LIBEL DEFENSE RESOURCE CENTER

TWENTIETH ANNUAL DINNER

20 YEARS: LAW, LAWSUITS, LAWYERS
THEIR LEGACY FOR NEWS

Monday, November 13, 2000

A Conversation With
Alex MacLeod, Managing Editor, The Seattle Times
Brian Ross, Chief Investigative Correspondent, ABCNEWS
David Schneiderman, CEO, Village Voice Media
P. Cameron DeVore, Esq.

and

Victor Kovner, Esq.

Led By
Floyd Abrams, Esq.
MS. BARON: Good evening and welcome to our 20th anniversary dinner. I’m Sandy Baron. I’m the executive director of the Libel Defense Resource Center. And I want to thank all of you for coming to our 20th anniversary LDRC annual dinner. We’re pleased and we’re proud to be celebrating this anniversary, and celebrating it with all of you. LDRC, always a membership organization, could not exist without your active participation and support.

Ken Vittor will talk more about this event when he introduces the program in a minute. but I didn’t want to sit down without saying thank you to all of you for giving this organization the support that you do.

I also want to thank our friends at Media Professional Instruction for the cocktail reception that precedes this dinner. It is a great and beloved institution, that reception, and one that I know we all look forward to.

And now I’ll introduce you to the chairman of the LDRC board of directors, Ken Vittor.

MR. VITTOR: Good evening. On behalf of the LDRC Board I want to thank you for your generous, and for many of you, long-standing support of the LDRC. It is deeply appreciated. As you know, tonight we celebrate the 20th anniversary of the LDRC. Following its creation in 1980 the LDRC quickly emerged as an indispensable information clearing-house and legal support network for First Amendment lawyers and their publishing and broadcasting clients.

In an era when businesses and individuals are desperately trying to establish communities of interest, the LDRC has quietly developed a remarkably effective and cohesive First Amendment community. I am asked frequently by young lawyers how to get a job as a First Amendment lawyer. I tell them it is quite simple. Just steal Sandy Baron’s rolodex at the LDRC and make some calls.

The LDRC provides publishers and broadcasters with a critical and powerful collective voice concerning cutting-edge First Amendment issues. Through its widely publicized damage surveys the LDRC helps shape the ongoing debate about the chilling impact of libel, privacy and related litigations on journalists. Through the LDRC’s invaluable collection of briefs, sample jury instructions and expert witness lists, as well as its comprehensive 50-State Surveys and monthly LibelLetters, the LDRC provides daily support to First Amendment litigators defending our diverse membership around the nation.

Through its scholarly Bulletins, such as the current work in progress on increasingly
troublesome right of publicity and misappropriation claims, the LDRC provides in-depth analyses of emerging legal trends, not only to assist in the defense against legal claims, but also to help in the fight against legislative initiatives seeking to infringe First Amendment rights.

Through its unique ability to identify important legal trends and to mobilize media members and their counsel, the LDRC has served over the years as a vital catalyst for collective responses to important First Amendment issues. Through its popular biennial conferences the LDRC teaches First Amendment litigators the latest developments and winning trial tactics in libel, privacy and related fields.

And as evidenced by the recent London conference, the LDRC has even extended its influence to the global arena in an attempt to begin to sow the seeds for much needed legal change in English libel laws.

As the list in your dinner program indicates, there are many individuals and organizations to acknowledge for having the vision and energy to establish the LDRC. There are also many individuals and organizations not on the list whose contributions following LDRC’s formation allowed it to develop and flourish well beyond its modest beginnings.

Tonight we would like to give special recognition to two individuals whose contributions were indispensable to the founding and growth of the LDRC.

Harry Johnston. Harry Johnston was the visionary who saw the need for the Media Defense Bar and its clients to come together to coordinate their formidable resources. Harry also had the organizational skills to create the LDRC’s unique coalition of media members and First Amendment counsel.

And Henry Kaufman. Henry Kaufman served as the LDRC’s general counsel through its formative years and had the energy, the drive and the deep knowledge of First Amendment issues to make the initial vision a lasting and remarkably successful reality.

On behalf of the LDRC board and the entire membership I would like to thank Harry Johnston and Henry Kaufman for their invaluable contributions to the LDRC. Harry? Henry?

To mark the 20th anniversary of the LDRC we thought it would be instructive to reflect upon the fascinating intersection of law and journalism. We have decided to focus upon the complex relationship between First Amendment lawyers and their journalist clients against the backdrop of the significant changes in the legal and journalistic landscape we have seen over the life of the
LDRC. And yes, given the turbulent and ever changing developments in Florida--is anybody talking about anything else tonight--we have also asked our panel to share their thoughts with us on the unprecedented Presidential election.

To assist us, we are privileged to have a distinguished panel of First Amendment lawyers and their world-class journalist clients. Each of our panelist’s illustrious and highly productive careers extend over the entire life of the LDRC. The lawyers on our panel, our moderator, Floyd Abrams, Cam DeVore and Victor Kovner are well-known to all of you. In the interests of time I will not review their remarkable careers other than to acknowledge their substantial and lasting contributions to First Amendment jurisprudence and practice both as constitutional litigators and teachers to us all.

We have asked our lawyer panelists to introduce their journalist clients, Alex McCloud, Brian Ross, and David Schneiderman. And so I’m therefore very pleased to hand over the proceedings to our moderator, Floyd Abrams.

MR. ABRAMS: I want to start again just with a personal note of appreciation to Harry Johnston and Henry Kaufman for the enormous contributions they have made not only to this organization, but to the development and protection of First Amendment law in this country. It has really, this organization has really played an extraordinary role in the development of that law through the years. And the work that Harry and Henry did in its founding is of enormous importance in the protection of the First Amendment rights of everybody. So thank you both.

It’s my pleasure now to introduce Cam DeVore and Victor Kovner who will introduce their clients, and I will say a few words about Brian Ross. As Sandy has said, the biographies of all the people who are here tonight are in the program. I will simply say that Cam and Victor both have been leaders in the development of First Amendment law for the press, and we like to think, for the public, for an extended period of time. Have been leaders in the development of that law in the commercial speech area, in the privacy area and the libel area, in all the manifest amount of areas that all of us practice in on behalf of our clients.

Cam has headed the Davis Wright Seattle office’s Communications, Media and Information Technology Department, and has been a senior partner at that firm for a number of years. Victor has been an extraordinary player in civic life in New York and legal life in New York in his own firm,
and now with the Davis Wright firm as a senior partner. And I’m delighted to have the opportunity to introduce them and give them a chance to say a word or two about the people that have accompanied them. Cam?

MR. DEVORE: Thanks a lot, Floyd. I’d like to introduce Alex McCloud, my very good friend and longtime client. I would start by saying that we’re both Scots. The McClouds and the Camerons were the last holdouts, trying to defend the right of Bonnie Prince Charlie. They were soundly defeated. I’m not sure our ancestors painted themselves blue, Alex, like Mel Gibson in “Braveheart,” but I’d put nothing past them. I guess that’s what I’d say.

Alex is, speaking of family, is the son of a former managing editor of the Seattle Times, Henry McCloud, a distinguished managing editor with a great career among American managing editors. Alex’s career at the Times covers the time, very neatly, I think, of the history of LDRC. I think the only other family non-owner managing editor, non or sort of genetic link we could think of is Tom Winship of the Boston Globe. Is that right? Somebody else who’s the son of a managing editor?

Alex came to the Times as a night police reporter. And in 1980 he was put in charge of the legal relationship between the newspaper and its lawyers. In 1986 he became managing editor. He has presided on his watch over a hugely improved newspaper. It is the newspaper of record in the Pacific Northwest – the expanding Pacific Northwest. He is usually, and they are usually on the enemy’s list of such major local corporations as the Boeing Company and Microsoft. He is known as afflicting the comfortable. And the newspaper specializes, I think, in that. There have been five Pulitzers on his watch as managing editor. An unmatched thing in the history of the newspaper.

He has also revolutionized the role of lawyers. Sometimes I think to the lawyers’ not total comfort. But he has done that. There are no in-house counsel, just our law firm, which also causes him heartburn from time to time which I’m sure he’ll tell you. There is almost no lawyer pre-publication review. And the lawyer budget is very, very heavily used for enforcing access under our access statutes and in access to the courts. And Alex has – the Times is always ready to take this to the highest necessary court to achieve access for the newspaper.

Alex and I have one other thing in common, and that is we both practice in a state without punitive damages. Our mutual friend, Bob Sack has always told us both that means we’re both
insignificant. But with that, I’m delighted that Alex is here with us to share his thoughts on this history.

**MR. ABRAMS:** Victor?

**MR. CONVER:** Well, it’s a great pleasure to introduce, and I know it will be a pleasure for all of you to meet and get to know, my friend of more than twenty years, my colleague and my client throughout this period, David Schneiderman. He really brings a very broad background, unusual perspective for all of us. In the seventies, for much of the seventies, he was deputy editor of the Op-Ed page of The New York Times. During most of the eighties he was the editor-in-chief of the Village Voice. During most of the nineties he was the publisher of the Village Voice.

And now in the new millennium he is the CEO and part owner, substantial owner of Village Voice Media which publishes not only the Village Voice, but in California, the L.A. Weekly and the O.C. Weekly; in Washington, the Seattle Weekly; in Ohio, the Cleveland Free Times; in Tennessee, the Nashville Scene. So he has an unusually broad familiarity with the problems that journalists and publishers face.

He successfully moved, transitioned the Voice from paid to controlled circulation, a challenging and remarkably successful task. He’s had many years with not having counsel at the Voice, where our firm was principal counsel on the outside. But he’s also moved, also very successfully as you’ll hear, to having fine inside general counsel at the Voice.

During his tenure they’ve been at the cutting edge of publishing. They’ve certainly pushed the envelope, but in a responsible fashion. And they’ve paid the price in terms of litigated challenges, more so in earlier years. But the numerous cases in New York, those of you familiar with New York law will see the dozens of Village Voice cases which make a major contribution to our jurisprudence here. And I’m pleased to say the paper has been vindicated in each and every one.

He has contributed much work to many of you in this room because his alumni, David’s alumni association, go on to make trouble elsewhere so that now Jack Newfield writes for the New York Post, Stanley Crouch for the Daily News, and Joe Conason for the New York Observer, and Robert Friedman at The New Yorker, and of course, I don’t want to omit the scourge for many of you in this room, Jonathan Tasini, originally at the Village Voice.
But it is David who was farsighted enough to develop the concept of buf. If any of you don’t know what a buf is, but it is a bargaining unit freelancer. And the Voice was really way ahead of the wave in terms of acquiring all the necessary rights from freelancers, and ahead of the wave in a number of important labor issues. The only, the first, a decade before other publishers to provide, for example, health insurance to spousal equivalents. Unheard of at the time.

He’s proud, and we’re all proud that they have won, for an alternative newspaper, three Pulitzers during his tenure. Theresa Carpenter, Jules Feiffer and Mark Schoofs. And he’s had the remarkable achievement of being able to work successfully with two very well-known owners, Rupert Murdoch and Leonard Stern.

**MR. ABRAMS:** Thank you. Brian Ross is an investigative journalist. Be careful. Brian has all of the best attributes of investigative journalists. Tough, probing, skeptical, absolutely and totally apolitical, entirely focused on getting the story and getting the story right, regardless of who may stand in the way or whose feathers may be ruffled by the process of news gathering.

Among other things, Brian’s a great client. He – how shall I put this? He has occasionally been sued. Only once in a case that I was involved in. But he’s very good to lawyers. And actually one of the ways he is really very good to lawyers is because he is smart enough, serious enough, focused enough to be able to sit with lawyers to talk about the case, to talk about the problems in the case, and to deal with them on an ongoing basis.

Brian was an investigative journalist at NBC News for eighteen years, and was the Chief Investigative Journalist on NBC’s Dateline. He is the Chief Investigative Journalist now and has been that at ABC News for the last six years. He has broken an extraordinary amount of stories. He has won virtually every journalistic prize, and he is a joy to spend time with and to have as a friend as well as a sometime, mostly former, client.

That said, all the kisses blown on this panel, let’s talk a little bit. I have received at least two dozen requests from you out there as to whether we’re going to talk a little bit about the election or Florida or our future. And I thought that we simply couldn’t hide that elephant anymore. So I thought I would turn to the journalists first and then the lawyers and really ask them in the broadest way two questions for them to address as they see fit about the election.

One is a sort of what has become of us? How are we doing as a country, and where do you
think we’re likely to go as a result of the election? And on a more focused level, as regard to journalism itself. Broadcast journalism, print journalism, all journalism in America. Will there be any changes as a result of the election coverage which has been widely criticized, at least as regards television.

Alex, we’ll try you first.

**MR. McCLOUD:** Well, I’d say that the first response I’d give, Floyd, is that an election like this does something that I thought was impossible. It has a roomful of people talking about politics. Presidential campaigns, local politics. You know, usually an election is held and the day after life goes on and people don’t spend very much time talking about it. The whole concept that one vote counts, and your vote counts has taken on entirely new meaning.

And if you watch the media, and newspapers in particular, one of the things that you see is a constant struggle to figure out how many people out there are reading about politics? How many people are following government? And you get the sense more often than not that that number is dwindling.

I think one of the things that this election will do is cause that number to turn around. So from a newspaper guy’s standpoint I think it’s terrific. I’m really, really glad that on Tuesday night I was not Dan Rather or Bernie Shaw or Peter Jennings or Brokaw. I think that was a black eye. I think it’s silly for a journalist to report what you don’t know. And I think that’s what they did on more than one occasion.

**MR. ABRAMS:** David?

**MR. SCHNEIDERMAN:** First I’d like to do a disclaimer before I get run off the stage. My two largest newspapers endorsed Ralph Nader. Now, the reason why I’m so brave to say that is that unlike mainstream papers, the publisher and/or owner have nothing to do with endorsements. And in fact, I wasn’t aware that newspapers had endorsed Nader till I saw them on my desk. I asked Dan Forrest, who’s our editor, why he didn’t tell me, because he usually gives me a heads-up, and he said he was afraid to.

So I don’t want you to think I’m coming from the perspective of somebody who would have
voted for Nader.

First of all, I think that after every election there’s always sort of dissatisfaction with how the media covers it. Everybody complains. All of us make a living doing that. And I didn’t see any great difference, positive or negative, in terms of how this was covered. And I don’t think actually in the end that it’s going to change much except maybe in the future the television media will be a little slower to call these races.

But one thing that did come – well, there’s actually two things that came out. One that I think is very positive is that I believe that this is a terrific thing we’re going through. Because it’s uncharted waters. We don’t quite know where we’re going. I believe, maybe being Pollyannish, that in the end the system will work one way or the other. Half of the country’s going to be unhappy; the other half won’t be. It’s going to be messy. My doorman, who is a very proud Dominican said, you know, in my country we would have taken care of this night with the army. And I said to Victor, that’s why you’re here, not there. So I think that’s a positive part.

The other thing I just wanted to throw in, it seems that when you look back in an election there’s an enormous amount of stuff that is missed. And it’s not through the fault of journalists who are basically working on deadline and whatever. But one of the things that I read today, which I found amazing – maybe people here knew it, maybe it was reported elsewhere and I didn’t see it – but in an Op-Ed piece in the Washington Post written by their pollster, he pointed out that the guy at Fox News, which was the first television station to call the Florida race for Bush – it wasn’t Voter News Survey or whatever, they called the state for Gore, and then they pulled back – but the first news organization was Fox, and the guy who made the decision is George Bush’s cousin. And I had no idea about that. I thought it was a pretty interesting story.

Apparently The New Yorker has picked it up. On the other hand, The New York Times sort of did a lot of reporting this morning about Bush and mentioned this guy John Ellis quite a bit, and never quite got around to the story. I use that only as illustration that two weeks from now, a year from now, three years from now there’ll be amazing revelations about what went on in this race that’ll be fascinating, and that’ll be called history.

But we, you know, as hard as journalists work, and I think generally they did pretty well this time, you just can’t always get the story. You’re as good as what you’re told.
MR. ABRAMS: Brian?

MR. ROSS: Well, I’m proud to work for the network that was the last to declare Bush winner of Florida by a good two to two-and-a-half minutes.

MALE VOICE: And after the polls were closed.

MR. ROSS: But for me as a working journalist and one who still thinks of himself as being in the trenches, it is another example I see as this lockstep journalism. The pack is always in the same place. In this case you have a pool of information for economic reasons that everyone shares, so everyone makes the same mistakes almost at the same time. And that’s the kind of pattern you see throughout the industry. And it raises questions for me as a journalist. And I always thought that, given the thousands of reporters in Washington, very little original reporting is done. And I still see the same thing now. The pack is in Miami and in Tallahassee, and they seem to be following the same story leads again and again.

I would guess next time they will treat the next election like this election, every – they seem to be four years behind each election. They covered the last election best the following year. And I would say that the closeness of the election has exposed some of the well-known flaws in the system that have always been there that usually have been camouflaged by the lopsided nature of the returns. And we’re seeing that now with allegations of vote fraud, and it turns out one percent of all the votes are always thrown out. That’s an amazing thing that has never been addressed until now. So I think there actually could be some healthy result from it.

MR. ABRAMS: Cam?

MR. DeVore: It’s amazing to me that we’re learning so much. I think that’s to me one of the great pluses of all this. The spotlight is shown on the system. The electoral college. It’s history. I learned things. I thought I knew all that. I didn’t. I didn’t know that history. And it’s really quite remarkable to learn. And I think that’s going to have an effect on us all as we work on these things in the future. There will be changes made. They will not be profound, but there’ll be changes made.
I’m hopeful. You know, the spinmeisters are doing their thing and there’s plenty of anger to go around on both sides. And there will be flip flops and the good Lord watch if the Florida vote somehow gets certified for Gore, and all those wonderful arguments that the spinmeisters have been making for the GOP will turn around and we’ll hear it from the other side. But the hopeful thing for me, quite aside from the law, is that I think that Gore and Bush have been pretty silent and pretty quiet. I find that to be a hopeful sign.

And I don’t mean to say that peace instead of war is always the answer, but I guess I have some hopes that when it’s all said and done, which I hope will be sometime in the next two weeks, that – maybe – that we will go on and that we will not be floundering around in various courts in January. I don’t think that will happen. And I think there are people of good faith in both parties that will tend to that.

MR. ABRAMS: Victor?

MR. CONVER: First, I think we’re doing very well. One thing that really bothers me about the media is that they are accepting the notion that we really need a decision right away. We look foolish if we don’t have a decision. As someone who has spent, in his dim dark past some time at election law, the fact is that there are dozens, maybe more than a hundred significant elections that are not decided on election night or the night after. We have close races all the time. Now we’ve never had one for President before, but that doesn’t mean that our processes shouldn’t apply.

And if it takes a couple of weeks or several weeks, there’s nothing wrong with that. That goes on all the time. And the notion that we need to wrap this up right away is, I think, the one thing that worries me. And I see it out there. A sort of lack of patience with the process. A need to be first, which goes back to what I think was the most troublesome point that Brian alluded to.

You know, for decades we can all recall when networks competed with the election results. Who would be the first to call? Who would be the first to project? How sound was their analysis? And then they took ads that we beat the other network and we were more effective. And they had separate election people. Election departments.

Now, for economic reasons alone, there was a single news election service. There was no competition. Why? There are, what, five serious networks reporting, covering this, service an
enormous audience, and they have one source of information? That is seriously unhealthy. And I hope that’ll never happen again. There are a number of good things that will come out. No longer will we have to remind everyone to vote. That every person’s vote counts. No longer will there be a serious third party effort which is divisive. That is over.

And those are good things for the future. When everyone votes the society will work a lot better and people will feel more connected to it.

MR. ABRAMS: My own view, like Victor’s, is that there has been on the part of some journalists and some real people the sort of frenzied sense that, you know, we need an answer. That it is absurd, unacceptable, preposterous that a great country wouldn’t have answered this question of who is elected sooner than we have. I think the public, and I think we saw this last year in the impeachment crisis which, in my view, was more of a crisis in a way than this. Because it was about the person who was running the country, as this is not. An extraordinary level of stability and seriousness and common sense on the part of the public. Something I don’t see on juries sometimes.

And I think that the polling data we have so far about the public reaction as of today is that putting aside the minutiae, critically important as it is, of how a count is had in Florida, that the public associates itself significantly with the view that it’s more important to get the count right than it is to get it now. How long that would last is something else, and how long it should last is something else. I mean, at some point soon I think that there will be a shared sense in the country that the time has come to know the answer. But I don’t think we’re there yet. And I don’t think that, again, the political side aside, that some of the journalists who are urging that are serving the public as I see it.

I also think that as you read a good deal of the things that are published in the press and watch a lot of people on television, that it is increasingly easy to identify people who are simply partisans of certain political views. People who have high intellectual pretensions and who have sometimes been honored for their contributions to public discourse have been all too predictable in which side they’re on, on the otherwise unpredictable question of go to court, not go to court, whether the Secretary of State of Florida should do this or that. There is on the editorial opinion side, and I speak now mostly of newspapers and cable television, there’s been a much higher level of predictability based on the political views of the journalists than I find entirely comforting.
That said, I’m of the view that either person, when finally designated, and notwithstanding a good deal of anger and cynicism on the part of his opponents, will be able to serve. Will indeed have a honeymoon. Because whoever it is will behave scrupulously, at least for the first few months of his Presidency. Will do all the bipartisan things and say all the things. Maybe even mean some of the things. But will say all the things to try to bring the public together which the public will very much want to hear.

And although we’ve lost some things in this election, I think, which we haven’t thought so much about. We’ve lost the cathartic effect of a victory celebration, and the losing candidate conceding defeat. It will not be the same, whoever wins, whenever some Florida election official lets us know who the next President is. And we’ll miss that. Because I do think that helps to bring the public together more.

And I think as well that we will lack some of the sense of national solidarity, however upset one or another side may be in all this, that would otherwise have come from a clear cut victory or defeat or even a clear cut win or loss however close it was on election night. But I remain relatively sanguine.

And I do think that some of the recognized leaders of the journalistic community, and now I don’t speak of the partisans, are too worried. Have too little faith in the public. And really don’t accept the notion that the public can take what for them is the awful agony of not knowing the answer to a question that I think the public is ready to wait for so long as it comes sometime relatively soon.

I saw a poll yesterday or the day before in which the public ranked the press, what, 12% favorable, or, I mean, something horrible.

**MALE VOICE:** That’s high actually compared to [interposing]

**MR. ABRAMS:** Is that high?

**MALE VOICE:** That’s getting higher. [laughter]

**MR. ABRAMS:** I mean, is this a--
MALE VOICE: It’s still ahead of us though, you know, by a little bit.

MR. ABRAMS: Is this a temporary thing? I’m not talking about the press regaining the favor it had in the romantic days of the seventies. But do you all think that the particular level of disdain which all the polling data and everyone I meet on the street offers will be overcome just by the passage of time and they’ll return to, you know, some level of normalcy in our life? David?

MR. SCHNEIDERMAN: I just want to give a quick rejoinder to something that Floyd and Victor said, but I’m reluctant to take on these two paragons of the First Amendment up here. But I want to make a distinction about the media. And that is yes, there are partisans and there are so-called editorial people. But the vast majority of people who are covering this story are newspaper people or reporters on TV. And I don’t see in any way, shape or form that they’re trying to push this story to a resolution.

I think that on the other side the so-called partisans, if you’re a Bush person you’re probably trying to get resolution because you think you know what the solution would be, and the same thing on the Gore end, you’d probably like to stretch it a little bit. But I actually believe, and I really see that the media is covering the story as it is. It’s an unfolding story. The fact is that in a real sort of deep sense the media would love to see it go on; it’s a great story to cover. Not for economic reasons. Of course, it sells newspapers, but it really is a fascinating story. And I think reporters love it and I think editors love it.

In terms of our respect or lack thereof, I can’t remember a time since I’ve been in media that we’ve ever been terribly well-respected except for that moment during Watergate. And before that when Floyd was involved in the Pentagon Papers. There was a period of time there that I think the public thought that we were doing quote “God’s work.” You know, we were uncovering a lot of bad things, that we were courageous, you know, they made movies about us. For whatever reason, and I don’t think there’s time to speculate about that, it has changed. I think there’s a lot of sort of negative feeling about the media. But I think that’s generally the way it’s been historically. I don’t think it’s all that unusual.

MR. ABRAMS: Brian?
MR. ROSS: Well, I would say that it’s probably a healthy thing for the public not to think that we’re perfect, and we certainly aren’t. And it would be good for us to not think we’re perfect either. And some humility would go a long way in our business I think to let us be in touch better with our readers and viewers. Not losing a sense of confidence in doing what’s right, but not displaying the kind of arrogance and, you know, being the know-it-alls of the world.

MR. ABRAMS: Alex?

MR. McCLOUD: Well, I think the definition of media is the thing that’s changing most. And how much of it there is. Cam was telling me that at a lunch somebody had a wireless handheld device that was it TV that was broadcasting or running? Anyway, watching, and at 1:08 they were reporting on what a federal judge in the State of Florida was doing. My take on things is that if you back up just a little bit to Monica, remember Monica? You remember Matt Drudge? You think about how many sources of news and information there are and how most of us allow ourselves to be bombarded by those sources.

I think that the way people relate to quote “news” is the thing that over the next ten years is going to change the most. And as that occurs I think the relationship that we have as journalists to the public will change as well. Whether it changes for the good or the bad depends on whether or not we do as Brian is describing, you know, we acknowledge the fact that we aren’t perfect, we acknowledge our mistakes when we make them, we try to follow the principles of good reporting so that we don’t make them in the first place.

You know, I don’t blame the public for having a negative opinion of most of the media because most of the media I think is not very good. And the point that Victor, I think you were making about the fact that you’ve got these five major networks and they are so goddamn cheap that they’re relying on one source of information.

MR. ABRAMS: Sort of like the AP.

MR. McCLOUD: It’s really pathetic. It’s really pathetic.
**MR. ABRAMS:** Well Alex, what do you think? How would you assess the, on a sort of a comparative level, the relationship or the feeling, I don’t know, about your readers to your newspaper now as opposed to I don’t know, ten, fifteen years ago? Any difference?

**MR. McCLOUD:** I think the major change is that the way people are living their lives, that they’re less anchored in place. And as a result their relationship to the newspaper is a less – it’s not as close a relationship. The newspaper when I grew up – my dad was a newspaper guy – you know, you moved into a home when you bought a home and started a family, and the newspaper was like a utility. And everybody subscribed to the newspaper. That changed twenty years ago. And with television, with the Internet, with radio, with multiple sources, I think the change continues.

Do they respect us? Well again, having grown up in a newspaper household, I never thought that respect was the issue; trust was the issue. And I think the relationship that we have with our readers is one of trust.

I’ll give you one piece of evidence that I think supports that. The Seattle Times until March 6th was the last remaining dominant afternoon newspaper in a metropolitan market in this country. on March 6th we became a morning newspaper. We took our readers’ relationship to us and we turned it completely upside down. We hired three consultants. These are people who have studied this kind of transition in other markets. One said we’d lose thirty thousand circulation, one said we’d lose forty, and one said we would lose fifty. We focused on our 205,000 home-delivered customers and six months after the transition our circulation is up three percent. That tells me that our relationship is fundamentally pretty good.

**MR. ABRAMS:** Brian, do you have any sort of comparative reaction based on everything you know and everyone you meet and everything you read about the relationship as it were, between your viewers and your employers?

**MR. ROSS:** There are fewer of them. I know that. I think they are probably, we’re shifting in the different demographics, we’re getting people who are older. Smart, but they’re older. The advertisers don’t like that so much. And it undercuts the power of the news division within a large network. We’re not delivering essentially the audience that would be desirable for the sales
department of our networks. And in many cases the primetime magazine programs are seen as kind of fillers of holes that they can’t come up with good comedies or dramas to fill otherwise, so let’s put in “20/20” or “Dateline” and we’ll fill that hole.

So the extent that our own bosses think of us as kind of cannon fodder, why shouldn’t the audience?

MR. ABRAMS: Intake breath. David?

MR. SCHNEIDERMAN: We’re in a funny position. And I talk to my editors about this a lot. We don’t sit and worry about losing audience. Now partly, that’s because we’re free. I remind them that, you know, when you tell me how all of the media is in trouble I say well, you want to put a price on this paper like we did at the Village Voice and let’s see how many people buy it. I don’t think that’s a reflection of the quality of these papers; it’s a reflection of the fact that I think young people are really into free media. They expect media to be free and they want it that way.

I mean, I get much of my news during the day from calling up MSNBC or my little Yahoo page with Reuters. It doesn’t cost me anything. If there were an afternoon newspaper, which there used to be in New York, I don’t count the Post as one, but if there were one I wouldn’t need to buy it. We don’t have to have it.

So I think that our kinds of papers are in a very positive and peculiar position, is that we do have that sort of magic young readership that Brian is referring to that his sales people would probably want to have. My worry is that we have to keep giving them really great journalism. And we have to keep figuring out ways to do that and have to spend money to do it. And now as someone who has a stake in the company, you know, it becomes sort of an interesting twist. The editorial part of me wants to spend a ton of money on all the journalism we do and then the business guy says okay, why are we spending all that money in that particular department? So, you know, I kind of wear two hats.

In the end I think it’s healthy because in most cases my past will win out unless the bottom line doesn’t look good. I think that the real problem is there’s just a lot of media out there. You know, it’s not as if papers aren’t any good or the reporters aren’t good or TV isn’t doing a good job. There’s just a tremendous amount of choice of where you can get information. And a lot of it
unfortunately, is unfiltered. It’s just there and, you know, you just pick it up and you think you’ve got it.

**MR. ABRAMS:** Speaking of two hats, I had told the journalists before we started that I was going to ask them each to just try to recall for us some intersection in their life with law or lawyers which surprised or disturbed them. And I wonder what you come up with. Alex?

**MR. McCLOUD:** Well, I have a couple that I came up with Floyd. One of them goes back to 1992. I was trying to figure out when was the last time we did a prepublication review of a story. And my recollection is it was 1992. And that was when the Seattle Times reported based on the allegations of seven women, that Brock Adams, who was a sitting United States Senator had sexually assaulted, molested and raped these women over a period of twenty years.

I decided to have that story reviewed prior to publication, not because I had any concerns about the story, but because I wanted to essentially expose a couple of the editors I work with to the process. And I remember we sat for about two and a half hours with Cam and Marshall Nelson and Bruce Johnson. And they gave us a pretty good going over. And we walked out, and the two editors I had taken with me were both sweating bullets. And I looked at them and I said, you know, think about what they asked us. Those are all of the questions that we had asked ourselves and in fact, we had answered them.

The thing surprising me about that experience though was that we had a fundamental problem. It was a journalistic problem. And the problem was we had seven women, none of whom were willing to be named in the newspaper. I think it was, I know it was one of the lawyers, and I think it may have been Bruce who came up with the notion of creating contracts between the newspaper and each of these seven women. And the contract stipulated that exactly what words we would use to describe each of these people in the story in the newspaper. Each of them was willing to be described to some degree. And we agreed on what those words would be for each of them.

They swore that everything that they had told us was in fact true, and they agreed that should we be sued, and if a court so ordered, we would be freed from our confidentiality agreements with them. That became the second paragraph of the story. And in fact, it was the thing that gave the story the great credibility that it had. We ran one story on a Sunday. Sunday afternoon Brock Adams called
a press conference. He withdrew from political life. We wrote a story the next day about that. And
we never wrote about Brock Adams again.

One of the reasons that we didn’t do it was that as I was reading the story for the Monday
newspaper – and this is how you wind up getting sued, it’s not when you’re really paying attention,
it’s the next day. And I was reading through it and I looked at the words we had used to describe one
of the seven women. They weren’t exactly the same words. And I managed to go back and fix that
so that we never had a contract issue with any of those women. But when I told the reporters we were
all done writing about those seven women, the reason I did it was that.

The second surprise that I had was a few months ago when we were trying to get some
records of a telecommunications company that was before the State Utilities and Transportation
Commission. We went to our law firm to represent us in this matter, and we discovered that they had
a conflict. And the conflict was that they were representing the telecommunications firm. Not only
that, but they were representing the telecommunications firm as it was moving to have the very
documents that we wanted access to sealed.

Now, I would describe that as a surprise. And I would describe it as the last time that kind
of a surprise is going to occur.

To the credit of the law firm, I’ll say this, that they have now assured us that they will, with
us, go out and identify a couple of lawyers in a small practice, and essentially they will teach those
lawyers how to do the kind of work that we need to have done so that if we find ourselves in this
kind of a conflict position again, as I’m certain we will and as they are certain we will, that we’ll
have some place to turn.

So those are my two surprises. One was a happy one and one not so happy.

MR. ABRAMS: Brian?

MR. ROSS: The last time I had a story reviewed before broadcast was probably going back
to five, five-fifteen this afternoon. I did a story tonight on the World News about vote fraud in
Wisconsin. It involved the wife of a New York multimillionaire who was handing out cigarettes to
people in homeless shelters in Milwaukee. And about 5:30 John Zucker, an ABC attorney called
with just a few questions and helpful suggestions.
I would say since the Wayne Newton story, which resulted – two minutes and 15 seconds resulted in a ten-year legal battle which Floyd saved me from, but every story I’ve done has been reviewed by a lawyer, certainly inside either NBC or ABC, and sometimes outside. And you look around this room and I see the familiar faces. And there have been boxing gloves on many, many times. But, you know, Laura and Rick and David over there, and Betsy and John, these are some of the smartest people I know.

But I would say that one of the surprises to me that has developed over the years is the extent to which my own bosses in the news departments at both networks have abdicated a lot of the sort of editorial decisions and responsibilities, the judgments to the lawyers. And these are bright, sharp people who are there and that have saved me again and again. But I’m not sure it’s such a healthy situation.

While I think that we’re on the same team, many of my colleagues don’t. They see the lawyers as the enemy. And to the extent they see the libel laws as arbitrary and hard to understand and sort of against the media more and more, that’s how many of my colleagues see the lawyers, all of you are there to review these broadcasts.

And I think it leads to an unhealthy situation were if we can just get it by the lawyers – now, what does that mean? Do you disclose everything you know? Are there a few little things they don’t have to know? Kind of make it easier. Those are dangerous situations.

When I worked at NBC there was a producer who got letters from General Motors and just stuck them in the desk and they didn’t get responded to in a timely way. And it led to a very ugly embarrassing situation which wasn’t good for anybody. It certainly wasn’t good for journalists.

And I do worry about, you know, you can’t have an election now without a lawyer; can you have a newscast without a lawyer? And if you can’t, is that a healthy thing? And can you be a journalist without having a full understanding of every intricacy of libel law? And beyond libel law all of the issues that are involved in a news gathering. Recording, hidden cameras, hidden microphones, privacy, can you ride with the police, can’t you? There’s a great deal of resentment among my colleagues in the trenches that these things which we used to think we knew from Journalism 101 we don’t really know anymore. And it comes as a shock.

I remember when Rick Cotton said to me, we don’t really violate the laws of other countries. And I was just stunned to hear this. What? I mean, we’ve gone to Cuba, and we go in and we sneak
in places and we do things. If it’s not in the United States who really cares? [laughter] But I’d say you take a sampling of many of my colleagues, they would be equally stunned to learn some of the things that have developed in the courts in cases again and again that have not been favorable to journalists. I don’t know that my colleagues appreciate it, and I don’t that they see all of you necessarily as on the same team. And I think that’s a surprise and it’s a disappointment and it’s something that all of us should be worried about.

MR. ABRAMS: Let me turn to management now. David?

MR. SCHNEIDERMAN: It’s my role now. Listening to Alex, I’m sitting here thinking, we do a lot of vetting at our newspapers and we’ve been doing it for about 35 years or so. And I’m wondering if maybe I should ask Victor for a refund going back 35 years, because if Alex hasn’t vetted then, you know, maybe I’m wasting my money. But I don’t really think so because he’s pulled us out of a lot of jams.

My first experience with a lawyer was actually quite surprising because I didn’t realize how important they were going to become to me. When I was named editor of the Voice way back in ‘78, ‘79 Rupert Murdoch was the owner. Which was one of the great anomalies of journalism then. And the staff wasn’t very happy about my appointment. In fact, virtually all of them except two sent me a petition saying, you know, don’t come here. Jack Newfield said we’re going to blow up the building if you arrive. But I came.

But the second issue which was perhaps even more important was that Murdoch’s counsel, not his in-house counsel, but one of his law firms which I’m not going to mention, wanted the Voice quote “libel work.” They just wanted to take that over. And the staff was nuts, understandably, that Murdoch’s lawyer would see our copy before it got in the paper. Now, one of the reasons they were nuts is that we were writing about Rupert all the time. [laughter] Which didn’t please him, but it was one of the most important aspects of this newspaper; the ability to say what it wants to say, you know, when it does and how it wants to say it.

And the person actually, besides Victor, who had an enormous impact on my sense of the First Amendment and what we can do is Nat Hentoff on our staff, who is probably the pre-eminent First Amendment journalist in this country. And Nat is, who I think would agree with me, is very
much an absolutist on this, and taught me a lot about it.

And the Voice has been extremely aggressive over the years, as you know, in reporting. I personally can’t imagine living without Barbara Cohen who’s our terrific counsel now, or Victor or Elizabeth MacNamara, and Laura Handman who did tremendous work for us. I can’t imagine doing the ten worst judges without them. It’s a guaranteed lawsuit. A lot of our vetting is not about saying what we can say and whatever, it’s really are we protected in case the quote “inevitable lawsuit comes.”

We are undefeated, I must say, and I’ll knock on wood for that one. But it’s a very different thing. I mean, I’m curious Alex, how many lawsuits you’ve had over those years, or whether Seattle is litigious or whatever, what you think, you know, that’s all about. I’m just fascinated by the fact you haven’t vetted that long.

MR. McCLOUD: Well, I think the answer Cam alluded to at the beginning which is we don’t have punitive damages in Washington State and so there’s not a well-developed plaintiff’s bar. But having said that, and at the risk of saying something I shouldn’t, I guess my answer to it is that when I started working with Cam twenty years ago, the first thing that I experienced was a relationship with somebody who understood that his role was to advise me on risk, and to counsel on how we could get stories into the newspaper. And my job was to be an editor.

And I kind of liked that because I was raised to be an editor. I love being an editor. And I went through a number of very high-profile and very sensitive stories primarily with Cam’s counsel. And then we started bringing Cam into our newsroom along with Bruce and Marshall and Dan Waggoner and some others from Davis Wright, and we started working internally. And we just tried to develop the skill.

My personal belief is that first of all, the times you’re going to get in trouble are not the ones you know you’re going to get in trouble for. It tends to be the ones that somehow fly under the radar. So that when you know you’re dealing with a sensitive one you’re already going to pay attention. And those are the ones that if you’re going to do pre-publication review you’re going to do it. Those are exactly the ones that you apply journalism to. And that’s what we’ve tried to do. We just do it as journalists. If we’re accurate, if we’re fair, if we’re complete, and if we’re willing to acknowledge our mistakes whenever we make them, and acknowledge them prominently and quickly, we just
don’t have problems.

And it’s not because we’re doing candy-ass newspapering. I mean, we’ve taken on virtually every major institution in the Pacific Northwest and we have not been sued at any time. Now again, we’re about to take on another one and it’s one actually where we made do some pre-publication review because I have some questions about whether or not people we are writing about in that really qualifies public figures. And I feel like there’s probably a little review that might be helpful. But –

MR. ABRAMS: Does it make a difference, Alex, in your journalistic work, if you’re writing about a public figure?

MR. McCLOUD: Oh, sure. Oh, it does. From the standpoint of the legal risk, I think the difference in the legal risk is a fairly clear one.

MR. SCHNEIDERMAN: Let me, just one quick thing to Alex. We had a paper in Seattle, the Seattle Weekly. The day that we took over official ownership we were sued. [laughter] So we were these new guys in town. Alex is sitting there, you know, with this great record, and we were there for 24 hours [laughter]. For a start, we didn’t even publish; we inherited it. There was some crazy guy. I mean, maybe, I don’t know what it was, but we did get hit with a suit.

MR. McCLOUD: The answer to the question, we got sued in like ‘88 or ‘89 and that was by, that was just a circumstance that we had no way to protect ourselves against. And the only downside to it was, and this’ll come as a great shock to you, we ran into a trial court judge who didn’t want to deal with the substance and therefore, didn’t really want to look at summary judgment. And it took us a couple of tries but we finally lost that one on summary judgment. But that’s our last one.

MR. ABRAMS: It sounds to me as if Alex knows a lot of law.

MR. McCLOUD: It’s true.

MR. ABRAMS: What – how have you perceived your role through the years, not just for
this client, but in shaping your relationship in terms of the sort of things Alex has been talking about. Editor, counselor, lawyer, adviser, what’s your overview of it?

MR. DEVORE: Aside from the really literally mounds of access work which I mentioned earlier, which is ongoing, usually several cases at a time, a lot of litigation in that area, our role is still the same as it was when Alex and I began this process. We’re still facilitators. But our facilitating, it really is one of an educational role. Alex will call periodically and say, time for a seminar. The Supreme Court has just decided something, the Ninth Circuit has just decided something. And we will tell him about it and if he hasn’t been keeping track. He’ll say, let’s do a seminar. And we all will gather at the paper and we’ll run through it and we’ll do hypotheticals, and we’ll do all of that stuff.

Our role to some extent is not to make them lawyers, but to make them sensitive enough to what the implications are of what they’re doing so that they will call us only when they really need us. And sometimes we wait for the phone to ring and it doesn’t ring. Because either we’ve educated them so much or their chutzpa is such that they feel they can proceed without us. But it has been a symbiotic relationship where we have an educational role.

MR. ABRAMS: And Victor, what is your sense based on your own experience as to the changing role, if it’s changed, of the role of outside counsel and media clients?

MR. KOVNER: Well, in terms of this particular client it has changed because they have a very fine general counsel, a former lawyer at our firm, who understands the nuances and challenges very well. We do have Liz MacNamara and Laura before her, not so much myself in recent years, do regular seminars to try to sensitize the people at the Voice. I know Barbara does that elsewhere with other publications. And hopefully, the challenges and the difficult questions are few.

I think it is an ongoing conversation, if you will, between the lawyers and the publication that needs to embrace a wide range of events, developments in the law, litigation developments, so that the editors and the journalists are sensitive to what’s happening. The law is very complex. It is a shame that the rules change and that they are burdensome, and they are not likely to get any better. But in most of the areas of our concern, especially libel law, it is fortunately well-settled and not changing very much. It’s the news gathering that tends to be the greater source of the difficulties.
And it is keeping the journalists well-informed that is the best route to mitigating problems.

**MR. ABRAMS:** We only have five minutes left. Let me ask each of you very briefly, for a sound bite. What direction are we going in, in terms of the degree to which law is more or less burdensome on journalists, or prevents good stories from coming out, if it does. I mean, is the law limiting in a way? The law as we see it now, and lawyers as they behave now, limiting, in terms of getting out good valid stories, as you see it, Alex?

**MR. McCLOUD:** I, of course, have nothing bad to say about lawyers as long as they’re on my side. But I think the major threat to news gathering and to the law is going to come out of the area of a generalized notion of personal privacy. That’s the thing that we see expanding the most. And it’s expanding in ways that appear politically to be very difficult to manage. Because it affects people from so many different directions. An awful lot of the invasion of a person’s private space is coming not from the media and not through government records access, but because of all of the other data that’s collected on people by private businesses.

But because of that what I expect to see happen is over time it becomes more and more difficult to obtain any record in which a person is individually identifiable. And if that occurs, particularly if that occurs in access to government records the public’s ability and the media’s ability to effectively assess the performance of government is going to be shot to hell.

**MR. ABRAMS:** Brian?

**MR. ROSS:** I would see one area that I think is particularly troublesome for everybody here is that whatever you learn, you don’t know anything because you have to know the laws of Costa Rica or Mozambique or wherever it is that our signal is seen. Are to obey the laws of all of those countries in terms of what we broadcast? Does the First Amendment mean anything if the story deals with Costa Rica or Mozambique? And if the signal from ABC is sold around the world then what is the lowest common denominator? Do we stand firm, and say we will since we export the First Amendment or not? And I see that increasingly, for what we do in terms of investigative reporting and reporting what is done outside of the country, as a serious problem with no easy answer
that I can see.

**MR. ABRAMS: David:**

**MR. SCHNEIDERMAN:** My biggest concern is that in the last twenty years we’ve seen, I think, an enormous shift from public power to private power, i.e. corporations. And I worry a lot about the money behind corporations and their power to sue news organizations. And I think it has had a big impact in certain cases. There’ve been some really lousy cases out there, not always handled well by the media. But I think that, you know, years ago you were better off in going up against the government and there was something that could temper that which was public opinion.

If a corporation decides they want to go after you and they have the resources, they can keep you in court for a long time and spend a lot of money. And for a company like ours, which is a lot smaller than let’s say, a Gannett or a New York Times it’s a pretty significant issue. I mean, we’re never going to not do it, and I would never let it stand in our way, but I’m concerned about the ability of the media to cover private power or corporate power in the aggressive way it covered public power over the years.

**MR. ABRAMS:** Well, I promised Ken Vittor and Sandy Baron that we would get you out of here now. [laughter] And we’re going to do that. I just want to thank in particular Ken and Sandy and all the panelists for their extraordinary participation. Thank you very much. [applause]
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