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Remarks at the Nova University Forum

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Abstract

Thank you so much. It's really a pleasure to be down here in warm climates. I have really enjoyed having met so many of you before and look forward to meeting many of you afterwards and look forward to the questions which I, find contentious and stimulating. I met last night with some people from the Law School and the University and I find this place to be a real miracle.

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Thank you so much. It's really a pleasure to be down here in warm climates. I have really enjoyed having met so many of you before and look forward to meeting many of you afterwards and look forward to the questions which I, find contentious and stimulating. I met last night with some people from the Law School and the University and I find this place to be a real miracle. The fact that a new university and a new law school, relatively new at least, could have been established during these trying times of budgetary constraint is a real credit to President Fischler, Dean Abrams, and Vice-President Goldstein and I really want to wish them continued good luck.

While watching the news this morning with the first anniversary of the invasion in the Middle East, thinking about the current events and about the world in terms of how it's changed in the last year, particularly the destruction of the Soviet Union, I was reminded of a visit I made to the Soviet Union back in 1974, on behalf of dissidents, talking about hopeless causes in those days, people like Natan Scharansky and Edith Udell. I remember meeting with Edith Udell who was then going to jail the next morning for the terrible crime of simply wanting to join her family in Israel and having protested about that. I met her in front of St. Basil at five o'clock in the morning in order to avoid detection by the KGB. I expected to meet a forlorn and distraught woman who was facing the inevitability of imprisonment and instead I found a bouncy and vivacious woman waiting to confront the Soviet legal system. I remember she said, "Before we begin our serious discussion, Professor, tell me a joke or a story that Americans tell which reflects life in America." So I thought a moment and I said, alright, and I told her the story of poor Mr. Schwartz who got sick one day in Boston and was taken to the Massachusetts General Hospital, the fanciest pavilion . . . where only presidents and actors go. And he was there for two or three

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days, getting great care. Finally he insisted that he wanted to go to the smaller little hospital down the road, the Beth Israel Hospital. It wasn't as good as Massachusetts General. So he goes to the Beth Israel Hospital and the young intern there, who was a little jealous that he wasn't an intern at Massachusetts General said, "Mr. Schwartz, I see you'd agree with us here that the medical care in Massachusetts General is not what it's cracked up to be." And Schwartz said, "no, the medical care was fantastic. I can't complain." He said, "it must be the nurses". "No, the nurses were wonderful. I can't complain" "Was it the X-ray technicians?" "No, the X-rays were excellent. I can't complain." "It must have been the food there, all the watercress salad they gave you." "No, the food was very good. I can't complain." He said, "then why did you switch to our hospital.?" And Schwartz said, "simple, here I can complain!"

And I said that was the essence of being an American. Here we can complain. In fact, not only can we, but we must. It's part of our obligation as a democracy. Indeed, there is even a constitutional amendment about it; the right to petition government for the redress of grievances. That's a fancy word for complaint.

So, today, in the spirit of the First Amendment, I am going to complain a little bit. I am going to exercise my right to complain. I want to complain about the fact that, as we see emerging nations throughout the world, particularly in Eastern Europe, expecting and demanding more freedom and more rights and more liberties, that we in this country seem to be neglecting our rights. We seem to be taking them for granted; we seem to be regarding them often as inconveniences. We are impatient about these rights, particularly the rights of minorities. These rights excite us at a time when we are beginning our celebration of the two-hundredth anniversary of the Bill of Rights, an unusual document we talk about as constitutional amendments. They are really not constitutional amendments. The first ten amendments to our Constitution are part and body of the Constitution. The Constitution itself, which is a document not of rights but of power, would never have been enacted had it not been for a promise that there was going to be a Bill of Rights to restrain the power of the central government. People like Thomas Jefferson, who said in 1787, "were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." Thomas Jefferson, Madison, Hamilton and others told us we didn't have to choose. We can have both newspaper and government. We could have both freedom of speech and the power of

the government to defend us in case of war.

The irony, and one repeated I think throughout American history, is that it was generally the citizens themselves who have sought to constrain our rights in the interests of safety, security and convenience. Sometimes the interests were even less compelling: xenophobia, bigotry, intolerance. The greatest crisis of constitutional democracy occurs when the majority demands that minority rights be abridged. The conflicts between the power of the many and the rights of the few raise the most profound questions about our theory of government.

You know, it's interesting, when you have government by the minority, as you had in communist countries, and as you have in most countries throughout the world today, such as in the Middle East and Asia, then rights are often majority rights. In South Africa, the rights are the rights of the majority who try to participate in government. But when you have a real democracy, such as the one that we have in this country, then rights tend to be the rights of minorities. Power is the power of the majority. How does a democracy justify its Bill of Rights which allow minorities to overrule the majority? Every time one of our first ten amendments to the Constitution or any of the other provisions, the 14th, 13th, 15th amendments are also part of the structure of our government before the Civil War and the close of the war amendments were really part of the peace treaty that resolved the conflict between North and South, between slavery and freedom; every time the Constitution is invoked to strike down legislatively-enacted statutes that constrain a popularly-elected official, we have made an uneasy compromise with democracy. In that sense our Bill of Rights is somewhat analogous to the Ten Commandments or other constraints upon majority will within a religion.

I am reminded of the good news, bad news story when Moses came back from Sinai bearing the Commandments and then he said, "Ladies and Gentlemen, the good news is I got him down to ten. But the bad news is that he still kept the prohibition against adultery." Well, that might not have been so popular in those days but, nonetheless, it is one of the Commandments.

Now, religious society and secular society, of course, are different. Throughout our two hundred year span as a constitutional democracy, many efforts, theoretical, jurisprudential have been made to justify the constraints on majority action. Though no single accepted rationale has ever emerged as the definitive one, the general consensus has been that our experiment with restraining the powers of the majority have worked tolerably well. The greatest threats to our liberties have always

come from tangent majorities, impatient about the rights of minorities. I always remember comedian Yakov Smirnoff, who came from the Soviet Union, saying, "The day I got my citizenship and stood at the Statue of Liberty this great feeling overcame me and I started to ask myself, what can we do to keep these damned immigrants out!" There is a sense, when you become a majority, how would you feel about the threats of minorities.

From the very beginning of our history, Thomas Jefferson, Adams, and Hamilton were willing to tolerate limitations on our freedom. The Alien and Seditious Acts were virtually contemporaneous with our First Congress. And what did it do? It undercut the First Amendment quite dramatically. The trial of Aaron Burr for sedition virtually came at the time of the beginning of our constitutional rights. Thank God we had a Chief Justice in place, John Marshall, who presided over that trial and defined treason so narrowly and specifically that we were able to live within the constraints of the First Amendment. Slavery in this country! Thurgood Marshall has pointed out, that the Constitution started out describing slavery and defining African-Americans as three-fifths of a person. It's not the kind of a Constitution that could have endured forever but for the amendment process. Nativism, the persecution of immigrants, segregation, racism, anti-Japanese hysteria at the beginning of the Second World War, the detention of 100,000 people of American descent because of their racial background, and the hysteria over McCarthyism. Last night I was privileged to read a brilliant law review article, really a book, written by Professor Marc Rohr of your faculty here, entitled "Communists and the First Amendment: The Shaping of Freedom of Advocacy in the Cold War Years", which tell us the terrible story of how we almost lost our First Amendment in our quest to end communism both here and abroad and the great victory of both the First Amendment and our fight against tyranny and communism. We didn't need to sacrifice the First Amendment to destroy communism. Communism self-destructed because of its absence of a First Amendment, because of the absence of a way of expressing oneself under totalitarian regimes. And I think we have a great deal to be proud of as to how we eventually allowed communism to defeat itself, without allowing it to become tyranny in this country and to repress our own Bill of Rights.

Of course our Bill of Rights has provided far less than perfect protection against the excesses of tangent majorities. But it has continued and contributed, and continues to contribute to the prevention of popular tyranny. The First Amendment certainly has occasionally imposed

unnecessarily restrictive checks on majority power. Surely during the New Deal the way in which the courts used the first ten amendments and the Fourteenth Amendment to the Constitution to prevent social welfare legislature from being enacted, shows one excess. Many Americans believe that the Warren Court went too far in protecting the rights of criminals in relation to the interests of the victims. Reasonable people could have different views on that one and my view is not in accordance with that popular conception but nonetheless I understand the opposing points of view.

But this balance is very much a part of a dynamic system of government which eschews too much concentration of power. American sovereignty! You know, it's interesting, when Tocqueville came to America, 150 years ago, he came looking for where sovereignty led. He was used to Britain where you can find sovereignty in either the King or in the Parliament, or in France where you can find sovereignty in the president. He came to the United States and he thought he would find sovereignty in the president and they said, no, the president isn't really sovereign. The legislature isn't really sovereign. The judiciary isn't really sovereign. And he went back in a state of confusion because he was looking in the wrong place. Sovereignty in America is not located within a particular branch of government. It is located within a process of government; the process of checks and balances; the process of separation of power. It's very hard to see a process in a day. You can't take a snapshot of a process. You can only take a videotape of a process. But Tocqueville wasn't here long enough to see the process in operation. But our concept of checks and balances, and our process of separation of powers are an extremely subtle and well-functioning form of sovereignty. But beyond that abstract concept is a common sense distrust of untrammelled authority, born out of the very histories and experiences which combined to create the very diverse American character.

We are a nation of minorities. We are a nation of dissidents, of immigrants, of risk-takers, of skeptics, of pariahs, of experimenters, and of naysayers. We are distrustful and ornery mavericks. We are a tyrant's nightmare and an anarchist's dream. Our slogans, anachronistic as they may seem, tell us something profound about our sense of individualism. Don't tread on me! Give me liberty or give me death! Show me! Question authority! Yesterday's quaint slogans have often become today's rude bumper stickers, T-shirt logos or wall graffiti. But whatever the medium, the American message has been similar for over two centuries. We need breathing room. We will not submit to regi-

mentation. We demand our liberties.

Against this historical landscape, the Bill of Rights can be viewed as an insurance policy protecting against tyranny. As with all insurance policies, payment of the annual premium is no fun at all. You get nothing material in return, at least not right away. We pay a heavy premium every time a guilty criminal is freed in the name of the Fourth Amendment; every time a pornographer or a racist is permitted to instill their hate in the name of the First Amendment; every time a girl is allowed to make a "wrong choice" in the interests of freedom of choice; every time an indigent seminary student is denied governmental tuition payments for his or her religious education that would violate the Establishment Clause.

But as with any insurance policy, we pay these premiums in exchange for partial protection against disasters that are specifically unpredictable and generally inevitable. No insurance policy can prevent death or disability but it can ease their ravages. Sometimes a good insurance policy even reduces the risk by requiring those who control to take precautions as conditions to reducing premium payments. Likewise, the Bill of Rights by itself cannot prevent oppression. I think it was Learned Hand who said, "If there is oppression in the souls and hearts of the American people, no Bill of Rights can ever keep it from coming to fruition. And if there is liberty in the hearts and souls of the American people, no Bill of Rights may be necessary." As to the latter, I think he was wrong, with all due respect. The Bill of Rights is necessary. It slows down the passions. It makes us think long term. It makes us understand that there are minority rights to be balanced against majority rights. It sends an important message to those who would seek power through dubious means. We Americans take our rights seriously and you ignore that message at considerable political risk. The downfalls of Richard Nixon, Joseph McCarthy, Eichmann are great testaments to the American allergy to traffic in constitutional rights. During the past two hundred years, we have paid many constitutional premiums and accumulated much equity in our collective insurance policy. What you have here is not merely a term policy; it is a whole life policy and an investment in our future as a free country.

There are those today who would turn our Constitution into a narrow, authoritarian tool for advancement of particularistic philosophies, doctrines and even religions. Evangelist Pat Robertson has called the Constitution a "Christian document" and has promised to "rescue us from non-Christian judges who have been misconstruing it in a secular manner." Presidential Candidate Pat Buchanan has made similar

points, though he has added the cosmetic of calling it a "Judeo-Christian document" hoping perhaps to make it more acceptable to Jews as well as Christians. It won't work. The Constitution is not a document for some, even for the majority. It is a document for all. It is a document for the increasing number of non-Christians or non-Jews who are coming to this country, and who are making this country the most diverse and heterogeneous experiment in the history of humankind. Some politicians view the Bill of Rights as an encumbrance to their political programs which should be interpreted grudgingly to somehow reflect an original intent, an intent they claim to know. But if there was any original intent in the minds of the Framers, it was general and broad to create an enduring charter of liberty capable of responding to changing conditions.

I remember having a debate recently with Chief Justice Rehnquist. Chief Justice Rehnquist, I think, doesn't like me because the *New York Times* asked me a couple of years ago what did I think of the fact that more Americans knew the name of Judge Wapner than the name Justice Rehnquist. And I said I was not surprised, Wapner was a better judge. But in the course of my debate with Chief Justice Rehnquist about judicial intent, I told a story that comes from the Talmud. The Talmud is that great, old Jewish document which is akin to the United States Reports. It simply reflects all the cases, stories and controversies that occurred during several millennia of Jewish litigation. The story that I wanted to tell was the story of the great Rabbi Eliezer, who was engaged in an acrimonious dispute with some other rabbis in the seminary about the meaning of a particularly arcane provision in the Bible. Eliezer was so certain that he was correct in his interpretation of the Bible that he brought forward every imaginable argument. But the other rabbis did not accept his interpretation. Finally, in excess frustration, he invoked the original intent of the Author of the Bible, God Himself. Eliezer implored, "if the Halakah, the authoritative meaning of the Law, agrees with me, let it be proved from Heaven." Whereupon a booming heavenly Voice cried out to the others, "Why do you dispute with Rabbi Eliezer, seeing that the Halakah, the Jewish law, agrees with him?" Pretty authoritative evidence, that the original author would say it. But another of the rabbis, Joshua, rose up and rebuked God for interfering in this very human dispute. "Thou hast long since written the Torah and we pay no attention to a heavenly voice." The message was clear: God's children were telling their Father it is our job, as the rabbis, to interpret and give meaning to the Torah that you gave us so many years ago. You gave us a docu-

ment to interpret and a methodology for interpreting it. Now, please, leave us to do our job. According to the tradition, God laughed, agreed, and said to the angels, "My children have defeated Me in argument." Well, if no single person, divine or otherwise, can tell us what the authoritative meaning of the Bible is, certainly the idea of looking for divine intervention to explain to us general phrases in the Constitution is always going to be an exercise in futility. I can just imagine Jefferson, Hamilton and Madison in constitutional heaven today, looking at Justice Rehnquist, Robert Bork and Antonin Scalia looking and poring over the text of the constitutional amendments saying, "They must have meant this!" And Hamilton, Jefferson and Madison saying "We just never thought of those models! It never occurred to us how to deal with wire tapping! It never occurred to us how to deal with current problems that are facing the American people. Please use your own common sense, use your own experience, use your own points of view subjected to widespread debate. But come, please, to your own conclusions."

I worry very much about the insensitivity that so many have today towards civil liberties. You know, if you ask people in America, are you are a civil libertarian? They all say, oh, yes, sure, we agree with civil liberties. Do you agree with the First Amendment? Oh, sure, we agree with the First Amendment. Do you believe in the Bill of Rights? Sure, we believe in the Bill of Rights. But then when you ask them more particularistic questions, it turns out that for most Americans, civil liberties and the Bill of Rights mean rights for us; rights when we think our interests are disturbed. They have so little understanding about the concepts of rights for others. I think about Patrick Buchanan who never, ever supports the rights of people charged with crimes. He is always in favor of a law and order approach. He always believes in the rights of victims. But he's upset when it comes to Nazi war criminals. Pat Buchanan has never found a Nazi war criminal that he couldn't support. In fact, Allen Ryan, head of the Justice Department's Special Investigation Office recently said, "Many people are asking why is Pat Buchanan so in love with Nazi war criminals?" You have to ask yourself that question, what is it about Nazi war criminals that would attract the attention of a Pat Buchanan who generally doesn't support the rights of any criminal defense.

Or, to switch from right to left, look at William Kunstler, who said, "I defend only people who I love." I'll never forget the time when he asked me to defend him, having been charged with contempt of court in the Chicago Seven case, I said, "Bill, I'll defend you but I

don't love you." And he then threw his arms around me and kissed me and said, "It's good enough that I love you, Alan." Well, Bill doesn't love me anymore, even though he won his case, because I have been very critical of his selective use of the Bill of Rights.

But take an issue that certainly attracted the attention of so many people down here for so long a period of time. How many radical feminists do we know that believe in the Bill of Rights and the Constitution except when it comes to the rights of people charged with rape where they would suspend constitutional rights. Catherine MacKinnon said recently in an article in the *New York Times*, that we ought to change the burden of proof on rapes from beyond a reasonable doubt to a simple by a preponderance of the evidence, as a kind of an affirmative action program towards the rights of women. Or right to lifers, who have discovered within the Constitution, a right to protest or a new right, a right to life, but who don't support or have any sympathy for the right to choice. Or many of my Jewish friends who believe in freedom of speech but who were on the side of the city of Skokie when it tried to ban Nazis from marching through the city of Skokie, finding within the Bill of Rights an exception where it suited their own particular convenience or ideology. How many African-Americans do we know who believe in freedom of speech except when it comes to the right of a white diplomat from South Africa to speak at a university campus. How many gays do we know who support the right of freedom of expression for gays but would ban homophobic speech. How often we see with the political-correctness doctrines today on campus; a selective invocation of rights when it serves the interests of the left but not the interests of the right. How many times do we hear from those who are wealthy that the most important right in the Constitution is the right to preserve property; that the right of liberty certainly can be compromised in the interest of property. How many poor people or advocates for the poor see in the Constitution only a welfare right but not a right of property. How many of those who are religious read only the first part of the First Amendment talking about free exercise, and neglect the Establishment Clause. And how many who are irreligious see in the First Amendment only the Establishment Clause, without looking at the opposite side of the coin, the right to practice one's religion freely.

I want to spend the last few minutes of my talk on one particular right that nobody ever advocates. That is, the rights of criminal defendants. A job that I have taken over the past twenty-five or thirty years. It's a very thankless right because virtually all of the other rights I have spoken about have advocates. There are people who vote and who

defend the rights of the religion, the rights of life, the rights of property and others. But when it comes to defending the rights of people charged with crimes, you don't win elections on a platform of saying "I am for the criminal". I have often wondered, in Florida, the only state I know of where people run for the office of public defender, what's the program, what's the platform? "I am going to be the best public defender in Broward County! I am going to free more guilty people than my predecessor! I am going to invoke more constitutional rights! You are going to see a higher rate of recidivism under me than under any of my predecessor!" You run that way or you run by saying, "Vote for me. I won't fight that hard. I'll put one arm behind my back and I'll protect all of you. You should put me in as public defender." That's how you run for public defender because advocating the rights of criminal defendants is so unpopular. It's no surprise that you don't see any Nobel prizes for those who defend the rights of criminal defendants. Nor would you ever see a president of the United States get up and make the following speech. "I am now going to appoint as the new justice to the Supreme Court a man or a woman who has devoted her life or his life to defending pornographers, rapists, murderers. That's what we need on the Supreme Court. Someone who will speak up for the rights of thieves, disenfranchised elements of our society." You know, you ask yourself, how did he ever get on the United States Supreme Court. Name me justices who have ever stood up for the rights of criminal defendants and I will tell you a one word answer, accident, total accident. When you think of the great justices who have supported the rights of criminal defendants over time, who have they been? Earl Warren, appointed as governor of California, former district attorney, former attorney general, tough "law and order" type and he gets on the Supreme Court and suddenly he is in favor of the rights of criminal defendants. William Brennan, never had any reputation as an advocate for the rights of defendants. He had been a justice in the New Jersey Supreme Court where most of his cases had to do with sewage and other phenomena in New Jersey. Suddenly he gets on the United States Supreme Court and is freed from the constraints of politics and he becomes a beacon on the rights of criminal defendants. The only justice in history ever appointed to the Supreme Court who has had a record and a reputation for defending the rights of criminal defendants was Thurgood Marshall and who was appointed, I think, largely and importantly, because for two hundred years we have not had an African-American on the United States Supreme Court. The next African-American appointed to the Supreme Court surely was not

one who supported the rights of criminal defendants, perhaps except if they were charged with harassment. We'll wait and see how those cases turn out. But the rights of criminal defendants certainly have been a benchmark of how we define our constitutional system and yet we see people appointed to the Court for all kinds of other reasons but not because of their defense of the rights of criminal defendants.

It's a hard job. Some of you probably are criminal defense lawyers or at least are friends of criminal defense lawyers. We've all had the same experience. When we defend somebody who is popular everybody loves you. "Oh, you are doing a great job." You know, when I speak in the financial community, people come over and pat me on the back and say "we really appreciate that you are representing Michael Milken. We think he is unjustly accused of a crime." Or when I represent a Doctor Spock people from the radical community say "oh you are doing a terrific job. You know, we really like the fact that you are representing somebody charged with that particular" Or if I represent somebody who, as mentioned before, was accused of pornography, a Harry Reems in the latest film made right down here twenty or twenty-five years ago, the people from that industry find you to be something of a hero. But everybody disagrees with most of the people we represent most of the time. My bellwether is always my mother and my mother finds most of my clients thoroughly disagreeable. She happens to like Leona Helmsley. But it's rare to find any criminal defense lawyer who can continue to represent defendants who will give them any kind of popularity contests. A great lawyer from Florida, Roy Black, when involved in the defense of William Kennedy Smith, made as many enemies as he made friends. The *New York Times* op-ed piece recently called him sexist for using words like hysterical to describe the complaining witness. I thought it was a poor choice of words myself. Others regard him as a great hero and a great lawyer. I think the one thing you can say about many lawyers, particularly a lawyer like Black is that he was thoroughly professional. He did a very, very good job. He played by the rules. He did what a defense attorney is supposed to do.

You know the famous old story of the defense lawyer who cabled his client, "justice has prevailed." His client cabled back, "appeal immediately!" We are not necessarily in the justice business. That is, the American system of criminal justice is based on a very interesting theory. It's a theory that we achieve justice not by everybody in the system trying directly to reach justice but by everybody in the system trying to achieve what's best for them. It's almost like the way capitalism works

in a free market economy. In a free market economy, every single participant in the economy does not have his or her particular goal, to achieve a kind of economic equilibrium. We hope that the invisible hand of Adam Smith would bring about some kind of economic revolution and everybody fights for his own piece of the pie. Our adversary system of criminal justice, which is entirely compatible with the capitalist system of economy, the free market systems, works in somewhat the same way. If everybody works hard and if everybody is on an equal plane, the William Kennedy Smith case revealed, I think, how actions sometimes in equal level plane deal with participants, and if everybody has a roughly equal access to resources, and roughly equal access to excellent counsel, the system in the end will work.

What does it mean, "the system in the end will work?" Does it mean the truth will always come out? No. Because truth is only one, and perhaps the most important goal of the system but only one important goal of the system. The system's goal is fair process. The system's goal is achieving as many of the equities that the system is capable of achieving. Justice is a summation of all the other virtues that our system is capable of achieving. It's a very hard system to justify. It's a very hard system to explain. The hardest question I'm asked all the time, as I said, not only by my mother. I am asked by my children. I am asked by my students. I am sure at some form or another I will be asked by you, is how can I sleep at night defending people I know to be guilty. And I do know that some of my clients are guilty. How do I know that they are guilty? They told me. Why did they tell me? Because I promised that if they told me I wouldn't tell you. And if they told me, I would never use that against them. It's a very important part of the system that I encouraged them to tell me the whole truth. That way, if they want to lie on the stand, I can try to talk them out of it. If they want to do something that's improper, I can try to persuade them that most of the time it's not in their best interests to do it. Unfortunately, sometimes it may be in their best interests to violate ethical and legal rules and then a lawyer really has a very difficult job. So the role of the defense lawyer is part to understand, it's part to explain, it's part of the system and a process which generally produces good results but at a very high cost. And so I invoke the insurance policy analogy, even in talking about why I defend guilty clients.

I defend guilty clients, first of all, because there aren't that many innocent ones around, and let's talk about that for just a minute. Isn't that a wonderful thing to say about the American system of justice. The vast majority of people who are charged with crimes in this coun-

try are guilty and thank God for that! Would we want to live in a country where the vast majority of people charged with crimes are innocent. That might be Iraq, it might be China, it might be the former Soviet Union but it's not America. One of the reasons why the vast majority of people charged with crimes are, in fact, guilty is because we criminal defense lawyers are prepared to fight the government, as they find to charge somebody with a crime, whether or not the person charged is guilty or innocent. We keep the government honest. We make sure that we can never get to a situation where the government can say, a ha!, this time I'll cross the line and charge somebody who is innocent because the lawyer will not be vigorous, the lawyer will not defend, the lawyer will not use all the resources available to her or him, so that the ability to challenge the government at every turn is a big difference between the rights in the United States and the rights in totalitarian countries. In this country we have the most fundamental right of all, the right to be wrong, the right to make a mistake. The right to be wrong if you are a journalist, to make an honest mistake, that's what the *New York Times'* Mr. Sullivan gave us. The right to defend somebody who is guilty, the right not only to defend when the person is innocent.

In the Soviet Union there is a rule, or there used to be a rule, I don't know whether it exists under the new Russian government constitution, that you could not get up in court and defend somebody who you knew to be guilty. Socialist democracy demanded that if you knew the person to be guilty you had to plead that person guilty. Well, how do you determine whether or not you knew somebody to be guilty? Well, very simple. If the person was eventually found guilty and you defended him on the ground that he was innocent, you were presumptively in violation of the law. And that presumes, of course, that the system would never make a mistake. We know our system is imperfect. We know that it makes mistakes.

I started out with a story that came from the Soviet Union. Let me end with a story that takes place many years ago in China. The story is about a Chinese farmer who calls in his family one day and says, "We had a terrible family tragedy. Somebody has pushed the family outhouse into the Yangtze River. Now, children, tell me which one of you did it." Nobody says a word. And finally the father said, "maybe this will loosen your tongues. Let me tell you a story about a faraway place called America and a young boy who is called in by his father. And his father said, 'somebody chopped down my cherry tree. Who was it who chopped down my cherry tree?' And this young man

said, 'Daddy, I cannot tell a lie. It was I who chopped down your cherry tree.' And the father embraced him and hugged him and kissed him and this young man, George Washington, became the president of the United States. Now, does anybody want to tell me who pushed the outhouse into the Yangtze River?" The youngest boy comes forward and says, "Daddy, I cannot tell a lie. It was I who pushed the outhouse into the Yangtze River." Whereupon the father slapped him and beat him and pushed him. And the young man said, "But George Washington's father loved George Washington when George Washington chopped down his father's cherry tree." The father replied, "His father was not sitting in the cherry tree!"

I tell the story to illustrate the principle that justice can not be done by those who represent solely the clients that are perceived victims of rights. Most of us find it easier to identify with the father in the outhouse because so many of us are pushed around these days, so many of our own rights are interests are being violated. But justice, I believe, must be done from a somewhat loftier perch. Thank you very much.