legislative and Congressional efforts to close voter registration, property tax and land transaction records.

Now, I said earlier that it would be disturbingly ironic if the "everyone is a publisher" feature of the Internet ultimately leads to all publishers having less in the way of First Amendment rights. As to this second possible result, less information being made public, if the price of that is Internet level distribution, I'm not as disturbed, but the result certainly is ironic.

Finally, there are other costs, costs of a different sort, costs—and those of us who toil on the First Amendment legal vineyards rarely acknowledge, but I thought in honor of Justice Holmes I would at least refer to. For the Internet is not only, in Justice Stephens' phrase, a vast democratic fora, it is a fora which tests our continuing devotion to the First Amendment. The problem is not Matt Drudge or Pierre Salinger, it is everything, because if everything, or just about everything, is now to be made available on the Net, we ought to face up to the consequences.

Here's one. There has been an explosion on the Net of Nazi-like, Ku Klux Klan-like speech, hate speech, and then some, which we are busily and instantaneously exporting to the rest of the world. In the rest of the world, that information tends to be illegal. Here it would be protected under the First Amendment, and I agree with the protection, but look what happens. It is not that that speech didn't exist here or that we didn't protect it before the Internet, it did exist, we did protect it, but like everything in the pre-Internet world, it was harder to get it out, often impossible to do so on a large scale basis. Now it is possible and it is happening. The Steven Weisenthal Center has identified 1,400 such sites in a recent report, more than double last year's.

And one of the leading extremists on the World Wide Web, the founder of the publication, *Storm Front*, has said that, quote, "The benefit is that we reach tens of thousands of people, potentially millions." It's almost like having a TV network. That is First Amendment language. It happens to be First Amendment language in the service of evil, but it is First Amendment language.



And all the advances of the Internet about which I have previously spoken have contributed to this. The ease with which one can participate, the low cost of participation, the easy availability of information and the like. And what that means in the area of hate speech is that there has been a sort of resurgence of the widespread dissemination of ugly and sometimes dangerous views that have historically been constitutionally protected here but not much seen, and now they are seen by more people in this country and abroad.

The same is true of pornographic material, including child pornography. When *Time* magazine published an article on child pornography in 1995 based on an article in the *Georgetown Law Journal* that claimed that there were 917,000 pornographic files on the Web, the magazine was justly criticized for its analysis of the data presented. But I think what should not be in dispute now is that there was in 1995—there is far more today—available on the Net of a sort that almost all parents would find to be extraordinarily disturbing for their children. The most current statistical data that I've seen, itself about half a year out of date, indicates that the publicly indexable World Wide Web now contains about 800 million pages on about 3 million circuits of about, of which about 1.5 percent, that is to say, 12 million pages, contain pornography. And it is preposterous to deny this.

We can talk about what we can do about it. Higher degrees of parental involvement. Use of filtering devices. The use of the criminal law to punish the dissemination of information that is genuinely unprotected by the First Amendment. But it is simply inaccurate to deny the new reality that if in Justice Stephens' words, "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soap box,"<sup>26</sup> that the town criers now include Nazis and pornographers. That doesn't change my view of the First Amendment and I think it should not change yours, but it is true.

None of the new technological innovations, I think, should make anything that Justice Holmes said any less powerful than when he said it. If anything, what may be most different now from then is our technological inability, or at least the extraordinary difficulty in stifling speech, even if we wanted to do so.

I gave a speech a few years ago at the law school in Kuala Lumpur in Malaysia. Like many authoritarian countries around the world, but particularly ones with large Muslim populations, Malaysia had banned the sale of Salman Rushdie's book, *The Satanic Verses*. In an effort at international comity, and maybe in my own safety, I didn't say a word

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26. 521 U.S. at 870.

about the book during my speech about free expression. When I finished, I said, as we are about to do here, "Anybody have any questions?" The first question was, "Did you read the Rushdie book?" I lied and said, "Yes, I read it." And the second question was, "Did you like the book?" And the third question was, "Should the book be banned?" And I finally turned to them and I said, "Look, this book is banned here. It is a crime for you to, for anyone to sell it. It is a crime for you to buy it. For all I know, it's even a crime for you to ask me about it. How do you even know about the book?" This is eight years ago, to which, as one—they all said, "CNN." Now, that was in pre-Internet days. I mean, almost a full ten years ago, that is what they were saying.

And it seems to me that what was true then is already far truer now, it is almost impossible to stop the spread of information, good information, bad information, useful information, dangerous information. One would have to live in a country with a degree of ruthlessness and technological know-how, willingness to be ruthless and a high level of technological know-how, to cut back on what the Internet is doing, mostly, for obvious reasons, mostly for the good in getting information out. And it's very hard these days, and will be harder still in the future, to do just that.

There is something else that was also true just those few years ago when I was in Malaysia that was also true when Justice Holmes said it and that remains true today, and that's what I started talking with you about today. There is a logic that sometimes seems to justify censorship, at least to people in power, and there's also a history that tells us that the path of censorship is a path that leads inexorably to an end to freedom.

Our judges will stop loving the Internet soon enough when they start seeing some of the material on the Internet that most of them are wholly unaware of at this moment. And when that happens, and when the fight begins of a serious sort about the freedom of the Internet, it seems to me that we should keep recalling, maybe even quote to ourselves now and then, the sort of language that I read to you from that single paragraph of Justice Holmes' earlier articulations which allow limitations on speech only when an immediate check is required to save the country, language which permits limitations on speech even in crowded theater circumstances only when it would itself cause immediate panic or the like. And in the end we could all do worse than to remind ourselves now and then, as Justice Holmes did, that the ultimate good is better reached by the free trade and ideas than any other way. Thank you very much.

I would be glad to do questions on anything from John Rocker to Justice Holmes in and around the First Amendment area if anybody has any.

*QUESTION FROM AUDIENCE:* In what is now Russia, we are hearing that the government there is employing spies to monitor the Internet traffic in and out. A moment ago you were talking about ruthlessness and technological know-how. Could that survive? Could that actually come to happen in a country that size?

*MR. ABRAMS:* I'm not technologically knowledgeable enough to know what is possible by way of intrusion and the level of technological sophistication to do it. The question, for those of you back there, was whether if in Russia, say, a genuine effort was made to find out who the source was of Internet postings, whether it could work from a technological point of view, and from that point of view I really don't know. Obviously, we are trying here to learn about our hackers and who they are and the like, and I suspect that some of the technology of trying to find out is not dissimilar. But I have heard that in China, for example, where the Chinese have made a serious effort to crack down on the use of the Internet, that the kids are just too smart, that these are—the people trying to crack down do not have the immediate firsthand knowledge of how to prevent being caught that people who have grown up, or started to grow up, on the Internet have; and, so, I think, we already see the beginning of a different sort of class warfare, adults and children, in which the children will win.

*PROFESSOR BLUMOFF:* In reference to a point that you were raising before about the rapture with the Internet and its obvious and perhaps perceived as largely harmless democratizing potential on one hand with the equally obvious apprehension of what's shown in recent years with traditional media, and that, also, with its unwillingness, at least until recently, to deal with campaign finance issues, all of which deal with this notion of democracy and its potential in whether it's harmless or not, does that make sense to you?

*MR. ABRAMS:* I understand the question. I have to offer my views in sections. I think that what judges don't like about journalists is what most people don't like about journalists. They seem arrogant, they seem presumptuous, they seem to be sitting in judgment on everyone else other than themselves, and I think these are particularly bad days for journalists vis-a-vis the public. I think, for example, that journalists will pay a heavy price for many years for their coverage of the Clinton-

Monica scandal. For one thing, they've lost their last constituency, liberals who support the President. But more than that, I think that the degree to which journalists strutted with false notes of piety, journalists, some of whom I represent, who have occasionally had affairs themselves and lied about them, did not play well with the public. I think that it's going to be very hard to deal with that for a lot of reasons. One of them is that there is a lot of reason to be upset at some journalistic behavior. What concerns me more is that even when journalists act at their best, make their greatest contributions to the public, they don't seem to get an awful lot of credit for having done so. There was a time when they did, but that time is not now.

Now, as regards campaign finances, I have—I should say, in that speech I told you about that I gave at this church a few weeks ago, this was a very friendly group of people who probably shared social, political, cultural attitudes to a high degree. New York City, liberal, smart. The sort of people I'd like to hang around with and that I'm very comfortable with. And one of the questions I got was, "It's all very easy for you to talk like this in front of us. Why don't you say something some of us might disagree with because all your examples so far have been examples of people trying to suppress speech that all of us would disagree with. Give us some example of some First Amendment topic where we will all disagree with you." And I said, "Campaign finance, because I am one of the people who continues to be of the view that there are very strong First Amendment barriers to the sort of campaign finance reform that is sought by people who tend to be my political soul mates." That is to say, I know why Senator McConnell says what he does about it, but I think he's more right than the people that I agree with politically. And, so, when I hear talk about closing up the loopholes, and the loopholes are real, and the impact of money on politics is often terrible, my first response is that they better be very careful because they are treading very deeply into what I recognize, at least I view, as protected First Amendment activity. There are things I can think of to do which would cushion that conflict, including public funding, including public—required public disclosure of certain things, but for myself, new legislation which significantly cuts back on what I view as the ability of people, even rich people, to participate in the political process as they wish to do so, is dangerous from a First Amendment perspective.

**QUESTION FROM AUDIENCE:** In many countries, in an attempt to distinguish the legitimate press from everyone else, they issue credentials to journalists, and that has from time to time been done here. My questions to you are two. First, is that not in and of itself a form of

editorship? And, second, how do you suggest that we distinguish the legitimate press in the way that encourages a vigorous media for the country; and, yet, doesn't extend as you talked about, those protections to everyone, to many people who don't understand the ethical issues of balanced sources, fairness?

**MR. ABRAMS:** A very good and powerful question. First, I think licensing of journalists is in all likelihood unconstitutional, even as viewed by people who disagree with me constitutionally. I should say—I must say parenthetically before I go on, one of my favorite cartoons I used to have on my wall was an old *New Yorker* cartoon which showed the people on the Supreme Court all sitting around together, and one of them turns to another and says, "Do you ever have a day when everything seems unconstitutional?" I really try not to sound that way.

So, licensing I think is bad. And, indeed, I did a brief some years ago before the Inter-American Court of Justice in Costa Rica arguing that a policy in Venezuela of licensing journalists violated international principles of free expression, and the court did say that.

The much harder question for me is what to do, how to raise standards, how to teach better, how to recognize more within the press and within a new community of people who are beginning to communicate on a widespread basis. First, the new people don't think of themselves as, quote, "journalists." I'm not talking about whether they're flattering or condemning. They often think they're talking to each other. I mean I've gotten calls from people who have gotten sued for libel for e-mail communications who had no idea that anybody could sue them. They think of it as if it's a telephone call, and the only difference legally is that no one knows what you say in a telephone call. It is like a telephone call, but if someone can prove that you say something defamatory in a telephone call, you can get sued there for libel just as well. So there's a whole new class of people out there that will need you all as lawyers, and I want you to be happy about that.

Improving the standards is the hardest and the most important. One of the things that I think that the old-fashioned press does least well is to talk about what it does best, that is to say, in part for fear of seeming to crow too much about their good things, they wind up simply doing good and bad things and never distinguishing.

A newspaper in Texas won the Pulitzer Prize a few years ago, a Fort Worth paper, for doing this series of articles about how particular helicopters that were being used in training by the military were unsafe. Over 160 American young men had died in helicopter classes in training class. Management of the company boycotted the newspaper by cutting out all ads. The union for which the workers in the company with which

they are associated urged their workers not to buy the paper. The paper suffered considerably financially as a result of doing something which was only good. It did win a Pulitzer Prize. The Pulitzer Prize was a one day story mostly in that paper only because the press isn't very good at celebrating what the press does that is worth doing. Sometimes, I know, sometimes they celebrate too much, but that's pretty rare. And I think the beginning of improving standards is to recognize when something has been well done as opposed to being badly done.

A second thing is for the press to engage in more self-criticism. Now, it does do more of that than it used to do. It does it in a few different ways. One can now find editorials in newspapers, rarely but sometimes, which criticize the coverage of certain things by other newspapers or broadcasters.

When *Time* magazine was sued back in the 1980s for an article accusing the then Israeli Defense Minister Sharon of purposely fermenting the massacre that occurred in Southern Lebanon, which it seems he did not do, the *New York Times* had an editorial criticizing *Time* not so much for the article, but for defending the article to the end of the earth legally and for never admitting that it had erred. I thought that was an important journalistic step for the better.

Then sometimes journalistic organizations, generally in extremis, ask outsiders to come in and have a look at their work. That's what Gannet had to do last year when a Cincinnati newspaper owned by them did a large, highly publicized, story about Chiquita, a story which may have been true and which was based, or may not, but which was based on information that was illegally obtained and as to which the journalist lied to his superiors about the method of obtaining it. They did an enormous amount of internal work after the fact, finding out how it came about, adopted new publicly disclosed standards written in lay English, the way real people speak to each other, setting forth their standards for the future. For example, we will never deceive people about who we are.

Now, I have defended, and meant it, the proposition that journalists sometimes have served the public well by not always fully disclosing who they are. My point now is simply that when Gannet took a hard look at its behavior in this situation where they came out was to say, never, this is a policy from now on, when we call we will say we work for the *Cincinnati Inquirer*, nothing else, nothing different, et cetera.

And then, on a personal level, CNN asked me a few years ago to look into the story that it had done on the Tailhook matter, a situation where CNN did a very major report saying that the United States during the war in Vietnam had engaged in activities in Laos which were at least palpably illegal if they had occurred, including deliberately killing

Americans who were prisoners of war of the Vietnamese and were acting in some complicit way with the Vietnamese. The basic charge in this piece was that the U.S. had used a sort of nerve gas in Laos.

CNN was accused of having put material on which was untrue. There was a great furor about it. CNN decided to go outside CNN, and in that case asked me to have a look at the outtakes, interview anyone I wanted to interview, write a report, which was made public. The report concluded that CNN did not have an appropriate basis for making those charges. CNN should apologize to the troops that were in that unit and do a formal public apology about the piece on the air, which it did, and did again around the world for, I think for a full 24-hour cycle over and over again withdrawing its piece.

I take a lesson from that, incidentally. The lesson is that journalistic organizations don't suffer when they admit error, even egregious error, and that they only benefit; and, of course, we only benefit when, if they do something wrong, even embarrassingly wrong, they just 'fess up to it and say so.

Those are some of the things I think that have to be done, but one can go on forever about it.

*PROFESSOR CHON:* I'd like to go back to your observations about hate speech on the Internet in that I suspect that everyone in this room has an opinion about it—they don't want it to happen, but I think there might be a difference of opinion about whether *R.A.V. v. City of St. Paul*<sup>27</sup> was correctly decided. I'm concerned about the exporting of our First Amendment jurisprudence in this particular area. I think oftentimes when we think about censorship occurring in other countries we think about extreme examples like Malaysia, Singapore, and China, but, in fact, other western democracies have found it a very legitimate balancing interest to say this is the kind of speech we find unacceptable for reasons of human equality, human dignity, and we don't have that balancing, at least with our current Supreme Court. So how would you, I see a very imperialistic brouhaha for us to export that particular view of speech to the rest of the world. And I'd like your comments on that.

*MR. ABRAMS:* Let me summarize the question just in case you all didn't get all of it, and you all didn't hear everything. It really relates to the exporting, a phrase that I used also, of American First Amendment norms around the world. We're the only democratic country to speak of, that protects what we've been referring to as hate speech.

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27. 505 U.S. 377 (1992).

Canada, England, France, Germany all make it a crime to engage in speech which demeans someone simply based upon race, religion, national origin, et cetera. The et cetera differs country to country, but at least those are similar.

The question was isn't it sort of an unjust expansion of our own sovereignty to insist, as it were, that the world adhere to our First Amendment standards in this area.

My own view is this. First, I'm not critical of foreign countries that take stances on free expression which are not as expansive, not as protective, as ours. They come from different cultures, they have different views, and it seems to me that while there is certain speech which ought to be protected everywhere, and although I think we are right for us in protecting almost all speech here, I don't think other countries misbehave when they come out differently than we do in some areas like this.

There's a problem, though. The problem is in part one of technology. Someone's law is going to govern in a real politic way about what is said. That is to say it will either be the country with the least or the most restrictive protection of free expression. An example before we get to hate speech. A few years ago, the British sent lawyers literally around the world trying to suppress a book which describes secrets of MI-5, the British CIA, and described activities that the British had engaged in which would ordinarily be viewed as improper and outrageous. These were engaged in by intelligence operatives from their country at the request of their country. It was a national policy to do these things.

The book got out. It got out because it got here. As soon as it's here, the game is over. You don't need an Internet. There was no Internet then. There were book sales, and people from the UK would bring it back to their country. But when you think about it, the purpose there was never about protecting lives or anything. Once the book was out, any threats that existed were there. Any confidences that were blown were blown. If the problem was that the Russians, then, would learn these secrets, the fact that this book was sold widely in the U.S. made that inevitable.

Nonetheless, they sent their lawyers out representing the Crown to Australia, to Hong Kong, to South Africa and to friendly venues, they thought, around the world, and the general answer wasn't that the U.S. law governs, it was that it was useless. There was no secret anymore. The book was out. The secrets were public. If you can catch someone who said it, do what you want to him. But you can't suppress the book.

Another way to say that is that our law won. It won because it was legal to publish it here, and because it would have been hopeless under our law for them to have come to an American court and sought a prior



restrain against publication of this book. That's our First Amendment law. And, so, the bottom line there was whatever the other equities might have been, however strongly they felt about it, however much they wanted to make a point about it, it wouldn't work. It was all useless.

Now we come to hate speech. I think we get the same result in hate speech, subject to one important caveat. We get the same result in that it's legal here—someone puts it on the Web page here, it's out. There it is.

The caveat is the entities at risk in Bavaria, say, which sought to prosecute Prodigy for doing just that, were not the people that put it on Web sites, but Prodigy or AOL or the entities that do business in Germany and were subject to process in Germany, the carriers, as it were, of these views. Now, for most of us that did raise serious First Amendment problems, First Amendment-like problems at least, and that is could it really be that an American entity running an essentially American operation was at risk of criminal prosecution in a foreign country for doing something which is perfectly legal here. Now, that is by no means a question to which the answer is legally clear. In fact, I suspect the real answer is the State of Bavaria was free legally to do whatever it wanted. I mean, it's not that we were going to send a group of judges over there to limit them. So they could have done whatever they wanted. They decided, for reasons of relationship with the U.S., not to do it.

So I mean, my own view, then, is that as a general matter, because we are the most permissive or, if you will, the most speech protective country in the world, that in light of the developing technology that has occurred, our culture, for better or worse, is likely to, and, in fact, has been, sweeping the world. It's one of the reasons a lot of countries are so disturbed at the United States, not just the degree of control, power we have, but because our ideas, even at their vilest, are being routinely sent around the world with not a whole lot that people can effectively do about it.

Whether there is some way to negotiate out these issues, whether there are some technological changes, whether there are in the future to be filtering devices of a magnitude at this point unknown and unknowable, I just don't know. I suspect what will happen is that we will continue, not by virtue of any government decision, but just by virtue of the nature of the technology that exists and that will exist, and the law that protects the activity here, to continue to have enormous impact, probably disproportionate impact, on what the world gets to see and read.

Let me do a last question.

**QUESTION FROM AUDIENCE:** I'm interested in your comment about the favorable treatment of the Internet of the judiciary. And, in particular, at one point you said that if the judges knew more of what was on the Internet, they might change their views. Are you suggesting that judges are ignorant of what's on the Internet or is there some other reason that you can point to as to why there's been favorable treatment given that media?

**MR. ABRAMS:** I think the judges are favorable about the Internet because they view it just as they're saying, as an enormous progress in democracy. I think on a more impressionistic nature, the judges are especially taken with the Internet because everyone's views on the Internet is in a sense, and this will not continue, and I don't even believe it's true now, but everyone's views on the Net are equal because a Web site is a Web site is a Web site, and because they are disturbed at what they view as the misbehavior and enormously overdone degree of power, as they view it, of the American press. So that's where I'm starting from.

The comment I made earlier, though, comes from my sense that it is uncommon for people who are on the Supreme Court, I'm thinking not parenthetically I've got to go back there so I have to be relatively restrained in a Holmes appearance, but I don't think they know what's out there anymore than I think they know what happens in trial courts.

Thank you very much.

**MS. BROWN:** Good evening, everyone. My name is Elizabeth Brown and I'm the Lead Articles Editor of the Mercer Law Review, and on behalf of the Law Review I'd like to thank you all for joining us tonight. And I would also like to thank Mr. Abrams for being with us tonight and sharing his thoughts with us on this very important and interesting topic. At this time we'd like to present him with a gift as a token of our appreciation for joining us. We hope it will help him remember this event. Thank you very much.

Ms. Chon, Mr. Jaffe, Ms. Kessler, and Mr. Lefevre will be engaging each other in a panel discussion tomorrow starting at 9 o'clock at the Medical School Auditorium, and we hope you will all join us tomorrow for a continuation of this discussion. Thank you and have a nice evening.

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**1999-2000 OLIVER WENDELL HOLMES  
SYMPOSIUM AND LECTURESHIP  
AT MERCER UNIVERSITY:  
THE MARKETPLACE OF IDEAS IN CYBERSPACE**

**A PANEL DISCUSSION ON  
THE MARKETPLACE OF IDEAS IN CYBERSPACE**

*featuring*

**Margaret Chon**

*Associate Professor of Law  
Seattle University School of Law*

**Daniel Jaffe**

*Executive Vice President  
Association of National Advertisers, Inc.*

**Liza Kessler**

*Staff Counsel  
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**Greg Lefevre**

*Bureau Chief  
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**Sheri Lewis, Moderator**

*Associate Law Librarian  
Walter F. George School of Law, Mercer University*

*at*

**MERCER UNIVERSITY, MACON, GEORGIA**

*on*

**SATURDAY, MARCH 18, 2000**

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