

# ADDRESS INTERNA



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

ROBERT  
FROST

**I**ntroduction 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**  
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**BY NADINE STROSSEN<sup>1</sup>**

sitting alone in his own house, what books he may read or what films he may watch.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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