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FREE SPEECHES



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AIN'T NOBODY'S BUSINESS IF YOU DO:
THE AMBIGUITY OF CONSPIRACY CRIMES IN A FREE SOCIETY
by Peter McWilliams.
©1993 Prelude Press.*

No democracy
can long survive
which does
not accept as
fundamental to
its very existence
the recognition
of the rights of
minorities.

FRANKLIN D.
ROOSEVELT



THE COMIC BOOK LEGAL DEFENSE FUND ORIGINATED IN 1986,

when Friendly Frank, a comic shop in Lansing, Illinois, came under fire for selling adult comics to adults. The store's manager, Michael Correa, was arrested after undercover officers determined that seven of 15 comics they had purchased were "obscene." Confident in his First Amendment rights, Correa waived a jury trial but was convicted by a local circuit judge named Foggrover (who was later himself convicted of taking bribes on the bench).

X Fortunately, with the help of ace attorney Burton Joseph, Correa's obscenity conviction was overturned on appeal, after nearly two years and many thousands of dollars in legal fees. Most of that money came from comic book publishers, creators, retailers, and fans, who quickly organized in support of Friendly Frank's right to sell comics, and the customers' right to purchase them. In short, the comics community rallied together for one of their own.

X The Friendly Frank's case put the comics community on notice that comic books remain an attractive target for the would-be censor. Decades after the underground comics movement redefined traditional notions of what comic books can look like or address, and at a time when most comic books in America ("mainstream" or otherwise) are purchased and read by adults, comics are still perceived by the general public as cheap juvenile entertainment. The popular notion that they are designed for kids makes comic books particularly vulnerable to attack by those who would handcuff the arts in the name of "protecting the children."

X I was proud to coordinate the fundraising for the Friendly Frank's appeal. While it was a lot of work, the sense of outrage from readers and professionals—who had basically been told that their beloved artform was not art at all—made the job a lot easier than any of us suspected. After the successful appeal, funds remained available. I had the feeling that Friendly Frank would not be the last comics retailer to come under fire from over-zealous police officers or prosecutors, so I asked other to join me on a formal standing

A free press is
not a privilege
but an organic
necessity in a
great society.

WALTER
LIPPMANN

committee to monitor similar incidents. Finally, in 1990, against a chilly political climate and a steady wave of attacks on comics, we registered the Comic Book Legal Defense Fund as a 501 (c) 3 non-profit corporation. Since then, the CBLDF has stood ready to provide legal and financial support whenever the First Amendment rights of comic book retailers, publishers, or creators are threatened.

X In the twelve years since the Friendly Frank's case, many have spoken out on behalf of free expression for the comics community. Contained in this volume are some of the most eloquent, insightful, and heartfelt testimonies to comic books' proper place among great American artforms—and their fundamental protection under the First Amendment.

X On behalf of myself and the CBLDF Board of Directors, I would like to thank Neil Gaiman, Frank Miller, and Dave Sim for their contributions to *Free Speeches* and their ongoing leadership in support of free expression for comics. Over the years these top creators, who are much in demand, have volunteered considerable time, and energy, and provided substantial financial support to the CBLDF. Their passion for comics is clearly evident in the powerful statements contained in this volume, setting an example for all who care about the continued vitality of the artform.

X Special thanks goes to Nadine Strossen, President of the American Civil Liberties Union, whose stirring keynote address at the 1996 Comic-Con International in San Diego on the history of censorship and comics comprises a large portion of this book. The ACLU has a proud history upholding the Constitutional rights of all Americans, and it has been a valuable ally to the CBLDF on more than one occasion. It is an honor to stand beside Ms. Strossen and the ACLU in defense of the First Amendment.

X *Free Speeches* is a classic example of the comics community coming together for the common good, a microcosm of how the CBLDF has worked since the beginning. Oni Press worked diligently with Susan Alston, Chris Orr, and others to coordinate the project and created a beautiful book in the process. Diamond Distribution, Ronalds (Quebecor) Printing, and Negative Perfection all waived certain fees in preparing, printing, and distributing *Free Speeches*. More than two dozen of comics' finest artists provided brand new illustrations to make it as visually interesting as it is informative.

X With thousands of other readers, you are also part of this process. In fact, you are the most important part. By purchasing this book, you have helped provide the CBLDF with financial support critical to realizing our mission. In reading it, you will understand that mission better. You will come to understand, as I have, that the First Amendment stands only when it is defended every time, everywhere.

Denis Kitchen

President

I am mortified to be told that, in the United States of America, the sale of a book can become a subject of inquiry, and of criminal inquiry too.

THOMAS JEFFERSON

The only fence against the world is a thorough knowledge of it.

JOHN LOCKE

1683

ADDRESS INTERNA



The moments
of freedom,
they can't
be given
to you.
You have
to take them.

ROBERT
FROST

Introduction I am delighted to be here. I can't think of a better way to celebrate the 4th of July than speaking about our constitutional free speech rights—especially to this audience, which is on the front lines of exercising and defending those rights.

All over the country, we've been seeing an epidemic of censorship. And comic books—and individuals involved in creating and distributing them—have been particularly hard hit. Spurred on by the increasingly powerful groups on the "religious right," law enforcement officials have been violating First Amendment and other rights in the comic-book world. For example, they have conducted massive, intrusive searches of businesses and even homes. Additionally, they have seized and held entire inventories and other property even before pressing any charges and even after any charges have been dropped.

Judges have also been trampling on First Amendment rights concerning comic books, by imposing harsh punishments for exercising those rights. Probably the most outrageous example is the sentence that a Florida judge imposed on comics artist Mike Diana in 1994. This was the first time in our history that an artist was convicted for producing and distributing his own work to a select group who chose to receive it. Worse yet, the judge's extreme punishment would be unjustified even if there had in fact been an underlying crime. Among other things, he ordered Diana to undergo psychiatric evaluation, to take a course in journalism ethics, to have no contact with minors, and to create no obscene material for three years, even for his own personal use.

How can things like this be happening here in the United States in 1996? Despite the 4th of July, the Declaration of Independence, and the First Amendment? Also despite a 1969 Supreme Court decision that held that even though it is a crime to sell obscene material, it cannot be a crime to look at such material in one's own home? In the Court's words: "If the First Amendment means anything, it means that a State has no business telling a man,

AT THE
INTERNATIONAL COMIC CONVENTION
SAN DIEGO, CALIFORNIA
JULY 4, 1996
BY NADINE STROSSEN¹

sitting alone in his own house, what books he may read or what films he may watch.² Or, likewise, what comics he may draw.

How can government officials harass and persecute Mike Diana and others in the comic-book world—despite their constitutional rights, and despite the Supreme Court cases enforcing those rights? The answer, of course, is that there has always been a big gap between the rights that we have in theory and those that we actually enjoy in practice.

The Constitution is not a self-executing document. It can be enforced by judges, but only if there are people who are willing to bring cases to them and lawyers who are willing to represent those people. Without those lawyers and their clients, the Constitution and its Bill of Rights are only worth the paper they are written on.

That is precisely why the ACLU was founded in 1920. At that point, our Constitution had been on the books for some 130 years, but the U.S. Supreme Court had never enforced the free speech guarantee or any other provision in the Bill of Rights. Therefore, during the World War I era, 15,000 people were arrested just for peacefully criticizing U.S. entry into the war.

So the ACLU began to defend individuals whose rights were violated. And the courts began to enforce those rights. And, since then, many other civil rights and public interest organizations have joined in this critical effort to translate rights that exist only on paper into real rights for actual people.

I would like to extend my special thanks and congratulations to one such group: the Comic Book Legal Defense Fund—or CBLDF. I'm so grateful to the CBLDF and everyone who supports it, not only for working to make free speech and censorship a major theme of this year's International Comic Con, but also for its essential work in defending free speech.

Of course, the CBLDF focuses on censorship threats that are specifically aimed at comic books. And the goal of protecting free expression in comic books is very important. As I will explain in more detail later, contrary to some popular prejudices and stereotypes,

Freedom of the press is perhaps the freedom that has suffered the most from the gradual degradation of the idea of liberty.

ALBERT CAMUS

If the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his house, what books he may read or what films he may watch.

JUSTICE THURGOOD MARSHALL

From a unanimous Supreme Court decision, 1969

The will of the people is the only legitimate foundation of any government, and to protect its free expression should be our first object.

THOMAS JEFFERSON

FIRST INDEPENDENT ADDRESS, 1801

comic books are as valuable as every other type of expressive material the First Amendment protects. They are not, and must not be treated as, second-class speech under the First Amendment.

But the significance of defending free speech for comic books goes beyond the comic books themselves, important as they are. That's because all free speech—and all censorship—is indivisible. Any erosion of any expression or idea in any medium endangers every expression and every idea in every medium.

The ACLU has always recognized this concept of the indivisibility of all rights. That's why we have always defended all fundamental freedoms for all people. We know that if the government is ceded the power to violate one right for one person, then no right is safe for any person. That knowledge is not just a matter of abstract theory. Rather, it is based on long-standing historic experience.

So, in any given case, what's at stake is not only the particular idea or expression—or comic book or comics artist—that is the direct focus of that case. What's really at stake is the ongoing right of free speech for every comic book, every other expressive work, every writer, every artist, every publisher, every distributor, every retailer, every actual or potential reader or viewer. Any weak link in that chain between the creator and the audience endangers the entire communicative process. Therefore, we're all harmed by any government censorship—and also any self-censorship—at any point in that process.

I certainly know that standing up for free speech is a hard, expensive, lonely thing to do. Even if the constitutional principles are on your side, that does not mean you will necessarily win. At the very least, you may well have to go through a lengthy trial and even one or more appeals before your rights are vindicated. And even if you ultimately emerge from this process as a legal winner, you are still a loser in other senses, including the financial costs, the time and effort, and the emotional and psychological tolls.

Therefore, every single one of us is enormously indebted to the heroic individuals who do make these personal sacrifices to fight censorship. The ultimate beneficiaries are not so much they themselves as our free speech principles and all of us who cherish and exercise those principles.

Precisely in recognition of this common stake we all have in resisting all comic-book censorship, the CBLDF was founded. I'm proud that it has worked very closely with the ACLU, and that ACLU staff and volunteer attorneys have represented comic-book retailers and others involved with comic books, all over the country.

But, important as these lawyers are, they couldn't do anything without clients. So those of you in the comic-book business who are willing to enlist the services of the CBLDF and ACLU—who are willing to stand up for your own rights, and thereby for all our rights—you are the ultimate First Amendment heroes. I salute you. I congratulate you. And, most of all, I thank you.

In the rest of my talk, I hope to provide the information and inspiration that will help others in the comic-book world to follow your fine example. To know their First

Amendment rights. To appreciate those rights. To exercise them. And to support others who do so.

Specifically, I'll first outline the history of comic-book censorship and show that it mirrors every other effort to censor all types of expression throughout history. Next, I'll explain the basic constitutional principles that bar the government from censoring any expressive material, including comic books. This includes an explanation of the fact that comic books are as fully entitled to First Amendment protection as other expressive material. Alas, this point is not as obvious as it should be to too many people. Finally, I'll explain why the First Amendment bars not only direct government censorship, but also industry self-censorship, including through codes or warning labels.

II A Brief History of the Censorship of Comic Books and Other Media

Let's start with a thumbnail sketch of how comic-book censorship fits into the history of censoring all new media. No sooner did the comic book emerge as a mass medium, and become popular among children, than it became a target of censors.

Comic books thereby fit into a long-standing pattern concerning all new media, both before and after. Throughout history, each time a new medium makes it easier, faster, and cheaper to convey words and images—ideas and information—it opens up new possibilities for strengthening individual freedom.

At the same time, though, these expanded communications opportunities always frighten those with an authoritarian or paternalistic outlook. Therefore, throughout history, each new medium promptly triggers calls for new forms of censorship.³

In the city of Mainz, where Western printing was invented in 1456, a censorship decree was issued soon after.

In the 16th century, Erasmus wrote: "Printers fill the world with useless, stupid, calumnious, libelous, violent, impious, and seditious books..." Sound familiar? It's strikingly similar to the rhetoric that has been used to denounce comic books, as well as TV and other modern media, isn't it?

When movies were invented, they showed vaudeville dancers and even bare ankles! Traditionalists were outraged and sought a ban.

When the radio arrived on the scene, a typical study worried: "Parents have become aware of a puzzling change in the behavior of their children..."

Who knows?
Maybe my life
belongs to God.
Maybe it belongs
to me. But I do
know one thing:
I'm damned if it
belongs to the
government.

ARTHUR
HOPPE



Roberta Gregory © 98



A great many people think they are thinking when they are merely rearranging their prejudices.

WILLIAM JAMES

social scientists and law enforcement officers. The heart of the matter, as always, was that comic books were effective in reaching, and conveying ideas to, a large audience—in particular, a large audience of young people. Some of us consider this to be positive! But there are always others in our society who are afraid of the effective communication of some ideas, especially to children. This fear was plainly expressed, for example, in a 1954 report of the New York legislature, supporting comic-book censorship. It said:

Comics are a most effective medium for the dissemination of ideas....[W]hen such a medium is used to disseminate bad ideas, which may leave deep impressions on the...absorptive minds of children, [its] publication and distribution...becomes a matter of grave public concern.⁴

These age-old fears, of course, underlie the current rush to censor the very newest mass medium that is effectively reaching an audience, including children—namely, on-line communications in cyberspace. The resulting hysteria is well illustrated by *Time* magazine's cover story exactly one year ago: July 5, 1995. The cover itself featured a horror-stricken, zombie-like child mesmerized by a computer screen. The headline blared: "CYBERPORN: EXCLUSIVE. A new study shows how pervasive and wild it really is. Can we protect our kids—and free speech?"

That alleged study, by the way, was subsequently shown to be an unscientific sham, thus

The telephone was no exception to this universal fear of all new media. Soon after its introduction, a noted psychiatrist accused the phone of driving people permanently insane.

And, of course, television has been blamed for a host of social problems, including crime and violence, throughout its entire existence. Thus, the current bipartisan attacks on TV violence, which culminated in the V-chip provision in the new telecommunications law, are part of a long tradition. In fact, the first Congressional hearings on TV violence were held back in 1952—when fewer than 25% of American households had TV sets, when the violence rates were among the lowest in the century, and when the violence among youth was actually decreasing. But so eager were politicians and the public to blame TV for something, that they attacked it for problems they did not have!

In the early 1950s, Congress also held hearings on the alleged connection between comic books and what was then called "juvenile delinquency."

These were prompted by the writings of some

following in the footsteps of earlier studies about the alleged evil impact of other media, including comics. Despite countless studies by diverse social scientists and others throughout this century, no causal connection has ever been shown between even massive exposure to any kind of expressive materials and any kind of criminal or anti-social conduct.⁵

The National Rifle Association and other opponents of gun control are fond of saying, "Guns don't kill people. People kill people." Whatever your view might be on that point, it would seem incontrovertible that pictures of guns don't kill people! The vast majority of us who see violent or misogynistic images do not go out and imitate them in the real world. In fact, many of us are moved by those images to act in exactly the opposite way: namely, to redouble our efforts to prevent real-life violence and misogyny.

To be sure, there are now and always have been social scientists, law enforcement officials, and other "experts" who blame various expressive materials for crime and other anti-social conduct. For example, in 1904, a French criminologist, L.J.G. Proul, "proved" that crimes and suicides were committed under the direct influence of works by Shakespeare, Goethe, and Dostoyevsky. Therefore, he urged bookstores and libraries to ban these works.⁶

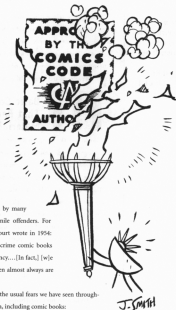
But for every expert who has taken this pro-censorship position, there are others who reach the opposite conclusion. This was true during the 1950s debate about the alleged relationship between comic books and juvenile delinquency. For example, in 1954, the leading authority on adolescent psychology, Erik Erikson, said: "There is an unfortunate and increasing tendency without adequate evidence to blame juvenile delinquency on such media as comic books, television, [and] movies."⁷

Likewise, the same conclusion was reached by many people who were actually working with juvenile offenders. For example, the superintendent of one juvenile court wrote in 1954: "We have never had a case in which reading crime comic books seemed to be a motivating factor in . . . delinquency. . . . [In fact,] [w]e have noticed that chronically delinquent children almost always are poor readers."⁸

Today's scapegoating of the Internet reflects the usual fears we have seen throughout the ages and concerning all other new media, including comic books:

The modern conservative is engaged in one of man's oldest exercises in moral philosophy, that is the search for a superior moral justification for selfishness.

JOHN K. GALBRAITH





- X impressionable young people
- X sex
- X violence
- X crime
- X idleness
- X alienation
- X anti-authority
- X extremist potential
- X isolation
- X commercialization
- X bad grammar
- X bad manners
- X bad attitude

We must learn to distinguish morality from moralizing.

HENRY
KISSINGER

This is not to belittle these concerns, but rather to observe that it is always the new-media kid on the block that is held responsible for our social problems. And this media scapegoating is always doubly flawed.

First, it leads to censorship, which violates First Amendment rights of minors and adults. Second, it diverts attention and resources away from the actual underlying causes of the social problems and meaningful steps to redress them.



Basic Constitutional Principles That Bar Censorship of Expressive Materials, Including Comic Books

I would now like to explain the basic constitutional principles that are violated every time the government censors any new medium for fear that it will convey "bad ideas." Of course, whole treatises have been written on free speech law, so I will have to oversimplify somewhat. In general, though, there are two core principles and one limited exception.

The first core principle states what is not a sufficient justification for government restrictions on speech. This principle is "content-neutrality" or "viewpoint-neutrality." It was recently reaffirmed by the Supreme Court in its two decisions striking down laws that criminalized the burning of the U.S. flag.⁹ In those decisions, the Court described the requirement of content- or viewpoint-neutrality as the "bedrock principle" of our free speech jurisprudence: it is the notion that government may never suppress speech merely because the majority in the community is offended by or disagrees with the content or viewpoint of the speech. That this is indeed a core, central tenet is underscored by the fact that those two decisions were joined not only by the two most liberal justices at the time—Justices William Brennan and Thurgood Marshall—but also by two of the Court's most conservative members, Justices Antonin Scalia and Anthony Kennedy.

The second core free speech principle states what is the only sufficient justification for speech restrictions. It is the "clear and present danger" principle, which provides that government may censor speech only when necessary to avoid a "clear and present danger" of actual or imminent harm. The most famous example of expression that would satisfy this appropriately stringent standard was supplied in a famous dissenting opinion by former Supreme Court Justice Oliver Wendell Holmes, when he said that the First Amendment would not protect someone who falsely shouted "Fire!" in a theater, thereby giving rise to a panic.¹⁰ It was significant that this most famous example of constitutionally unprotected speech is a hypothetical scenario, underscoring how difficult it is to satisfy this demanding standard in an actual case.

While Justice Holmes' speech-protective discussion was set out in a dissenting opinion, a later Supreme Court enshrined his view as the prevailing law of the land. In a unanimous decision in 1969, the Court applied Holmes' approach to rule that even advocacy of illegal or violent conduct will not satisfy the strict clear-and-present-danger standard. Instead, the Court explained, the First Amendment would tolerate suppression only of expression that constituted intentional incitement of imminent violent or lawless conduct, which was both intended and likely to cause such conduct immediately.¹¹ Under this speech-protective approach, mere descriptions or depictions of crime or violence are fully protected.

Consistent with this approach, in an even earlier case, the Supreme Court struck down a New York law that banned the sale to minors of comic books depicting crime and violence.¹²

The one exception to the two core principles I have just described has to do with sexually explicit expression. Our puritanical society has always treated sex as inherently dangerous. As Garrison Kellor quipped, when testifying in Congress in defense of the National Endowment for the Arts, which had been attacked for funding some sexually oriented artworks: "My ancestors were Puritans from England, [who] arrived here in 1648 in the hope of finding greater restrictions than were permissible under English law at the time."¹³

Reflecting the same puritanical suspicion of sex, the Supreme Court has treated some sexually oriented expression as inherently dangerous. Even so, the Court has carved out a relatively narrow category of sexual expression that it deems to be beyond the First Amendment pale. The legal term of art for this category is "obscenity." In contrast, the First Amendment does protect sexually oriented expression that does not satisfy the Court's criteria for constitutionally unprotected obscenity. Therefore, the Constitution does extend to what is commonly referred to as "pornography," "indecency," "vulgarity," or "smut."

The art
of power and
its minions is
the same in all
countries and
in all ages.

It marks
its victim;
denounces it;
and excites
the public
odium and the
public hatred,
to conceal its
own abuses and
encroachments.

HENRY CLAY

1844



**The
responsibility
of tolerance
lies in those
who have the
wider vision.**

**GEORGE
ELIOT**

I must stress that the ACLU opposes the obscenity exception to the First Amendment, believing it to be unjustified by the plain language, history, and purposes of our free speech guarantee. Nevertheless, it is important to recognize that the obscenity exception to the First Amendment is a much more limited exception than those advocated by many would-be censors. It is also important to recognize that, notwithstanding the obscenity exception, the vast majority of expression about sex is constitutionally protected. The Supreme Court itself stressed this point in the very decision in which it first upheld an anti-obscenity law against a First Amendment challenge, in 1957:

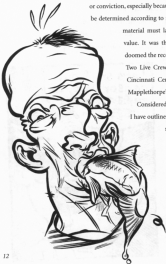
Sex, a great and mysterious motive force in human life, has indisputably been a subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern.¹⁴

Since 1973, the Supreme Court has enforced a tripartite definition of constitutionally unprotected obscenity; no sexually oriented material will satisfy this test unless it satisfies all three elements of the definition.¹⁵ First, the material must appeal to a "prurient interest" in sex. The Supreme Court has "clarified" that this is a "shameful and morbid" interest in sex, as opposed to a "normal and healthy" interest.¹⁶ Second, the material has to be "patently offensive" according to contemporary community standards.

The third element is what usually makes it difficult to sustain an obscenity charge or conviction, especially because—in contrast to the preceding two elements—it must be determined according to national standards, not local community standards: the material must lack any serious literary, artistic, political, or scientific value. It was the failure to satisfy this third element that ultimately doomed the recent high-profile obscenity prosecutions of the rap group Two Live Crew, for its piece "As Nasty As You Wanna Be," and the Cincinnati Center for Contemporary Art, for its exhibit of Robert Mapplethorpe's photographs.

Considered together, the three guiding First Amendment principles I have outlined make it hard for the government to justify any censorship.

That is illustrated by the Supreme Court's June 1997 ruling that struck down the Communications Decency Act (or "CDA") and its attempted censorship of cyberspace.¹⁷ I'm very proud that this landmark case is called *Reno v. ACLU*, and that the ACLU was not only the first-named plaintiff, but also the lead counsel in this landmark free speech case! All of the Supreme Court Justices¹⁸—along with all members of the special three-judge lower court that had initially struck down the CDA the previous year¹⁹—held that the CDA violates fundamental free speech principles.



Many individual Justices have questioned the obscenity exception to the First Amendment, and I would not be surprised if that exception is re-examined and narrowed in the not-too-distant future. For example, in the most recent case in which the Court considered the obscenity exception, in 1987, three Justices—John Paul Stevens, William Brennan, and Thurgood Marshall—concluded that all anti-obscenity statutes are unconstitutional, at least as applied to adults.²⁰

Moreover, even arch-conservative Justice Antonin Scalia has urged the Court to reconsider its current obscenity law, noting:

[I]t is quite impossible to come to an objective assessment of...literary or artistic value....Since ratification has little to do with esthetics, the fabled "reasonable man" would have to be replaced with...the "man of tolerably good taste"—a description that betrays the lack of an ascertainable standard....Just as there is no use arguing about taste, there is no use litigating about it.²¹

The subjectivity inherent in the concept of obscenity leads to further constitutional problems because of the unpredictability as to precisely which material will be targeted for prosecution. The most candid definition any Supreme Court Justice has ever offered of constitutionally unprotected obscenity, because it acknowledged this inescapable subjectivity, was the one offered by former Justice Potter Stewart, when he said: "I shall not today attempt further to define [obscenity]...and perhaps I could never succeed in intelligibly doing so. But I know it when I see it."²² The problem, though, is that everyone—every judge, juror, prosecutor, police officer, and citizen—sees a different "it." Therefore, essentially anything within the realm of the sexual is endangered by licensing government officials to impose their own standards on the rest of us.

This problem is inevitable no matter what label one uses to demonize particular sexually oriented expression—whether that be "obscenity," "pornography," "indecency," or any other term—and no matter how one attempts to define the prohibited expression.

The inescapable vagueness of any purported "definition" of any category of proscribed sexual expression means that its enforcement will inevitably violate several important constitutional rights. First, the vague concepts require all enforcing authorities to make subjective judgments. There is no specific forewarning as to precisely which sexually oriented materials will be targeted, thus producing what courts have called a "chilling effect" on expression. To avoid possible convictions—or even investigations and prosecutions, which are unpleasant and burdensome enough, even if ultimately unsuccessful—artists and others will avoid producing or distributing materials that might be targeted, even if these materials in fact turn out to be fully protected under the First Amendment.

The lack of advance notice as to potentially targeted materials also violates the Fifth Amendment right to due process of law, as the Supreme Court has repeatedly held, this right means that no one should face possible criminal penalties without advance notice of precisely what is outlawed: "the principle...that persons have a right to fair warning of that

Moralizing and morals are two entirely different things and are always found in entirely different people.

DON HERALD

Reader, suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself.

MARK TWAIN

An avidity to punish is always dangerous to liberty. It leads men to stretch, to misinterpret, and to misapply even the best of laws. He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself.

THOMAS PAINE

conduct which will give rise to criminal penalties is fundamental to our concept of constitutional liberty."²³

Yet another constitutional violation necessarily follows from the inherent vagueness of laws proscribing sexually oriented expression. Given the inevitable subjectivity of enforcement decisions under such laws, their actual enforcement will be at best arbitrary and capricious—singling out some sexual expression without reason—and at worst discriminatory—singling out sexual expression based on dislike of the ideas it conveys or those who create or view it.

One only has to look at the actual enforcement patterns of anti-obscenity laws and other laws restricting sexual expression to see that discriminatory prosecution is not just a theoretical possibility. To the contrary, throughout history, such prosecutions have consistently been brought disproportionately against expression by, for, or about relatively powerless, unpopular, or controversial individuals or groups, who are outside the cultural mainstream in their particular communities. Prominent targets have consistently included lesbian and gay expression—for example, the high-profile prosecution against the Cincinnati Center for Contemporary Art for its display of Robert Mapplethorpe's photographs—and rap music that is created by young African-American men—for example, the widely publicized prosecutions against Two Live Crew's music.

In the same vein, it is no coincidence that censorship crusades of all sorts consistently focus on media and expression that are particularly popular with young people, who lack political power: not only rap music, but also videos and videogames, TV, cybercommunications, and—of course—comic books. In addition to appealing to young people, comic books are also prime targets for the discriminatory enforcement of censorial laws for other reasons; they often are associated with a counterculture, and expose (or are perceived as exposing) anti-authority messages.

It should be stressed that the selective enforcement of anti-obscenity laws against unpopular or controversial expression—or expression that appeals to relatively powerless segments of society—is not just an accidental or random development. Rather, such discriminatory enforcement necessarily and predictably follows from the Supreme Court's definition of constitutionally unprotected obscenity—specifically, from the tension between the first two elements in that tripartite definition.

As I explained, these two elements are that the material appeals to the "prurient" interest in sex and that it is "patently offensive." Stanford University Law Professor Kathleen Sullivan mem-



orably paraphrased these elements as follows: "prurient" means that the expression "turns you on," whereas "patently offensive" means that it "grosses you out."²⁴ But, you might well ask, how can the same material satisfy both, apparently inconsistent, criteria? The answer is that material that "turns on" some people—namely, those who created, distributed, or viewed it—"grosses out" other people—namely, the police, prosecutors, judges, and jurors who found it obscene.

One of the rationales that was invoked for striking down the Communications Decency Act in *Reno v. ACLU* was the inherent subjectivity of that law's key terms, "patently offensive" and "indecent." To illustrate the unacceptable vagueness of these terms, the ACLU's evidence included many examples of important, valuable expression that could well be swept within them—for example, everything from classic works of art to current information about sexually transmitted diseases. Without denying that any of this expression could be subject to investigation and prosecution under the CDA, the government's response, as paraphrased by the lower court, was essentially, "Trust us." In other words, "While we have the power to prosecute that material, we will exercise our discretion to refrain from doing so." After paraphrasing this government argument, Doris Sloviter, Chief Judge of the Third Circuit Court of Appeals, who presided over the lower-court panel in *Reno v. ACLU*, declaimed it:

[T]he bottom line is that the First Amendment should not be interpreted to require us to entrust the protection it affords to the judgment of prosecutors. Prosecutors come and go. Even federal judges are limited to life tenure. The First Amendment remains to give protection to future generations as well.²⁵

IV Comic Books Are as Fully Entitled to First Amendment Protection as Other Expressive Material

I hope you now understand that First Amendment law already provides very strong protection against censorship, and that there is reason to hope that this protection will become even stronger. Specifically, the Supreme Court might well eliminate, or at least narrow, its obscenity exception to its general speech-protective principles.

The one further point I want to make about these principles is that they apply fully to comic books. Unfortunately, too many people seem to think that somehow comic books are inherently inferior to other types of books or expressive materials, and that they are therefore second-class citizens under the First Amendment.

A. There is no second-class speech under the First Amendment

A case in point is the Oklahoma City prosecutor who has been persecuting the former Planet Comics store and its besieged owners. That prosecutor recently dropped one count of the original eight-count indictment. The dropped count concerned *Viper Series Official*

**Distrust
all men
in whom
the impulse
to punish
is powerful.**

**FRIEDRICH
NIETZSCHE**

**What I'd like
to see police do
is deal with
important issues
and not these
sorts of victim-
less crimes when
society is riddled
with problems.**

**ALDERMAN
RODNEY
BARKER**

The trouble
with the world
is that
the stupid
are cocksure
and the
intelligent
are full
of doubt.

BERTRAND
RUSSELL

Art Book, a soft-cover collection. In a recent interview with *The Comics Journal*, the prosecutor said that she was dropping this charge because “[*Viper Series*] is a book, not a comic book....”²⁶ (All the other counts concerned comic books.)

This alleged distinction is just plain wrong, though. First, there is no quality prerequisite for First Amendment protection. Outside the obscenity exception, all expression—all words or images—come within the First Amendment ambit, regardless of their alleged “value” or “merit” or lack thereof. For example, in a 1948 decision, the Supreme Court struck down a New York law that criminalized comic books and magazines about crime and violence. The Justices so ruled even though they took pains to stress that they did not see anything of value in these works, which they called “sanguinary” and “salacious publications, with their stimulation of juvenile delinquency.”²⁷ Nonetheless, the Court said: “Though we can see nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature.”²⁸

Even in the context of obscenity, material that appeals to the “prurient interest” in sex and is “patently offensive” is still constitutionally protected as long as it has any serious value. Moreover, the Supreme Court has made it quite difficult for the government to disprove any such value. Specifically, it has said that the other two elements of obscenity should be determined by local community standards. In contrast, though, the Court has held that the lack of “serious value” must satisfy a national standard. Therefore, even if no member of the jury would find any serious value (or, where the trial is before a judge, even if the judge would find no such value), the work still cannot be deemed obscene if there is other evidence that, from a national perspective, it does have serious value.

Let’s turn now to other possible arguments that comic books should not have full First Amendment protection.

B. Speech that entertains is fully protected First, what about the fact that comic books are often intended to entertain, instead of, or in addition to, providing information? The Supreme Court long ago rejected an argument that the First Amendment

does not apply to art or entertainment. Here is the Court’s explanation of that conclusion:

We do not accede to the...suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instances of propaganda through fiction. What is one man’s amusement, teaches another’s doctrine.”²⁹

The subjectivity of this asserted distinction—with the resulting potential for arbitrary enforcement—is shown





by the government's own testimony in *Reno v. ACLU*. One of the government's witnesses, a long-term federal law enforcement official who recently had specialized in on-line investigation and enforcement, was asked by one of the lower-court judges whether the CDA would criminalize particular images displayed by one of the ACLU's clients, which provided safer-sex information geared toward teenagers. Specifically, the judge asked whether the witness would pursue a criminal case against an on-line image of an erect penis with a condom on it. The witness answered "No." In a follow-up question, the judge asked whether the witness would pursue a criminal case against an on-line version of a widely publicized cover of *Vanity Fair* magazine, which had displayed a mostly nude photograph of the movie star Demi Moore when she was eight months pregnant. This time, the witness said the image would be subject to prosecution under the CDA. Obviously puzzled, the judge asked the government's expert to explain this disparity. His explanation? "The condom picture was educational, but the Demi Moore picture was for fun, not education!"

If nothing else, this answer graphically illustrates the inevitable subjectivity of the enormous, discretionary enforcement power that any sexual censorship law unleashes on the part of law enforcement authorities. In addition, as the ACLU's National Legal Director commented, the answer reflected the overall American psyche toward sex: if it's for fun, it's got to be illegal or sinful! (Alternatively, perhaps we consider it fun precisely because it is sinful or illegal!)

Attuning as this exchange might be on one level, on another it is terrifying: it shows that no matter what line the government tries to draw between protected and unprotected sexual expression, it will necessarily endanger everything within that vast—and vastly important—realm.

Moral indignation: jealousy with a halo.

H.G. WELLS

Tolerance is the positive and cordial effort to understand another's beliefs, practices, and habits without necessarily sharing or accepting them.

JOSHUA LIEBMAN

C. Speech that appeals to minors is protected Let's now look at one final possible justification that is often asserted for limiting First Amendment protection of comic books: the fact that some comic books are aimed at children. This rationale, though, also falls flat, for two principal reasons.

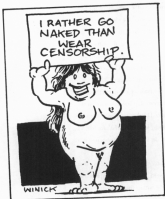
First, contrary to widespread misconceptions, children themselves have First Amendment rights. The First Amendment itself (along with other provisions in the Bill of Rights) specifies no minimum age before its protections come into play. As the Supreme Court has stated, "Constitutional rights do not magically spring into being when one attains the state-defined age of majority."³⁰ Specifically focusing on free speech rights, the Supreme Court has expressly said that "[M]inors are entitled to a significant level of First Amendment protection."³¹ Accordingly, in her opinion in *Reno v. ACLU*, Chief Justice Souter indicated that the CDA might well be unconstitutional because of its restrictions on the free speech rights of minors.³²

Even putting aside minors' own free speech rights, the asserted concern with shielding children from certain expression can never justify restrictions that have the effect of depriving adults of access to that expression as well. Accordingly, the Supreme Court has consistently struck down a long line of censorial laws for this reason; the CDA was simply the most recent measure that the government unsuccessfully defended as necessary for the welfare of children, but the Supreme Court rejected as violating the First Amendment rights of adults.

Measures that will limit children's access to certain material may be defensible if they do not result in depriving adults of access (and do not trammel the minors' own constitutional rights). For example, certain comic books could be put on restricted shelves or

require proof of age before purchase, much the way other sexually explicit materials are often handled. Those who advocate more restrictive measures will counter that such limitations are not foolproof—or, more accurately, not proof against minors who are not fools! But the fact that some determined young people may well circumvent restrictions to secure access to these materials cannot justify more complete bars, since the latter would deny access to adults as well as minors.

The basic concept involved here is one that is central to constitutional liberties in general: the notion of "least restrictive alternatives," or that the government must pursue even important goals through measures that restrict individual liberties as little as possible. As the Supreme Court put this, in striking down a Michigan law that prohibited the sale of



sexually explicit (but not criminally obscene) books in order to protect children, you can't "burn the house to roast the pig."³³ Playing on that metaphor, one of the lower court judges who invalidated the CDA, Judge Stewart Dalzell, condemned that cybercensorship law as an effort to "burn the global village to roast the pig."³⁴

D. Precedent and principle specifically protecting comic books

For all of the foregoing reasons, censorship of comic books violates the First Amendment just as much as censorship of other books and other expressive materials. That conclusion was expressly ratified by the Supreme Court's 1988 decision invalidating a New York statute that criminalized (among other things) certain comic books.³⁵

This legal conclusion, that comics are indistinguishable from other words and images for First Amendment purposes, was recently reaffirmed by a noteworthy California case. Since 1990, the California Board of Equalization, which administers the state's sales tax, had been treating cartoons differently from writings when they are sold to a publisher. The Board treated writings as ideas, which are not subject to the sales tax, consistent with the First Amendment. In contrast, it treated cartoons as commodities, which are subject to the sales tax. This discriminatory treatment was protested by Paul Mavrides, co-creator (with Gilbert Shelton) of the underground comic heroes, the Fabulous Furry Freak Brothers. Both the ACLU and the CILDF supported Mr. Mavrides' challenge.

He was also supported by Art Spiegelman, the award-winning creator of *Maus*. Spiegelman commented:

If the position that comics are not literature is allowed to stand... I guess I'll have to send back my National Book Critics Circle nominations... as well as my Pulitzer.³⁶

Fortunately, though, Spiegelman did not have to do that, because Paul Mavrides recently won his appeal. The California Tax Board decided that his comics were the equivalent of other literary work, and hence exempt from the sales tax.

Not only are comics the equivalent of other media; indeed, in the near future, they may well become the model and archetype for the newest, most important media. This idea was suggested by one of the foremost experts on new media, Professor Eli M. Noam, Director of the Columbia Institute for Tele-Information ("CITI") at Columbia University. In a new book, he wrote the following:

The dominant medium of the future is likely to be the hyper-medium, which will combine the best elements of text, image, and video... The format of information display could be inspired by the comic strip. Or rather, the "hyper" comic strip...panels of text, pictures, and symbols for easy scanning, that will go into deeper detail or provide moving images and audio when one touches the screen.³⁷

The most efficacious method of dealing with deviancy is to ignore, to the furthest point of our tolerance, those items which we find offensive.

**GILBERT
GEIS**

Tolerance implies no lack of commitment to one's own beliefs. Rather it condemns the oppression or persecution of others.

**JOHN F.
KENNEDY**

Many politicians are in the habit of laying down as a self-evident proposition that no people ought to be free till they are fit to use their freedom.

This maxim is worthy of the fool in the old story who resolved not to go into the water till he had learned to swim.

THOMAS
BABINGTON
MACAULAY

Idiot, n.
A member of a large and powerful tribe whose influence in human affairs has always been dominant and controlling.

AMBROSE
BIERCE

V The First Amendment Bars Not Only Direct Government Censorship, But Also Industry Self-Censorship

The final point I would like to discuss is that the First Amendment bars not only direct government censorship of comic books and other media, but also indirect forms of censorship, including industry self-censorship. The ACLU has always opposed any form of industry self-censorship, from the movie ratings system, through the latest such initiative, the V-chip for television with accompanying government-mandated ratings.

When the comic-book industry established a rating system in the 1950s—whose broad, ambiguous, and censorial “standards” created all the problems discussed above concerning attempts to curb obscenity and “indecentcy”³⁸—the ACLU strongly opposed it. We published a 1955 pamphlet condemning the Comics Code. Let me read you a passage from that pamphlet, which explains this position:

Although a single publisher may prescribe for himself any set of standards he may desire... a different situation exists where a significant segment of the industry agrees to abide by a code. Collective adherence to a single... code has the effect of limiting different points of view, because individual publishers—as well as writers—are fearful of departing from the accepted norms lest they be held up to scorn or attack and suffer economic loss... But the variety of ideas is the lifeblood of a free society. Whatever evil exists in the restraint of competition in our economic life pales in significance when compared to the dangers of monopoly or uniformity of ideas.³⁹

In response to the more recent flurry of media rating or advisory systems in the past decade—for example, for videogames, sound recordings, and TV—in 1987 the ACLU adopted an updated policy statement that reaffirms our opposition to all such systems. Let me read you just a few excerpts from that policy, outlining some of the reasons for opposing any rating system, for any media, including comic books:

✗ *This entire subject is tainted by the question of how “voluntary” the rating systems are.... Though not directly imposed by governmental edicts, action taken under the fear of governmental reprisal is not purely voluntary....*

✗ *Industry-sponsored rating systems create the potential for constraining the creative process and thus contracting the marketplace of ideas. Experience has shown that ratings inevitably have serious chilling effects on freedom of expression. For example, movie contracts often prohibit directors from creating films that might receive an X rating; newspapers frequently segregate or refuse to accept advertising for X-rated films; and some... markets (hotels, airlines, pay television) frequently refuse to accept X-rated films. Similarly, many radio stations... will not play records bearing the advisory label... [And] [many] retailers... will not market such records....*

✘ Moreover, industry-sponsored rating... schemes can impose serious economic pressures on the creative process....First Amendment values are endangered if the effect of an industry rating scheme is to make the production of certain [works] unfeasible....

✘ Another danger of industry self-rating systems is the threat of arbitrary and capricious decision-making. This is one area where self-regulation is potentially more dangerous than governmental regulation, because the constitutional safeguards of due process and equal protection do not apply....The usual government appellate process that normally protects First Amendment values is not present....

✘ [A] final danger posed by rating schemes is...the proverbial slippery slope....Each industry concession leads to more cries for other forms of communication to be rated, labelled, and restricted.⁴⁰

Indeed, the sadly prophetic nature of that concluding statement has been demonstrated by subsequent developments. Hot on the heels of the 1996 federal law mandating TV ratings, government officials and others are now reacting to our great Supreme Court victory outlawing direct government censorship of the Internet by clamoring for "voluntary" rating schemes for on-line information and communications.

During a telephone conversation prior to the 1996 International Comic Con, comics artist Frank Miller asked me, as "devil's advocate," the question both of us always get from those who (unlike Frank and I) do not oppose industry rating schemes: "Isn't this just the provision of more information? How can you, as a free speech advocate, oppose that?" Frank really liked the answer I spontaneously shot back to him, so I'll repeat it now: "Was the Scarlet W on Hester Prynne's dress just giving her neighbors more information about her?"

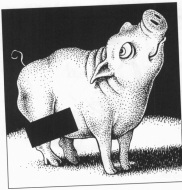
The answer, of course, is that such a warning label is more—or, indeed, less—than the provision of information. It doesn't convey any meaningful data that could form the basis for a responsible individual decision. Instead, it's a conclusory epithet, reflecting someone else's negative bottom-line judgment. It's a stigma. It's punitive. It's intended to and does deter others from committing the same "sin."

Therefore, the ultimate practical effect of the rating or label is not to convey more information, but, rather, exactly the opposite: to stamp out certain expression altogether, for adults as well as children. All of us are reduced to seeing only what is deemed fit for children under the rating system. Our cultural expression is reduced to the lowest common denominator.



I believe there is something out there watching over us. Unfortunately, it's the government.

WOODY ALLEN



Politics is the art of looking for trouble, finding it whether it exists or not, diagnosing it incorrectly, and applying the wrong remedy.

ERNEST BENN

violate the First Amendment. For example, in 1996, the Court struck down two provisions in a federal law authorizing cable TV operators to restrict "indecent" material, even though those restrictions were directly imposed by cable operators, not the government.⁴¹

The Supreme Court itself has never ruled specifically on so-called "voluntary" ratings of movies or other expressive works, but there have been some successful challenges in lower courts. For example, a 1990 decision by a New York court blasted the movie rating system, deriding its subjective standards as "the wishes of the AAP" or "Average American Parent": "This court will not dignify the present system by rendering an opinion on so frivolous a standard. . . ."⁴²

VI Conclusion

One of the ACLU's mottos is a statement from Thomas Jefferson: "Eternal Vigilance is the Price of Liberty." Likewise, in the words of our principal founder, Roger Baldwin, "No fight for civil liberties ever stays won."

These insights certainly apply to comic-book censorship and industry self-censorship for comic books and other expressive materials. Therefore, I would like to share with you a statement made by the ACLU's then-Executive Director, when he testified before a Senate committee considering comic-book censorship, back in the early 1990s. His words are, alas, equally relevant today, in light of the current widespread attacks on our mass media and popular culture. The many politicians who have recently denounced words and images as dangerous and harmful, and called for censorship, include both major presidential contenders during the 1996 election.

I especially like the statement I'm going to read to you from the 1950s comic-book hearings because it responds so directly to today's concerns about what politicians call "family values." They try to defend their calls for censorship as helping the "traditional American family." But the ACLU believes that Big Brother is not a member of the traditional American family! (And he's certainly not welcome within the non-traditional families whose rights we also defend!)

Here, then, is an excerpt from the testimony of the ACLU's then-Executive Director, Patrick Murphy Malin, before a Senate committee investigating comic books in 1954:

There may be, in the absence of censorship, some risk that some persons...may possibly get hurt. But...[t]here is risk—and indeed certainty—that every day many people will be killed by automobiles, and yet we leave automobiles on our streets....[F]ree speech is surely just as vital to our society as the automobile. Risk there is in all life, and we must take this risk on the side of freedom. That is the glory of our way of life. Censorship is abhorrent to Americanism.⁴³

I would like to close by quoting my favorite ACLU T-shirt. Its message brings us back full-circle to a point I made at the beginning: how important it is for each of us to stand up for our own free speech rights, not only for our own sakes, but also for the sake of everyone else. Thanks to TV shows and movies, we all know that "you have the right to remain silent." This T-shirt reminds us of another right, at least as important, but unfortunately, not as well-known:

YOU HAVE THE RIGHT NOT TO REMAIN SILENT!

I hope you will all keep exercising and enjoying that right. And if anyone tries to stop you, you know where to turn: to the CBLDF and the ACLU!

Footnotes

1. President, American Civil Liberties Union; Professor of Law, New York Law School. For research assistance with the preparation of this chapter, Professor Stromer thanks her Chief Aide, Rafael S. Toss, her Academic Assistant, Amy L. Tenney, her Research Assistants, Kurt Stackel, Mark A. Bantel, and El Granger, and the ACLU's Archivist, Janet Lindo.

2. *Stanley v. Georgia*, 394 U.S. 557, 565 (1969).

3. The following examples of censorship of then-new media were supplied by Eli M. Noam, Professor at Columbia University's Graduate School of Business and Director of the Columbia Institute of Tele-Information.

4. New York Joint Legislative Committee to the Study of the Publication of Comics, LEGISLATIVE

It seems as if the Department [of Justice] sees the value of the Bill of Rights as no more than obstacles to be overcome.

PROFESSOR
SANFORD H.
KADISH

He who tells the truth must have one foot in the stirrup.

ARMENIAN
PROVERB

The ultimate
result of
shielding men
from folly
is to fill
the world
with fools.

HERBERT
SPENCER

Document No. 37, at 11 (1994).

5. See *Blanca Peltz, Sex and Sensuality: Restrictions on Foreign Missions and the Will to Censor* (1994) (providing an excellent review and analysis of the relevant studies).

6. See *Reynolds Rosenfield, American Civil Liberties Union, Comic Books* (Sept. 1954).

7. *American Civil Liberties Union, Commission of Comic Books: A Surrender to Censorship on Civil Liberties Grounds* 15 (1955).

8. *Id.* at 15.

9. See generally *U.S. v. Eichman*, 496 U.S. 310 (1990). See also *Texas v. Johnson*, 491 U.S. 397 (1989).

10. See *Shenk v. United States*, 349 U.S. 47, 51 (1955).

11. See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

12. See generally *Winters v. New York*, 330 U.S. 507 (1948).

13. *Testimony on NPS Grant Funding and Restrictions, Hearings Before the Senate Subcommittee on Education, 101st Cong.*, 8993 (1990) (statement of writer Garrison Ballou).

14. *Both v. United States*, 354 U.S. 476, 487 (1957).

15. See *Miller v. California*, 413 U.S. 15, 24 (1973).

16. *Brackett v. Spokane Arcades*, 472 U.S. 491, 499 (1985).

17. See generally *Beno v. ACLU*, 117 S. Ct. 2329 (1997).

18. Justice O'Connor wrote a separate opinion, joined by Chief Justice Rehnquist, which departed from the majority's analysis in a single, narrow respect. Even these two members of the Court agreed with their colleagues, though, that in most respects the CDA is unconstitutional.

19. See generally *ACLU v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996).

20. See *Pope v. Illinois*, 481 U.S. 487, 515-518 (1987) (Stevens, J. dissenting).

21. *Id.* at 507.

22. *Jacobellis v. Ohio*, 378 U.S. 184, 187 (1964) (Stewart, J. concurring).

23. *Malta v. United States*, 400 U.S. 188 (1977).

24. See Jeff Brown, *Miller Time*, *Nine REPUBLIC*, Oct. 1, 1993, at 17 (quoting Kathleen Sullivan).

25. *ACLU v. Reno*, 929 F. Supp. 824, 837 (E.D. Pa. 1996).

26. John F. Roman, *Strenuous, Tim Comics Justice*, *FIRB*, Feb. 1996, at 7, 9.

27. *Winters v. New York*, 330 U.S. 507, 510 (1948).

28. *Id.*

29. *Id.*

30. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1975).

31. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212-13 (1975) (citation omitted).

32. See *ACLU v. Reno*, 929 F. Supp. 824, 851-53 (E.D. Pa. 1996).

33. *Boyer v. Michigan*, 351 U.S. 380, 383 (1957).

34. *ACLU*, 929 F. Supp. at 852.

35. See *Winters v. New York*, 330 U.S. 507 (1948).

36. Michael Miles, *Hot Type: A Tin on Comics*, 4 *CHICAGO BEAT*, Section 1, Aug. 11, 1995.

37. See M. NOON AND ROBERT FREEMAN, *Media Concentration in America* (Berbanning).

38. See Code of the Comics Magazine Association of America, Inc. (adopted Oct. 26, 1954). See Appendix A for examples of some of the more troublesome provisions in that Code.

39. *American Civil Liberties Union, Commission of Comic Books*, *supra* note 7.

40. *American Civil Liberties Union, Policy Guide, Bureau Section Sponsored by the Communications Industry*, POLICY #18, at 40-42a.

41. See generally *Dunne Am. Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727 (1996).

42. *Minimax Film Corp. v. Motion Picture Assn. of America, Inc.*, 360 N.E.2d 736, 735 (1986).

43. *American Civil Liberties Union, Commission of Comic Books*, *supra* at 30.



Appendix A

The Comics Code Authority

"It's (the Comics Code) reviewed periodically and some changes in the language have been made but, basically, it hasn't changed much since it was first created."—*Fred Messer, Comics Magazine Association of America Marketing Committee Member*

PREAMBLE The comic-book medium, having come of age on the American cultural scene, must measure up to its responsibilities. ✘ Constantly improving techniques and higher standards go hand in hand with these responsibilities. ✘ To make a positive contribution to contemporary life, the industry must seek new areas for developing sound, wholesome entertainment. The people responsible for writing, drawing, printing, publishing and selling comic books have done a commendable job in the past, and have been striving toward this goal. ✘ Their record of progress and continuing improvements compares favorably with other media in the communications industry. An outstanding example is the development of comic books as a unique and effective tool for instruction and education. Comic books have also made their contribution in the field of letters and criticism of contemporary life. ✘ In keeping with the American tradition, the members of this industry will and must continue to work together in the future. ✘ In the same tradition, members of the industry must see to it that gains made in this medium are not lost and that violations of standards of good taste, which might tend toward corruption of the comic book as an instructive and wholesome form of entertainment, will be eliminated. ✘ Therefore, the Comics Magazine Association of America, Inc. has adopted this Code and placed strong powers of enforcement in the hands of an independent Code Authority. ✘ Further, members of the Association have endorsed the purpose and spirit of this Code as a vital instrument to the growth of the industry. ✘ To this end, they have pledged themselves to conscientiously adhere to its principles and to abide by all decisions based on the Code made by the Administrator. ✘ They are confident that this positive and forthright statement will provide an effective bulwark for the protection and enhancement of the American reading public, and that it will become a landmark in the history of self-regulation for the entire communications industry.

CODE FOR EDITORIAL MATTER

General Standards—Part A

- 1) Crimes shall never be presented in such a way as to create sympathy for the criminal, to promote distrust of the forces of law and justice, or to inspire others with a desire to imitate criminals.
- 2) No comics shall explicitly present the unique details and methods of a crime.
- 3) Policemen, judges, government officials, and respected institutions shall never be



O Lord,
give us
the strength
to fight the
bastards and
the strength
to fight on.

U.S. ARMY
CHAPLAIN

Wherever
people are
well-informed
they can
be trusted
with their
government.

THOMAS
JEFFERSON

presented in such a way as to create disrespect for established authority. **4)** If crime is depicted it shall be as a sordid and unpleasant activity. **5)** Criminals shall not be presented so as to be rendered glamorous or to occupy a position which creates a desire for emulation. **6)** In every instance good shall triumph over evil and the criminal punished for his misdeeds. **7)** Scenes of excessive violence shall be prohibited. Scenes of brutal torture, excessive and unnecessary knife and gun play, physical agony, gore and gruesome crime shall be eliminated. **8)** No unique or unusual methods of concealing weapons shall be shown. **9)** Instances of law enforcement officers dying as a result of a criminal's activities should be discouraged. **10)** The crime of kidnapping shall never be portrayed in any detail, nor shall any profit accrue to the abductor or kidnapper. The criminal or the kidnapper must be punished in every case. **11)** The letters of the word "crime" on a comics magazine cover shall never be appreciably greater in dimension than the other words contained in the title. The word "crime" shall never appear alone on a cover. **12)** Restraint in the use of the word "crime" in titles or sub-titles shall be exercised.

General Standards—Part B

1) No comic magazine shall use the word "horror" or "terror" in its title. **2)** All scenes of horrific, excessive bloodshed, gore or gruesome crimes, depravity, lust, sadism, masochism shall not be permitted. **3)** All lurid, unsavory, gruesome illustrations shall be eliminated. **4)** Inclusion of stories dealing with evil shall be used or shall be published only where the intent is to illustrate a moral issue and in no case shall evil be presented alluringly nor so as to injure the sensibilities of the reader. **5)** Scenes dealing with, or instruments associated with walking dead, torture, vampires and vampirism, ghouls, cannibalism, and werewolfism are prohibited.

General Standards—Part C

All elements or techniques not specifically mentioned herein, but which are contrary to the spirit and intent of the Code, and are considered violations of good taste or decency, shall be prohibited.



DIALOGUE

1) Profanity, obscenity, smut, vulgarity, or words or symbols which have acquired undesirable meanings are forbidden. **2)** Special precautions to avoid references to physical afflictions or deformities shall be taken. **3)** Although slang and colloquialisms are acceptable, excessive use should be discouraged and wherever possible good grammar shall be employed.

RELIGION

1) Ridicule or attack on any religious or racial group is never permissible.

COSTUME

1) Nudity in any form is prohibited, as is indecent or undue exposure. **2)** Suggestive and salacious illustration or suggestive posture is unacceptable. **3)** All characters shall be depicted in dress reasonably acceptable to society. **4)** Females shall be drawn realistically without exaggeration of any physical qualities. **NOTE:** It should be recognized that all prohibitions dealing with costume, dialogue or artwork apply as specifically to the cover of a comic magazine as they do to the contents.

MARRIAGE AND SEX

1) Divorce shall not be treated humorously nor represented as desirable. **2)** Illicit sex relations are neither to be hinted at nor portrayed. Violent love scenes as well as sexual abnormalities are unacceptable. **3)** Respect for parents, the moral code, and for honorable behavior shall be fostered. A sympathetic understanding of the problems of love is not a license for morbid distortion. **4)** The treatment of love-romance stories shall emphasize the value of the home and the sanctity of marriage. **5)** Passion or romantic interest shall never be treated in such a way as to stimulate the lower and baser emotions. **6)** Seduction and rape shall never be shown or suggested. **7)** Sex perversion or any inferences to same is strictly forbidden.

CODE FOR ADVERTISING MATTER

These regulations are applicable to all magazines published by members of the Comics Magazine Association of America, Inc. Good taste shall be the guiding principle in the acceptance of advertising.

1) Liquor and tobacco advertising is not acceptable. **2)** Advertisement of sex or sex instruction books are unacceptable. **3)** The sale of picture postcards, "pin-ups," "art studies," or any other reproduction of nude or semi-nude figures is prohibited. **4)** Advertising for the sale of knives or realistic gun facsimiles is prohibited. **5)** Advertising for the sale of fireworks is prohibited. **6)** Advertising dealing with the sale of gambling equipment or printed matter dealing with gambling shall not be accepted. **7)** Nudity with mercetricious purpose and salacious postures shall not be permitted in the advertising of any product; clothed figures shall never be presented in such a way as to be offensive or contrary to good taste or morals. **8)** To the best of his ability, each publisher shall ascertain that all statements made in advertisements conform to fact and avoid misrepresentation. **9)** Advertisement of medical, health, or toiletry products of questionable nature are to be rejected. Advertisements for medical, health or toiletry products endorsed by the American Medical Association, or the American Dental Association, shall be deemed acceptable if they conform with all other conditions of the Advertising Code.

**Tyranny is
always better
organized than
freedom.**

**CHARLES
PÉGUY**

(1873-1914)



The soft-minded man always fears change. He feels security in the status quo, and he has an almost morbid fear of the new. For him, the greatest pain is the pain of a new idea.

**MARTIN
LUTHER
KING, JR.**

“The Story of Lulu According to Her Feet”

Introduction to Neil Gaiman’s Guardian Angel Tour
Reading at the San Francisco Palace of Fine Arts,
October 1995

by Dave Sim

First of all, I would like to welcome you here this evening, to the San Francisco Palace of Fine Arts. I’d like to thank you, as well, for your financial contribution to the Comic Book Legal Defense Fund, a most worthwhile and necessary organization, tireless in its efforts to protect the First Amendment rights of creators, publishers, and retailers in the comic-book field.

When I was asked to be master of ceremonies here tonight, I thought it would be appropriate to say a few words that might have greater resonance here in the Bay Area than elsewhere—observations which might more closely tailor the evening’s proceedings to our larger venue, the great city of San Francisco. To that end I enlisted the support of someone I would like to introduce to you now, a key organizer of this evening’s event, the owner/proprietor of the Haight District’s own Comic Experience, Mr. Brian Hibbs.

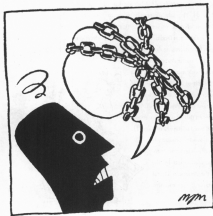
Brian went all the way to the library for this so we hope you enjoy it.

June 3, 1909, a day of infamy in the history of this great metropolis.

On that date, San Francisco became the first city in the Great Republic to have a genuine, official, brand-spanking-new, city-supported Censorship Board. Less than a month before, the San Francisco Board of Supervisors had passed unanimously—unanimously—Ordinance #761. In the convoluted syntax and phraseology common to legislation the world over, it read as follows:

[Groucho Marx voice]

“It shall be unlawful for any person, firm, association, or corporation to display or



cause to display or permit to be displayed at any moving picture exhibition or at any entertainment at which moving pictures are exhibited, any picture, illustration, or delineation of any nude human figure or of any lewd or lascivious act, or of any other matter or thing of an obscene, indecent, or immoral nature, or offensive to the moral sense, or in such detail to offend public morality and decency, any murder, suicide, robbery, hold-up, stabbing, assaulting, clubbing, or beating of any human being."

One more time: (Repeat in Groucho Marx voice, but much faster)

Unable to make hide nor hair of what they were talking about, the Mayor signed the legislation into law on May 13.

Norman W. Hall, secretary to the newly formed Board of Censorship,

in regarding this dog's breakfast of alarmist incoherencies, was moved to observe, "From the above it will be seen that the scope of the Board's action is wide." Mr. Hall is to be commended in retrospect as a master of understatement. In its four years of existence, the Board found no fewer than 476 films to condemn, no fewer than 158 films to modify. At least four arrests were made. In one notable case it required an arrest, a criminal prosecution, and the keen assessment of a municipal court judge to determine that one moving picture did not qualify for condemnation or modification under the "wide scope" of the Board's action—that a film of a boxing match did not constitute the "assaulting, clubbing, or beating of any human being."

The single public report issued by the Board of Censorship is a model of its kind. Here's a great quote from it:

"The Board is enthusiastic in its endorsements of the moving picture and desires to encourage its patronage by the public."

How very...beneficent...of them, I thought. How unutterably redundant to issue a report in 1911 encouraging people to see movies. Rather like signing a petition in 1995 encouraging people to watch more television.



A reactionary is someone with a clear and comprehensive vision of an ideal world we have lost.

KENNETH MINOGUE

Any frontal attack on ignorance is bound to fail because the masses are always ready to defend their most precious possession—their ignorance.

HENDRIK VAN LOON

This single public report—one pictures it descending from the hills above the city carved on stone tablets—this single public report goes on to pontificate that “with those moving pictures that depict positive immorality or criminality in detail, there can be but one verdict, condemnation.” The report then goes on to describe the “positive immorality and criminality” contained in those films in excruciating detail.

Also, shouldn't that be “positively immoral” or “the portrayal of immorality in a positive light”? “Positive immorality.” Hmm.

Perhaps catching himself drooling from the corner of his mouth, the author of the report hastens to add: “These particular pictures are mentioned not to condemn a great industry, but to impress the necessity of avoiding such productions in order to secure the patronage of the decent-loving . . .” (One supposes he meant to say “decent-loving,” unless the Board was also in the business of rating the romantic skills of the people of San Francisco.) “. . . [D]ecent-loving, self-respecting public, and at the same time, we have alluded to them to show the obvious importance of a careful censorship.” One gets the impression that black-and-white stills from some of the more salacious examples would go a long way, in the author's view, in assisting the process of a careful censorship.

As we gaze back upon the year of the report, 84 years distant from us, we are moved to speculate upon the all-consuming and disastrous effect upon the morals of the citizens—the “decent-loving” citizens—of this great metropolis had the Pharisees of Los Angeles (those eternal corrupters from Gomorra-by-the-Pacific) been able to circumvent the vigilance of the Board and inflict upon an unsuspecting—though by all accounts “decent-loving”—citizenry of San Francisco—such Mephistophelean fare as (and these are the actual titles of films condemned by the Board):

[Johnny Carson as Art Fern voice] *Saved by a Sailor*, *Getting Even With Everyone*, *The Banker's Daughter*, *The Way of the Transgressor is Hard*, *The Italian Sherlock Holmes*, and *The Story of Lulu According to Her Feet*.

What peril! What disaster so narrowly averted! What heroism that—for a stipend of fifty dollars per year—these stalwart defenders of the public good submitted themselves to the soul-jeopardizing imagery contained in *The Story of Lulu According to Her Feet*.



Of course there was another film that they condemned, a film banned from public display within the city limits of San Francisco:

Charlie Chaplin's *The Tramp*.

It is at this point in my narrative, at this point in every confrontation with the forces of censorship, the forces of oppression, that their buffoonery, their silliness, their Keystone Cop slapstick dog-and-pony show ceases to be funny and becomes serious. Deadly serious.

For whether you are talking about Film near to the point of its genesis as a medium of expression or the Comic Book as Literature near to the point of its genesis as a medium of expression, eventually—sooner rather than later—the battle lines are drawn and the issue becomes clear: whether it is better that society risks jeopardizing its self-perceived purity, hazards the potential corruption posed by the existence of *Saved by a Sailor* and *The Bunker's Daughter* in the interest of making possible and assuring the security and continued existence of the artistry of a Charlie Chaplin, or whether it is better to err on the side of caution and permit a handful of individuals to decide what is good for us and what is bad for us—what we are to be allowed to see and what we are not to be allowed to see.

The respective trenches having been excavated in this ancient conflict, the armaments in place, the armies assembled and deployed in the opposing camps, one envisions a manifestation in human form of Creative Freedom as Absolute facing a manifestation of the Self-Appointed Guardian of the Public Good raising, respectively, their pointed fingers of self-righteous wrath and approbation after the fashion of Revival Tent Preachers and crying out in a unison of accusation:

"If we give you an inch, you'll take a mile."

And, in this, both sides are entirely correct.

If the point were to be conceded (as it so seldom is) by the forces of censorship that errors are made, that shades of gray exist, and that it is possible and (courage now) likely that where their spirit manifests itself, the baby is invariably thrown out with the bath water (witness the prosecution and suppression of *Lady Chatterley's Lover*, *Tropic of Cancer*, *Huckleberry Finn*, and other creative works), then it must also be conceded by the forces of anti-censorship that where the boundaries of convention are challenged and breached, where the creative individual conquers new and vital ground and finds voice to speak what was previously unspeakable, the floodgates invariably open. Inadequate works—



Those who profess to favor freedom, and yet depreciate agitation are men who want rain without thunder and lightning.

FREDERICK DOUGLASS

Why don't
you judge for
yourselves
what is right?

JESUS OF NAZARETH

LUKE 12:57

poorly conceived, execrable in their execution, having naught to recommend them but the provocation of society's overly sensitive souls for provocation's own sake—will follow in the wake of genuine innovation as night follows day. An inch is granted and a mile is taken.

If we are to make ourselves—we who believe fervently in the freedom to choose, the irreducible right to free expression, and the dissemination of the fruits of that free expression—if we are to make ourselves large enough to encompass and contain our own argument, we must make that same concession. To make room for the sublime we must defend the absurd, the guttural, the macabre, the fourth-, fifth-, and tenth-rate. For this is the fine and subtle point upon which turns the largest part of our argument. If we are to be a free people and if we are to set ourselves apart from those who practice and advocate suppression, censorship, the imposition of one person or group's sensibilities upon another, then we must adhere to the absolutism of our position. If the forces which are interested in suppressing or labeling or sequestering Alan Moore and Eddie Campbell's *From Hell* are to be kept at bay, we must resist efforts along those same lines with a work like "A Taste of Cherry" in *Vevetika* #4. To concede the high ground of creative freedom by failing in a defense of Glenn Danzig's right to publish, Hart Fisher and Christian Moore's right to compose, and James Daley's right to draw the piece in question (deplorable and meretricious as it is—and the imagination is beggared by what loathsome imitations *Vevetika* itself might engender) is to invite exactly the kind of jeopardy we are most intent upon averting. To give the censors an inch on *Vevetika* is to invite them to take a mile—and within the confines of that mile might well exist *From Hell*, *Sandman*, *Stay Bullet*, *Love and Rockets*—perhaps even Spiegelman's *Maus* or Eisner's *Dropsie Avenue*.

For in the overarching context of what we are doing here tonight, our goal is not the defense of mindless pornography, our goal is not the advocacy of creative works which degrade any group or individual, our goal is not to hold those works aloft as a banner. These substandard and repulsive works are not the standard we bear, the flagpole around which we rally.

No. Our goal, our standard, our flagpole is creative freedom for all who choose to partake. The right to create comic books, to publish comic books, to display comic books, to sell comic books, to distribute comic books, and to buy comic books. In the waning hours of the twentieth century we believe that individual choice must be preeminent if we are to call ourselves a civilized people, a free people—whether as San Franciscans, as Californians, as Americans, as North Americans, or as citizens of the Global Village. Just as no one should be forced to create, publish, distribute, display, sell, or buy comic books in violation of their personal choices and preferences, so too must it be seen as a violation of inherent human rights to *impede* anyone from creating, publishing, distributing, displaying, selling, or buying the comic books of their choice. The hammer blow which strikes down *Vevetika* as self-evidently worthless trash glorifying violence against women will next descend—you can make book on it—upon Howard Cruse's *Swak Rubber Baby* or Donna Barr's *Desert Peach* for the portrayal of what our opponents would perceive as an "immoral lifestyle."

The aim of the
law is not to
punish sins.

JUSTICE
OLIVER
WENDELL
HOLMES

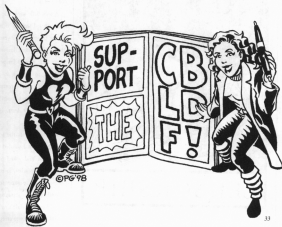
Your assistance in guaranteeing these fundamental freedoms to choose is urgently needed. No contribution can be considered too small. A five-dollar contribution from each of 100 people, a 20-dollar contribution from each of 25 people, or a 500-dollar contribution from a single donor—each contribution buys someone a minute or an hour or a day of freedom from the imposition of a collective will upon the rights of the individual. Neil Gaiman and the Board of Directors of the Comic Book Legal Defense Fund ask for your contribution in the name of the ideal of free expression of creative ideas and the fundamental human right to participate in and enjoy free expression without fear of prosecution.

Help us defend that inch...

And the mile will take care of itself.

The arts are
the rain forests
of society.
They produce
the oxygen
of freedom,
and they are
the early
warning system
when freedom
is in danger.

JUNE WAYNE



Among life's perpetually charming questions is whether the truly evil do more harm than the self-righteous and wrong.

JON
MARGOLIS

A Modest Proposal

by Neil Gaiman

I have heard that a story I adapted for comics form (*Judges*, chapter 19) is being prosecuted by the Swedish Government for containing imagery of violence toward women.

The book the story was done for was *Knockabout's Outrageous Tales from the Old Testament*. Outrageous, for me, at any rate, insofar as they were stories that provoked deep outrage, and that story provoked the most sense of outrage, revulsion, and horror, something I tried to convey in the adaptation, and which artists Steve Gibson and Mike Matthews succeeded admirably in putting on the page.

There's outrage in the story (which, if you are forbidden from seeing the comic-strip version, or even if you're not, I suggest you go to a good, uncensored Bible, and check out for yourself), in the actions of the characters, all thoroughly unlikable, and particularly in the treatment of the unnamed concubine who "played the whore against her husband" and who, being brought back from her father's house, is given to be raped and murdered by a frustrated mob—frustrated by being unable to homosexually rape her husband. Her husband

took her body home with him and cut it into 12 pieces ("together with her bones") which he sent "into all the coasts of Israel."

A sick little saga, vile and repugnant. I wonder if most of the people who swear on their Bibles even know it's there. The mental images of violence to women it provokes and its blasé treatment of the unnamed concubine are, for me at least, quite horrifying.

When I wrote the script for the story, I wanted that conveyed and asked Steve Gibson, the artist, to make sure that the rape scene would provoke repugnance and horror; I didn't want a hint of glamour to creep in:

The Eighth Deadly Sin



CENSORSHIP.

I didn't want a rape scene any man with rape fantasies could empathize with. He scored well—too well, in fact—and Mike Matthews wound up having to redraw the page. Still, the intent is there. And the violence and horror are presented unflinchingly.

I am told that Sweden has laws which forbid the depiction of violence toward women. I trust that this also applies to the printed word but fear that it won't; it would be interesting to see that chapter of the Bible removed (and perhaps some others: *Judges*, chapter 11, for example). There is a fallacy best articulated by Dame Jill Knight, an English Conservative MP, when she spoke on Radio Belfast, attempting to get *Outrageous Tales from the Old Testament* banned, a year and a half ago. "People are going to see a drawing of men raping and kicking a woman to death, and they'll go out and do it," she told the interviewer, apparently quite seriously, attributing to the readers of comics a stimulus-response mechanism that Pavlov's dogs would have envied.

I haven't noticed it happening yet. Nor have I seen any legal precedent, people claiming that the original Bible source material caused them to rape and murder. (Although the statement that "God made me do it" is a not unheard-of justification by serial killers and the murderers of prostitutes.)

But maybe it works like that. Maybe if we lived in a cotton candy world where everything was soft and kind and there were no images of cruelty, there would be no violence, no rape, no murder, no hatred, no hurt.

But if it is like that, why not go all the way?

Let us ban all images of violence—to anybody, male or female. For example, there's an image of torture and murder that crops up repeatedly all over the world, an image of a man dying in agony. It and its symbolic representation are ubiquitous, even having been used as a theme for some of our greatest painters, and worn around their necks by small and impressionable children. It has undoubtedly been responsible for many, many millions of human deaths—in war, by torture, by as many methods as human beings have been able to devise to ensure that other human beings die as unpleasantly as possible—in the last two thousand years.

It shows a man with a spear wound in his side, nailed to a wooden cross.

God forbid that any book should be banned. The practice is as indefensible as infanticide.

REBECCA
WEST



I can't understand why people are frightened of new ideas. I'm frightened of the old ones.

JOHN CAGE

Keynote Speech

at the Diamond Comic Distributors Retailers Seminar
June 1994

by Frank Miller

Let me get started by asking you all to join me in honoring two good men we recently lost. I'm sorry enough to ask you to stand up for this part. A round of applause, please, for as dear a friend as comics ever had: Mr. Don Thompson.

And another round—let's make this an even bigger one; I want the walls to shake this time—for the greatest artist in the history of comics: Mr. Jack Kirby.

Well, it's a pretty big room, but I think you did it. The walls had to shake for Jack, just like they would have on one of his pages.

An age passes with Jack Kirby. Us comics folks, we're all fond of naming "ages" of comics. We've come up with a half-dozen names for them in the last half-dozen years. But a very big age of comics is coming to an end now, and, I've got to say, I can't call it the Marvel Age of Comics, because I don't believe in rewarding thievery. I call it the Jack Kirby Age of Comics.

By saying this, I mean no disrespect to the outstanding and remarkable works of

Stan Lee and Steve Ditko and many others. We are in their debt as well. But it was Jack Kirby who defined the style and method of every comics artist who followed him. There is before Kirby, and after Kirby. One age does not resemble the other.

The King is dead. There is no successor to that title. We will never see his like again.

There are many others we should honor tonight. Too many, far too many. Comics have been around long enough for us to lose the generation that gave us the art form and the industry we celebrate tonight. They leave us with their example of the best thing



about our weird little corner of art and commerce: their love, their love of comics.

For most of you and me here, I know that love has been lifelong. And to our families, schoolmates, and acquaintances, it's seemed a little unnatural, hasn't it? It's always seemed a little weird, hasn't it?

Bear with me while I tell you about Frankie Markham, and how I fell in love with comics.

I was a skinny kid in grade school. The gangly kind of kid who grows tall too fast and falls down too much playing softball. Frankie Markham was my nemesis. Frankie Markham was mean and ugly and a number of years older than me, a tough-ass farm boy, a bully. He must've been all of twelve years old. You know what I mean. A grown-up.

Me, I started out wanting to be Superboy. My mom was kind enough to sew me a Superboy suit, and I often wore it under my school clothes. Only to a crowd like this would I admit that.

There came the day when I had to stop being Superboy. That was the day Frankie Markham slapped me around and punched out my buddy Craig. He punched him so hard it dislodged his braces. Craig was a bloody mess, and I was howling like a baby. It was all I could do, howl like a baby.

The fantasy was shattered. Superboy would've flattened Frankie Markham, or at least used his heat vision. I knew that I couldn't be Superboy anymore. It was time for this third-grader to grow up, so I did. With a new, pragmatic world view, I did the realistic thing. The mature thing. The grown-up thing: I decided I was Spider-Man.

Spider-Man had trouble with bullies, too. They embarrassed him in front of girls. They called him names. But he put up with it, concealing the secret of his awesome power. He put up with it and put up with it, just like me, he put up with it and put up with it, until—

And now my story moves towards its sense-shattering climax. At least I wish it did. I'd love to say that I kicked Frankie Markham's ass from Vermont to Wisconsin, but I never did that. I never had a fight with Frankie Markham, and I'd have lost it if I had. But I did learn to fight back against the bullies, with my fists and my wits, and Spider-Man helped. I gained courage, I learned to control my arms and legs, and I fought back. Somewhere along the way I even earned Frankie Markham's respect.

And Spider-Man helped.

It was years later, the last time I saw Frankie Markham. I was driving then, so I must have been about 17 years old. I was driving down some back road of Vermont, and there he was standing by the road, hitchhiking. I pulled over and picked him up and drove him over to some other back road. On the way, he told me that he'd heard I was moving to New York City and that I was going to become a comic-book artist. He thought that was really cool.

I let him off. I watched him lumber off. I watched Frankie Markham lumber off, down that back road. My old nemesis. All of a sudden he seemed small and sad. Not very often at all, I wonder about what happened to Frankie Markham.

Comics have always been desperately important to me. As a refuge. As inspiration. As a

We have not passed that subtle line between childhood and adulthood until we move from the passive voice to the active voice—that is, until we have stopped saying, "It got lost," and say, "I lost it."

SYDNEY J. HARRIS

All that the Devil asks is acquiescence... not struggle, not conflict. Acquiescence.

SUZANNE MASSIE

Appeasers believe that if you keep on throwing steaks to a tiger, the tiger will turn vegetarian.

HEYWOOD BROWN

vehicle for my fantasies. As a career, I know I'm not alone, not in this room, in loving what comics are and what they can do. It's that love that built this industry.

Jack Kirby was the biggest and brightest of a generation that brought so much love to the page that our entire industry is built upon it. It was an amazing generation. An epic generation. When you think about what they did... They clawed their way out of the Great Depression. Just this month, we were celebrating how they stormed the beaches of Normandy, beat Hitler, and quite literally saved the world. And along the way, they, in their generosity, gave us the comic book.

And now I'm lucky enough to be enough of a player in this field to be invited to speak to you all about the future of comics. And I will. But there's no way to talk about the future of comics without addressing its past. There's no way to properly understand where we are now and where we are going without looking at where we have been—and our history is so clouded by misconceptions and outright lies that I have to dispel a few of them just to help us all think straight.

Too often our villains have written our history. It's very important that we keep in mind that up until very recently everything that's been any damn good about comics has been done *in spite of* the rules of the game, not because of them. Men like Jack Kirby and Joe Shuster and Jerry Siegel and Wallace Wood and Steve Ditko—they brought such generous love to the page, and such joy to our lives, and so much money to our bank accounts, that it is easy to forget, way too easy to forget, that they were treated disgracefully.

Ours is a sad, sorry history. We have to keep that in mind while we're in this room enjoying this. It's a story of broken lives. Of suicides. Of brilliant talents treated like galley slaves. Talents denied the legal authorship of what they created with their own hands and minds. Ignored or treated as nuisances while their creations went on to make millions and millions of dollars.

An industry kept alive by love, in spite of all this.

The love they gave the page. It's a powerful thing.

We must honor our dead, and we must understand our history. We cannot move forward without looking very clearly at where we have been.

Misconceptions. Outright lies.



Misconceptions. Here's a whopper. One that has cost us dearly. The dreaded 1950s. Fredric Wertham. The outside world.

It seems a week doesn't go by where I don't sit down with my *Comics Buyer's Guide* and read about somebody, somewhere, fretting about the almighty outside world and how it is bound to notice our adventures are getting more adventurous. Nobody's come after us in any big way, but there's a little bit of the stink of censorship in the air, isn't there? There's all this noise about Janet Reno and Paul Simon and Beavis and Butt-head, isn't there? And we all know what happened *last time*, don't we? In the 'fifties, with Fredric Wertham and the Senate hearings. They shut us down, didn't they?

The outside world went and noticed us. The United States Senate held hearings and decided comic books caused juvenile delinquency, right? So we had to institute the Comics Code, right? Our backs were against the wall, right?

Wrong. Dead wrong. They didn't. The Senate vindicated us. Fredric Wertham failed.

This is how screwy our sense of our own history is. Most people in comics don't realize that the Senate vindicated us. After due consideration, the United States Senate decided comic books were *not* a cause of juvenile delinquency. We were vindicated.

Why, then, the Comics Code? Abject cowardice, maybe? Maybe partly, but not entirely.

We were vindicated. Why did the comics industry go and adopt a code of self-censorship far stricter than any in entertainment? Why would a healthy, vital industry selling comics by the truckload—hell, by the trainload—go and castrate itself? Why?

The answer may just make you all a little sick to your stomachs. You see, comics publishers in the 1950s had a problem. This problem had a name. Its name was William Gaines.

William M. Gaines was the parent of creatures, a brilliant publisher. His EC Comics outsold everybody else's comics by a long shot because they were better than anybody else's comics. By a long shot. The other publishers couldn't compete with him. Not fairly, anyway. So they used the free-floating fear of the time to shut him down.

If you read the Comics Code—and I have—you'll see that it was written with no purpose more noble than driving EC Comics out of business. That was its purpose, and it succeeded at it (*saving Americans in Four Colors*, a booklet published by the Comics Code).

I can back this up. I've got a copy of the Comics Code right here (*ripping the cover off the booklet*).

Excuse me, but I'm having some trouble opening it.

Here are a couple of examples of the Comics Code. General Standards, Part A, Paragraph 11: "The letters of the word 'crime' should never be greater appreciably in dimension than other words contained on a cover. The word 'crime'



The big
thieves hang
the little ones.

CZECH
PROVERB



The hottest places in hell are reserved for those who in a period of moral crisis maintain their neutrality.

DANTE

should never appear alone on a cover." See ya, Johnny Craig, [ripping pages from the booklet, throwing them away].

And here is General Standards, Part B, Paragraph A: "No comic magazine shall use the word 'horror' or 'terror' in its title."

A noble effort, folks.

That's why we had that damn stupid Comics Code for all these years. Not to protect children. Not to satisfy the United States Senate. Not to mollify Fredric Wertham. We were stuck with the Comics Code for all those dumb decades because a pack of lousy comics publishers in the '30s wanted to shut down Bill Gaines.

Misconceptions. That one continues to haunt us. Because of something that never happened, our industry cringes like a battered child every time there's a hint of a threat from the outside world. Every few years, the fear talk starts again. Every few years, the producers of stories about heroes who never give up start whimpering that we should fold up our tents and surrender to an

enemy who hasn't even shown up.

These days, the fashionable form of self-censorship is a rating system, so that's what people suggest. Cover advisories are

waved like a magic wand that will chase away the censors. Cover advisories. Little apologies printed on the corner of covers. Nobody will bother us if we apologize...if the storm troopers come after us, we'll be safe if we say we're sorry...

Come on! What kind of self-delusion is that! Did cover advisories help *Omaha the Cat Dancer* or *Yummy Fur* or any of the other comics seized in busts? No! It pointed them out, if anything. That's the first reason why cover advisories are a bad idea: they simply don't work. All they do is save the censors a little time.

Please understand: I believe you should know what you're ordering. Solicitation forms should tell you if a given comic might be trouble, so you can make your informed choice in your shop in your community as to how you want to handle the comic—or if you want to carry it at all. That's your decision. And it's my duty to put together my comic so that the format, the price point, and the cover honestly represent the contents.

It's a matter of choices, yours and mine, and whether or not we'll be left free to make our own.

I know I'm not out there on the front lines like you all are. Nobody's going to storm into my studio and take my brushes and pens and paper away. But we are in this together, and when you lose, I lose.

The highest
result of
education
is tolerance.

HELEN
KELLER

That's why I'm happy to report that I've been given at least some opportunity to help. Denis Kitchen broke the cowardly tradition of comics history by creating the Comic Book Legal Defense Fund, the first organization designed to fight censorship rather than surrender to it. Denis invited me to join its board of directors, and, not giving them a chance to come to their senses, I accepted the post.

We have to be brave, when and if the censors come. We have to stand up and stand together and give the bully a bloody nose. Apologies will only encourage the Frankie Markhams out there to come back for more.

There's another reason, more serious and more subtle, why cover advisories are the first step toward disaster in our future. We are not part of the electronic media. We don't play the same game with the censors that Hollywood does. We're part of a smaller, better industry: publishing.

Bookstores don't apologize for selling books for adults. Writers of prose don't submit their works to a pack of rating-system bureaucrats, or sit down with their notepad or computer when they get a good idea and think: "Are we talking about an 'R' here?" Book publishers use the First Amendment of the United States Constitution as a shield against censorship.

Cover advisories have a corrosive effect. I'll be bold enough to say that every time a publisher uses one—every time an artist allows a cover advisory on his work—he is, in a small way, cutting away at the tether that connects us to the book industry and its First Amendment protection. Every cover advisory is a signal to lazy parents and opportunistic politicians that we are theirs for the taking.

We're better than that. We've got too much love for that. We won't let misconceptions about our own history ruin our own future. We're better than that.

Misconceptions. Outright lies. Too often our history has been written by its villains.

Lies. Here's a string of them, and all about the same man: Neal Adams is crazy. Neal Adams just didn't like to work. Neal Adams was just being a troublemaker.

I can testify, as a firsthand witness: if there's ever an accurate history of comics written, Neal Adams will be recognized not just as a brilliant and influential artist, but as a visionary, as a pioneer. As one of the heroes of the field. And if our future is as bright as I believe it can be, Neal Adams will be appreciated as the man who helped us turn a crucial corner toward that future.

I was there. I can testify. Neal Adams recognized that the talent was treated disgracefully. As much as he loved the *doing* of comics—I've never seen anybody work harder! Anybody who saw him can testify to this. Even the flu didn't stop this guy—as much as he loved the *doing*. Neal was willing to sacrifice hours and days that amounted to years of a brilliant career, all to gain some measure of justice for Siegel and Shuster and others.

These days, cartoonists negotiate over how high a royalty is to be paid, not whether or not any will be paid at all. Neal came into a field where royalties were unheard of. A field where publishers routinely allowed original artwork to be stolen or shredded—did you

"Family" this
and "family"
that. If I had
a family I'd be
furious that
moral busybodies
are taking the
perfectly good
word *family*
and using
it as a code
for censorship
the same way
"states' rights"
was used to
disguise racism
in the
mid-sixties.

JOHN
WATERS

Liberty does not consist in mere declarations of the rights of man. It consists in the translations of those declarations into definite action.

WOODROW WILSON

The literature of a people must so ring from the sense of its nationality; and nationality is impossible without self-respect, and self-respect is impossible without liberty.

HARRIET BEECHER STOWE

know that at least one major publisher used to routinely show the original artwork?

Picture something from the Golden Age. Something by your favorite artist: Joe Kubert, whoever, Carmine Infantino. Back then the originals were bigger [growing to indicate page size]. Now imagine taking this Joe Kubert page and shoving it into a shredder and watching the little fingers come out the other end [miming action described]. I've just described to you the first work that one publisher gave to several comic-book writers I know.

Neal was one of the very few people who helped change all this—and along the way he taught a younger generation, my generation, that our work was worthy of respect. That our efforts deserved to be rewarded. That our families need not go hungry while our creations went on to make millions.

He taught me. He showed me that company loyalty at that time was an oxymoron that only a moron could believe. He had to be very patient. We don't really learn until it happens to us, do we? And there's always that little voice that says, "That was a long time ago, what they did to Siegel and Shuster and Kirby and Ditko..."

So it's no wonder that a lot of us were surprised when we learned that 17 years of loyal service and spectacular sales didn't buy Chris Claremont one whit of loyalty from Marvel Comics.

That was just one of many lessons learned by my generation, and now that we've learned them, it's astounding to find out how many allies Neal Adams had—and how well they disguised themselves. A few months ago, I read a release from Defiant Comics and found out that Jim Shooter has spent his whole career fighting for creators' rights. You could have knocked me over with a feather.

I knew Shooter was talented and accomplished. I knew he had something to do with the Legion of Super-Heroes. I had no idea he was Duo Damsel.

Misconceptions. Lies.

Here's one lie you can almost forgive, given the current condition of its source. Marvel Comics is trying to sell you all on the notion that the characters are the only important component in comics. As if nobody ever had to create those characters. As if the audience is so brain-dead it can't tell a good job from a bad one. You can almost forgive them this, since their characters aren't leaving them in droves like the talent is.

For me, it's a bit of a relief to finally see Marvel's old work-made-for-hire, talent-don't-matter mentality put to the test. We've all seen the results. They aren't even rearranging the deck chairs.

And the way Marvel's treating you all—the things I've been hearing about...I'd half expect that if I snuck past Terry Stewart's secretary and through his office and into the board room and saw who the real boss is at Marvel, I might just find out what happened to Frankie Markham after all.

Marvel Comics has been caught flat-footed and dumbstruck by a sea change in our industry. They are paying the price for separating the talent from the characters. As if one is worth a damn without the other. They're showing why creator ownership is so impor-

tant, not just to me—that's obvious—but to you as well.

Work-made-for-hire isn't just bad for artists. It's bad for business. Your business.

When I'm out on the road at conventions or store signings, there's one question I get asked just about every time. Comics fans are generally a very polite bunch, but some anger usually shows when they ask this question:

"How come people don't stay on books?"

"We loved your Batman. Why didn't you stay? We loved your Daredevil. Why didn't you stay?"

There's a whole pile of answers to that one. You run out of steam. You have a fight with your collaborator. Blah, blah, blah. Things happen. But the main reason a lot of us leave best-selling titles for work-made-for-hire publishers is simple: you get sick of feeling like a schmuck.

Don't get me wrong, here. Like everybody else of my generation, I knew the score coming in. I knew that I was playing with the company's toys. I knew that any characters I created would be turned into cannon fodder for other people. I knew that when I was promised that nobody else would be allowed to write Elektra, I knew that promise would be kept right up until the moment it was convenient for them to break it, which is exactly what they did. I knew all my efforts wouldn't amount to a hill of beans if some editor wanted my job, or had a buddy who did, and fired me. No matter how well the book was selling.

Don't take my word for that one. Ask Chris Claremont. Ask Louise Simonson. Ask Jo Duffy.

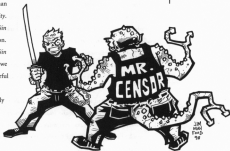
Yeah, I knew all that. And I knew that I was strip-mining the past instead of building the future. That was the game, and I knew it, and I played it, and I had a ball. But after a while I did start feeling like a schmuck. So I took the risk and broke away and signed on with a younger publisher, Dark Horse, one of many new publishers who have come along to offer better terms. Publishers not trapped in the old grab-it-all, keep-it-all ways.

And I'm happier now than I've ever been. I own *Sin City*. Nothing can be done with *Sin City* without my permission. I can't keep my hands off *Sin City*. I love *Sin City*. The love we give the page. It's a powerful thing.

And now I can finally give that angry fan an answer he might like. An answer I could never have given him before.

It is hard to fight an enemy who has outposts in your head.

SALLY KEMPTON





The real freedom of any individual can always be measured by the amount of responsibility which he must assume for his own welfare and security.

ROBERT
WELCH

If it's *Sin City*, I write it. If it's *Sin City*, I draw it. That's a promise. No exceptions. No fill-in issues. That's a promise. It's a promise I can make only because I own *Sin City*.

The creator bound to his creation. The creator in charge of his creation. It's better for me, and it's better for you.

Things are on their way to getting a whole lot better for both of us. But, still, the old, fearful mind-set

persists. The old self-contempt. And never has it been more shamelessly displayed than in the resentment and hatred that's been aimed at Image Comics.

For decades, rotten business practices caused a steady, slow brain drain, driving talent away one by one. One by one. Each individual artist or writer, more or less replaceable. There were always new kids to come along and feed the machine.

Then along came ringmaster Todd McFarlane and his amazing friends. Instant millionaires, I'm told. Their popularity at a fever pitch. They had it made. They had money. They had fame. They had no reason to leave—except that they were smart enough to realize that the best you can get under work-made-for-hire is the status of a well-paid servant.

So they left. Brilliantly, they left off at once.

Consider this: Todd McFarlane and his pals turned their back on guaranteed wealth. Guaranteed fame. They risked all of that on something that had never been tried before—an imprint that represented a group of artists rather than a bankroll.

And it was a gamble. It never seems that way when a gamble works out, but I am sure Todd and Jim Lee and Rob Liefeld each had long nights when they wondered if they'd made the biggest mistake of their lives.

They gambled and won. They shattered the work-made-for-hire mentality, showing how unnecessary it is. Even more surprisingly, they broke Marvel's stranglehold on the marketplace. The kids were with them.

And people hate them for it.

Consider this: the best-selling comic book in the country is creator-owned. And artists aren't celebrating. Too many of us are acting like galley slaves complaining that the boat is leaking.

Consider this: I wrote an issue of *Spawn* and was called a sellout—but nobody called me a sellout when I did *Dark Knight* and made more money from *Batman* than Bill Finger, Jerry Robinson, and Dick Sprang ever made combined.

Consider this: because of Image Comics, artists enjoy new opportunities and are paid better, even at Marvel Comics.

And nobody's said "thank you."

Let me be the first, then. Gentlemen. Thank you.

And, speaking as one of us who was out in the trenches a few years earlier, you're welcome, too.

And now Image has inspired Legend and Bravura and, I'm sure, other talent-based imprints to come. We are headed for better times and better comics.

There are new self-publishers and new publishers ready to offer fair and honorable terms. New homes for new creations—in a field that has been starving for something new and fresh. The future of comics.

I know this has been a scary time for many of you, maybe all of you. The Marvel Age of superhero universes, the Jack Kirby Age of Comics, is coming to an end. It's gone supernova and burned itself out and begun its slow, steady collapse into a black hole.

We couldn't feed off the genius of Jack Kirby forever. The King is dead, and he has no successor. We will never see his like again. No single artist will replace him. No art form can expect to be gifted with more than one talent as brilliant as his.

The rest of us, we will build upon what he gave us. We'll bring our best efforts, our own quirky, mischievous, and rude efforts. We'll screw up, we'll get lucky, we'll do right, we'll do wrong. We'll make comics that are diverse and wild. We'll take chances.

We'll need you to take chances, too. When you hear about next week's new work-made-for-hire superhero universe, please don't stifle that yawn. Take a chance on the new comics. Look for the ones where the creator has every reason to stay and can't be fired because he owns it, because it is his, and it is him.

It's a scary time because change is always scary. But all the pieces are in place for a new, proud era, a new age of comics. And nothing's standing in our way, nothing too awfully big. Nothing except some old, bad habits and our own fears. We won't let them stop us. We'll drop them off on some back road, like I did with Frankie Markham. We won't wonder what happened to them. Not very often, we won't.

We won't let them stop us.



If you want
a Big Brother,
you get all that
comes with it.

ERIC FROMM

ESCAPE FROM FREUD

Many people
never grow up.
They stay all
their lives with
a passionate need
for external
authority and
guidance,
pretending not
to trust their
own judgment.

ALAN WATTS

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