Robert Hawley (LDRC Chair):

Good evening and welcome... Thank you to Media Professional/Insurance and Scottsdale Insurance Company who sponsored the cocktail party that immediately preceded this dinner. As always, it was great, it was wonderful opportunity for us to say hello to each other. Tonight we will be commemorating the 25th anniversary of the Pentagon Papers decision and in a few moments we will be hearing from Mr. Kovner and David Halberstam who will be speaking to us about the decision, about the events that led up to it and to place it within the context of the time that surrounded the decision. Before we go forward with the rest of the evening, however, I'd like to say a few personal words. Those of you who were at LDRC's annual meeting earlier this afternoon know that the Executive Committee has begun a rotation to new membership. The first two directors to step down are Blair Soyster of Rogers & Wells and Chad Milton of Media/Professional. I wanted to take this opportunity to thank them for their service and commitment to LDRC. I have worked with Chad and Blair now for several years. I have met with them every month either by telephone or in person and during this past year in particular, which is my first year as Chair, I have benefited greatly from their advice as counsel. I am sorry to see them go and I will miss them. At the same time, I wish to extend a very warm welcome to Ken Vittor of McGraw-Hill and Susanna Lowy of CBS who were elected to the Executive Committee this
afternoon. Ken and Susanna bring a wealth of experience to LDRC and I'm looking forward to working with them. And now I'd like to present and introduce Sandy Baron, LDRC's Executive Director.

Sandra Baron (LDRC Executive Director):

I want to thank you all for coming to the Annual Dinner, for joining us in honoring Katharine Graham, LDRC's spokesperson and Arthur Ochs Sulzberger in this, the 25th anniversary year of the Pentagon Papers. But I also want to thank you for all of your support of LDRC throughout the year, for your financial support to be sure, but for all of the energy and ideas that all of you have brought to LDRC services projects. This is truly a cooperative membership organization. LDRC is, I think, is the sum of our expertise and our know how. It is a value-added of bringing together more than any one of us could know individually. For all of that, I thank you. I want to thank the LDRC Annual Dinner/William J. Brennan, Jr. Award committee, chaired by Diana Daniels and Solomon Watson, and a most special thanks to Mrs. Graham and Mr. Sulzberger for allowing us the privilege by honoring them here tonight. Now, enjoy your dinner. Talk to you later.

Victor Kovner:

I think we're ready to begin our program. My name is Victor Kovner and as one of the founding members of the Libel Defense Resource Center, I have the honor of embarking upon this most memorable occasion; the presentation of the William J. Brennan Defense of Freedom Award to both Katharine Graham and Arthur Ochs Sulzberger to honor the 25th anniversary of the publication of the Pentagon

Tonight we pay tribute to the courage of those who were prepared to go forward with the publication of material of vital public concern, despite the threat of legal proceedings by the government, the stated concerns about national security, and the institutional threats to the newspapers. Each of our honorees acted in the defense of freedom. Not only freedom of the press, but truly all of our freedoms.

I should note that tonight we also have with us a number of others who played vital roles in that litigation. Jim Goodale, then General Counsel of The New York Times, many attorneys from the remarkable firm of Cahill, Gordon and Reindel, and I would only add, that as many of you know, Floyd Abrams, a senior partner of Cahill is defending a libel trial in Florida this week and deeply regrets his inability to join in celebrating our honorees tonight. And also a great many from the distinguished firm of Rogers & Wells which successfully represented The Washington Post in that litigation. And I understand there are a great many journalists here who also worked on making the publication of the Pentagon Papers possible. So I'd like to begin by asking all those who participated in that effort if they would please stand and if the group would please congratulate them. [Applause]

At LDRC annual dinners we honor the winning of First Amendment freedoms. We do so because, unfortunately, many of those freedoms need to be re-won over and over again. Indeed, within the past year, a federal court in Cincinnati actually enjoined Business Week from publishing information its journalists obtained lawfully. The
information, like the Pentagon Papers, was contained in documents which, like the Pentagon Papers, was asserted to be confidential as a matter of law. And while it took fifteen days for the newspapers to fully publish the Pentagon Papers, it took twenty days to win the right to publish those materials last fall. But it was because of the Pentagon Papers' landmark decision that the prior restraint against Business Week was ultimately struck down. As the sign on the courthouse reads "eternal vigilance is the price of liberty," and tonight, as we celebrate the establishment of our most fundamental First Amendment freedoms, we should remember that the critical seminal victories of this century -- New York Times v. Sullivan and the Pentagon Papers -- derived from the courage and sacrifice of those in the Civil Rights movement, and in the anti-war movement, of the 1960s. Thus, it is fitting that our keynote speaker tonight, throughout his career as a journalist, author, and historian, has consistently reflected special sensitivity to those who struggled in those two movements. And in honoring our nation's leading publishers who assumed enormous risks in the course of fulfilling the highest traditions of their profession, we have the opportunity to hear from one whose work has taken him to the most hazardous places in our nation and in the world. Though his work has often been honored, including by the Pulitzer Prize, I believe his greatest honor is the degree to which he has shaped the lives and values of so many people, including those of us in this room that will leave us forever in his debt. Ladies and gentlemen, David Halberstam.
Victor, thank you very much for that introduction. I'll get that written down and put it in my bio later.

The people at the LDRC called and asked me if I would speak at a dinner honoring Punch Sulzberger and Kay Graham and I accepted immediately. There was some brief haggling over the fee. Finally we neared a figure in the mid four figures. Five thousand dollars seemed like a lot of money to me, but the opportunity for a reporter to speak publicly about two publishers, one of whom I actually worked for, was irresistible, and I told the LDRC people that I thought my wife and I could come up with the money.

There is of course no honorarium for a night as special as this -- an award which bears the name of one of our most beloved jurists given to two great publishers and done for an organization so much of whose work is pro bono.

I cherish Bill Brennan. He is freedom's man, quite possibly the most influential American citizen of the second half of the Twentieth Century. He is the common man as uncommon man. His gift to his fellow citizens is his trust in them and in their inherent wisdom and decency, and from that flows his own greatly expanded concept of liberty. Out of that it seems to me comes the far more dynamic and vital society which we live in today.

Those freedoms are self-evident in our profession -- my debt to him as a reporter and writer is immense because I simply could not have done my signature books without him and the laws he helped expand. I think the ideas he propounded are critical today in all aspects of the arts, in books, movies, art. I suspect as well, though there is no way of proving this, that the expanded concept of personal
freedom that he helped create extends to every aspect of our society and that one of the reasons that our economy is so much more dynamic today than it was fifty years ago is that heightened sense of personal freedom which Bill Brennan and others gave us, a quantum jump in the entrepreneurial spirit among young people in the private sector, as they went off and did their own start up companies instead of joining big companies. After all, freedom has a way of being contagious.

In the area of the law, Bill Brennan’s gifts to us are self-evident. As federal judge John Gibbons has written, he was "more humane than Holmes, broader in outlook than Brandeis, more practical and flexible than Black, a finer scholar than Warren, more eloquent than Hughes, more painstaking than any of them. He appears, in other words," Judge Gibbons said, "to be the outstanding justice in our century." Not bad for a man whose appointment was mocked by all the great legal experts of his time, and who himself said of his joining the Supreme Court that he would be the mule at the Kentucky Derby. Some mule, some derby.

So Punch and Katharine, an award named after Bill Brennan is no small thing.

These freedoms which we so readily enjoy today and which we celebrate tonight, were not always ours. Like Bob Dole, I remember another and not very distant America from those years right after the war, but I do not remember it nearly as fondly as he does. Lest we become too nostalgic for a simpler time which never was, I remember it was a time when the rights of blacks were suppressed by the law itself, when there were severe covert and overt limitations against women and gays in all aspects of our daily life, when Jews were effectively discriminated against in law firms, banks and hospitals,
and when all aspects of debate were effectively limited. The laws of that era greatly favored the powerful over the weak and the state over the individual. This was particularly true in our profession where libel laws were far more draconian than they are today. Just the other day I interviewed Claude Sitton for a book I am writing about some Civil Rights leaders in the Sixties. Claude Sitton, for those of you too young to remember, was a figure of heroic proportion who covered the Civil Rights Movement all through the Sixties for The Times and who brought great honor to his paper and his profession for his personal integrity and courage. When we talked recently he recalled for me that when the buses of the Freedom Riders were burned in Anniston Alabama he was unable to go and cover it because there was an injunction against him and The Times in Alabama at the time: a local police officer in Birmingham was harassing a great newspaper and The Times' lawyers would not let him go -- would not even let him fly over Alabama. "You better tell those people at Lord Day and Lord that I'm going in anyway," he had angrily told his editors. We know now -- as we really knew then -- that the police official who was behind the injunction against Claude was the head of a force which was overrun with Klu Klux Klan members and wanted nothing but to stop a free press from reporting on the cruel suppression of black rights in his city.

So it was not very long ago that the freedoms which we enjoy today did not yet exist. The event we celebrate tonight, the publication by two great newspapers of the secret history of a disastrous war, a war whose architects had systematically lied to the American people about what they were doing -- marked, I suspect, the highwater mark in the liberation of the American press, in giving newspapers the right to publish -- and in the newspapers themselves in
being willing to use those rights despite threats from the President and the Attorney General. It marks the historic right of a great newspaper to take on the state itself on an issue of war and peace and to expose the state's frailties and deceptions to ordinary citizens, despite the state's discomfort. The two publishers we honor tonight, knew that they owed nothing less to the people of the United States, nothing less to their staffs. They gave us and those who follow them a shining example of the uses of these great freedoms.

That is why we take such pleasure tonight in recognizing two publishers from two great families. A few years ago my colleague Ward Just wrote a wonderful novel about his own family's newspaper business in the mid-West. A Family Trust, he called it. What a fine word he used -- trust. It is the elemental quality demanded in any relationship. For that is what the Sulzbergers and the Grahams have given us over the years, publications we can trust, editors we can trust, reporters we can trust, finally, values we can trust. We know the obligations of the past weigh as heavily on them as the financial responsibilities of the present and we know that whatever the venue, Bosnia, Rwanda, and Japan, there will be a Times and a Post reporter whom we can trust.

Of the two honorees first -- Punch Sulzberger.

He and I are linked in one small footnote to history. In the fall of 1963 he was a brand new publisher, just a few weeks in the job, having replaced Orvil Dryfoos, his brother-in-law, who had died suddenly of a heart attack. And Punch was going to meet the President of the United States, John Kennedy. It was his first important meeting as publisher, and he was understandably quite nervous. On the way to the White House that morning he asked Scotty Reston who was
then the Bureau Chief what he should say. Scotty, an old hand at this, told him not to worry, that Kennedy would ask about Punch's kids and then Punch would ask about Kennedy's kids. It did not exactly go that way. The first words out of the President's mouth were, "What do you think of your young man in Saigon?" "We like him fine," Punch answered. "You don't think he's too close to the story?" the President continued. "No, not at all," Punch answered (heaven only knows what he really thought). "You weren't thinking of moving him to Paris or London?" the President asked. "No, not at all," Punch said, and with that -- his surprising baptism of fire -- he had almost unconsciously held the line in what was to be a historic collision between the executive branch and the free press.

I will divulge something here I've never spoken about before -- and that was that it was astonishingly easy to be a reporter in Saigon in those days. It was hard not to get the story right. The war didn't work. The evidence of that was all around us. The hard part was not being a reporter -- the hard part was being the publisher of people like me and Charlie Mohr and Neil Sheehan and Gene Roberts and Gloria Emerson and Homer Bigart.

There is a footnote to this story. Some 30 years later The New Yorker had invited back the members of the small group of reporters from Saigon in the early days who had reported pessimistically from the start. We were to have our photos taken by Avedon and we met to have dinner the night before at a restaurant called Elio's: there were five of us at the table -- all five of us had gone on to win the Pulitzer Prize for our reporting in Vietnam, Mal Browne, Neil Sheehan, Peter Arnett, Horst Faust, the great AP photographer and myself. And we looked across and saw a group of people eating dinner, including
the publisher of The Times, Arthur Ochs Sulzberger, and so, because we could have not done it without him, we did what reporters have always wanted to do for publishers, we sent him and his table a bottle of Dom Perignon.

The next day I sent him a note saying how genuine our feelings were, and that when he had defended me he had defended all of us in our right to report honestly. And I got back a typical Punch Sulzberger note, ever modest, saying, "I was very lucky in the choice of people I worked with."

I will use the past tense now because Punch is no longer publisher: he was as publisher modest in all things. His great strength was his innate decency and tolerance of others, his enduring common sense, and his constant inner self confidence. He allowed all sorts of people to go around thinking that they were smarter than he was (and one or two might actually have been smarter than he was) and he never let it bother him. He never let his ego get in the way of his job. His instincts were unerringly true. Knowing Punch as publisher, no one would ever again underestimate the importance of pure goodness and decency as attributes in a chief executive. His tour of duty was becoming to the great paper he published and the great family which has owned it for a century; he ran the paper in a contentious, volatile, and iconoclastic time; if truth be known he is the most distinguished publisher The Times has ever had.

Katharine Graham became the publisher of The Post at a time of terrible tragedy, and was surprised to find out that the people she respected did not think her family's paper was very good. She quickly set out to find out what was wrong, and she soon made a brilliant choice as editor: within ten years she had a paper which rivaled The
Times as a national newspaper. She was as publisher, direct, fearless, and open-minded. She picked her executives wisely and trusted in them once she had made her decisions. Punch carried on a great tradition, Katharine created one. Those of us who are in this profession and count her as a friend remain somewhat in awe of her -- she is a great reporter in the personal sense, and when we are with her she is always asking questions, always informing herself, always anxious to learn more. Katharine, if you had not been a publisher, you would have been a marvelous reporter. I told her this summer one day when we had lunch that she was a real gamer. She, clearly not a devotee of her own sports pages, asked me what a gamer was. A gamer, I explained, was a special kind of player: the bigger the game, the better the gamer performs; in addition a gamer is better in the late innings or the fourth quarter when the game is on the line rather than the early part of the game. A gamer is someone you want on your side, and I'm glad that both of you have been on the side of working reporters in these critical years.

Arthur Ochs Sulzberger:

I tell you, I kind of feel like I died and came back and heard my own eulogy. Thank you very much for those wonderfully inspiring words.

On behalf of my colleagues at The New York Times, and, in particular, those who worked on the Pentagon Papers, many of whom are here tonight, my many thanks. For all of us at The New York Times -- journalists, production workers, and particularly its lawyers -- the publication of those Papers remain a defining event.
Harking back twenty-five years which is no mean feat at my age, I can still remember the excitement, anxiety and confusion of those remarkable days. As I need not remind this gathering, a large measure of that anxiety came from the confused state of the law. While this is nothing new, it was unusual to have the spotlight turned so intensely inward on those who spend their time shining it on others.

The reasoning which led to our decision to publish was stated in The New York Times editorial of June 16, 1971, and I quote, "As a newspaper that takes seriously its obligation and its responsibilities to the public, we believe that once this material fell into our hands, it was not only in the interest of the American people to publish it, but even more importantly it would have been an abrogation of our responsibility and a renunciation of our obligations under the First Amendment not to have published it."

In a moment, Kay Graham will tell you what happened at The Washington Post. So let me just conclude by thanking my old friend Jim Goodale for guiding me and The Times through the hurricane and tell you what we learned. We now write editorials with shorter sentences.

Katharine Graham:

Thank you so much. The microphone is appropriately encased in a wine basket. Thank you so very much for this great honor you've given to Punch Sulzberger and to me tonight.

It's particularly meaningful, of course, as David so eloquently said, because of the person for whom it's named. Justice Brennan is a towering figure. One of the pre-eminent Americans of the Twentieth Century. On this occasion we remember especially, he was and is a
staunch advocate of freedom of the press. I'm so sorry he couldn't be here tonight.

It doesn't seem possible that the Pentagon Papers took place twenty-five years ago. At that time, The Washington Post was on the brink of becoming the newspaper we know today. After many years of economic struggle, we'd reached the point where we could invest much more heavily in editorial quality. Ben Bradlee had become executive editor three years earlier, infusing the Post with new vitality and spirit. When The Times first obtained and began publishing the Pentagon Papers, it drove Ben crazy. We finally procured a big hunk of them, of the papers, the day The Times was enjoined. We printed our first story by Chal Roberts, who read them and wrote the article in less than twelve hours with the idea of maintaining momentum, to take up where The Times left off after they had been enjoined.

It was truly a defining moment for The Post, for journalism and for the country itself. But only now I believe can we fully appreciate its fundamental impact.

For The Post, the Pentagon Papers fortified us to stand up to the government. By doing so, it prepared us to undergo the much more strenuous ordeal of Watergate. It is not an exaggeration to say that if the Pentagon Papers had not occurred, Watergate might not have occurred, either.

And not only from The Post perspective, the Pentagon Papers may have led the Nixon administration to take some of the actions involving the plumbers that made up the Watergate scandal.

Irwin Griswold, the Solicitor General who argued the Pentagon Papers case before the Supreme Court, thought the Justice Department should not even proceed because, as he later told me, the government
didn't have a leg to stand on. Unfortunately, no one else in the government shared his view. He had to go ahead, but decided the only realistic case he could make would be to waive the objection to publishing the vast bulk of the material. Instead, he would seek an injunction barring publication of eleven items out of forty-seven volumes he had determined were sensitive.

Griswold thought he ought to inform the attorney general, John Mitchell, of his plan. When Griswold reached him, Mitchell responded "Well, I don't see how I can approve that." There was a five second pause during which Griswold said his stomach fell through the concrete floor of the sub-basement. Then Mitchell continued. "But you're in charge of the case and if you think that's the way it ought to be handled, I'm with you."

When the Pentagon Papers decision was handed down by the Supreme Court, we all viewed it as a mixed victory at best. While prior restraint had been avoided, or at least after a time had been avoided, it was suggested the government could prosecute us after the fact. There was no ringing language upholding First Amendment freedoms.

But the passage of twenty-five years has brought a different picture into focus. From today's vantage point it's clear. The impact in the case was more profound, less ambiguous and much more favorable than we had initially feared.

The legal and political effect of the Pentagon Papers case, as Floyd Abrams says, has been to take the weapon of court orders against the press out of the hands and minds of presidents. Today, prior restraint is off the table. The government doesn't start down the road of "can't we stop the press by going to court no matter how angry
they might be or however tempted to hide their mistakes under the blanket of court orders?"

In short, although the Court's decision was not unanimous it was unambiguous. The government had failed to meet the heavy burden of proving the necessity of suppressing the Pentagon Papers. The judicial and political lesson of this decision has come to be understood as permitting no prior restraint against the publication of news. This was a great victory not only for the press, but also, and most importantly, for the people in this country. I greatly appreciate this wonderful opportunity to reflect again with Punch on a momentous event in our history. Thank you very much.