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From Falwell to Obama and Everyone (and Everything) in Between: Larry Flynt Unfiltered in Chapel Hill

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INTRODUCTION

It was not the first time that Larry Claxton Flynt,¹ perhaps best known to the general public as the publisher of Hustler magazine and to First Amendment² scholars as the Supreme Court-
vindicated defendant in *Hustler Magazine v. Falwell*, had spoken in a prestigious academic setting. On February 18, 2010, at the Great Hall in the Frank Porter Graham Student Union at the University of North Carolina, Chapel Hill, Larry Flynt again addressed a college campus in what the local student newspaper called a "witty and opinionated" talk that drew "a muted protest." Flynt previously spoke at Oxford Union, in 1999 — just two years after one British newspaper dismissively dubbed him a

Press Clauses were incorporated eighty-five years ago through the Fourteenth Amendment Due Process Clause to apply to state and local government entities and officials. *See* Gitlow v. New York, 268 U.S. 652, 666 (1925).

3. 485 U.S. 46, 57 (1988) (holding that the First and Fourteenth Amendments prohibit public figures from recovering damages for the tort of intentional infliction of emotional distress).


5. Id.

6. Oxford Union describes itself as “the world’s most prestigious debating society, with an unparalleled reputation for bringing international guests and speakers to Oxford. It has been established for 186 years, aiming to promote debate and discussion not just in Oxford University, but across the globe.” About the Union, OXFORD UNION, http://www.oxford-union.org/about_us (last visited Nov. 9, 2010). The organization:

holds no political views. Instead, the Union is a forum for debate and the discussion of controversial issues. For example, in the 1960s, Malcolm X came to the Union and demanded black empowerment “by any means necessary”. In the 1970s, Richard Nixon in his first public speech after Watergate admitted, “I screwed up – and I paid the price.” In the 1980s, Gerry Adams, still under his television ban, addressed the Union’s members. In Michaelmas 1996, O. J. Simpson made his only public speech in Britain after the controversial “not guilty” verdict in his criminal trial. The Oxford Union believes first and foremost in freedom of speech: nothing more, nothing less.

*Id.* The organization proudly boasts that it:
“white-trash pornographer”8 — and went back there again to give another lecture a decade later.9

Back on this side of the pond, he had previously spoken in 1999 at Georgetown University, where he mocked that institution’s Catholic tradition before a crowd of about 500 students by stating, as Flynt has done on several occasions,10 that “the church has had

attracts figures from all walks of life and continues to maintain its unparalleled reputation for international guests and speakers. Twelve British Prime Ministers have been Members or Officers of the Union: Tony Blair, Margaret Thatcher, Harold Wilson, Edward Heath, Sir Alec Douglas-Home, Harold Macmillan (Lord Stockton), Anthony Eden, Clement Attlee, H H Asquith, the Marquess of Salisbury, the Earl of Rosebery, and William Ewart Gladstone.


7. See John Follain, Larry Flynt vs the British Censorship People, SUNDAY TIMES (London), Oct. 10, 1999, at 9 (noting that “Flynt jumped at the offer of last night’s Oxford lecture on free speech as a chance to get his own back on the censors who have stopped all but one of his erotic publications from reaching the British reader”).

8. Luke Harding, Dirty War on the Top Shelf, GUARDIAN (London), Jan. 13, 1997, at 1B. This isn’t the worst thing that ever has been said about Flynt. For instance, Diana Russell, a professor emeritus at Mills College in Oakland, California, stated in 2004 that “I wish that this evil, misogynist man had died in his mother’s womb.” Will Harper, Mills v. Larry Flynt, EAST BAY EXPRESS (Oakland, Cal.), Nov. 17, 2004, available at LexisNexis Academic.


10. See, e.g., Clay Calvert & Robert Richards, Larry Flynt Uncensored: A Dialogue With the Most Controversial Figure in First Amendment Jurisprudence, 9 COMM/LAW CONSPECTUS 159, 167 (2001) (quoting Flynt as stating, during a December 2000 interview, that “[It’s the church. The church has had its hand on our crotch for over 2000 years. The government is exceedingly moving in that direction, feeling that if it can control our pleasure center, it can control us.”); Larry King Live (CNN television broadcast Jan. 10, 1997), available at http://www.cnn.com/SHOWBIZ/9701/11/
its hand on our crotch for 2,000 years and the government is moving in that direction, figuring that if they can control our pleasure center, they can control us.” He also had lectured at Harvard Law School, a talk that is featured in several sequences of the recent documentary about his life, Larry Flynt: The Right to be Left Alone. In 2001, Flynt “drew a standing-room-only crowd of 500” when he spoke at The Pennsylvania State University.

Flynt’s 2010 appearance in Chapel Hill, as keynote speaker for the First Amendment Law Review’s symposium entitled “Sexually Explicit Speech and the First Amendment,” was not without controversy. As described by adult industry trade publication Adult Video News:

A group called Feminist Students United (FSU), which according to its website was

falwell.v.flynt/kl1.00.html (providing the transcript from an interview with Larry Flynt and Jerry Falwell, and quoting Flynt for the proposition that “the church has had its hand on our crotch for over 2,000 years and the government is exceedingly moving in that direction because they both feel if they control your pleasure, they can control you”).


13. LARRY FLYNT: THE RIGHT TO BE LEFT ALONE (Midtown Films 2007); see also Gary Frisch, Larry Flynt: The Right to be Left Alone, VIDEO BUS., Sept. 29, 2008, at 14, available at 2008 WLNR 18493012 (reviewing the documentary and writing that “Larry Flynt has often been perceived as something of a train wreck. But after just five minutes of this documentary, you might find yourself admiring the man as a true patriot”); David Hinckley, A Natural-Porn Hustler in Free Speech Debate, DAILY NEWS (N.Y.), Aug. 7, 2008, at 84, available at 2008 WLNR 14770301 (describing Joan Brooker-Marks’ documentary as “a chronological walk through Flynt’s eventful life, focusing on highlights like his obscenity conviction in Cincinnati and the assassination attempt that left him a paraplegic”).

formed about one week ago, protested outside the event and handed out a fake program booklet listing what it said were the movies Flynt had produced, as well as some dialog from one volume of *Gag Factor*, which Flynt had nothing to do with. Also, one university alumnus and FSU supporter who attended Flynt’s speech, Anthony Maglione, had to be removed from the auditorium after hogging the microphone during the question-and-answer period that followed Flynt’s interview.16

The program claimed that it “[p]araphrased from work by Robert Jensen” showing the alleged harms to women caused by sexually explicit content. On his homepage, Jensen writes — in the third person voice — that he “draws on a variety of critical

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15. The Feminist Students United website includes a post dated February 11, 2010, announcing the launch of its website, but does not indicate when the group was formed. See Announcement, Feminist Students United, http://feministstudentsunited.org/category/announcement (last visited Oct. 31, 2010). The organization describes itself on its website as:

a progressive feminist organization which affirms that no form of oppression can be overcome until all aspects of racism, classism, sexism, and heterosexism are dismantled. We acknowledge intersecting identities and strive to be mindful of these intersections in all our work. We endeavor to create an environment which is non-hierarchical and supportive in nature, and we work to bring about change in our community through education, outreach, direct action and community organizing.


17. Program from Feminist Students United, Does Larry Flynt Have the Right to Speak? (Feb. 18, 2010) (on file with the First Amendment Law Review and with the authors).
approaches to media and power. Much of his work has focused on pornography and the radical feminist critique of sexuality and men’s violence, and he also has addressed questions of race through a critique of white privilege and institutionalized racism.”

But the protest clearly did not sit well with all students in attendance. As freshman R. Blake Wentley wrote in a letter published by The Daily Tar Heel:

The floor opened up to ask questions of Larry, and this individual stood up and “asked” the audience a “question.” By which I mean he preached about what a deplorable human being Mr. Flynt is and how we don’t want such trash at our school.

Unfortunately for him, the point of the event was to talk about how important free speech is, and nowhere in the description of the event was there any mention of hardcore pornography.

Pornography doesn’t enter into this discussion at all; we were there to hear what Mr. Flynt had to say about free speech, not to hear some random person tell us how ashamed we should be about caring what this man has to say about the First Amendment.

Flynt himself seems unperturbed by such controversy. In an interview conducted by a reporter for Independent Weekly the week before he spoke in Chapel Hill, Flynt was asked about the potential for controversy at the event. He remarked, “Oh, controversy, I don’t care about that. I speak on college campuses all over the world, and that’s where I feel the most comfortable. That’s where I

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feel I have the most influence, because these are the people who are going to be running the country.”

At his Chapel Hill talk, Larry Flynt had both family and friends in attendance. His wife, Liz Flynt, and his daughter, Theresa Flynt, sat next to each other in the front row of the Great Hall. Also in the front row were three individuals with adult industry ties who would be speaking the next day at the symposium: Diane Duke, the executive director of the Free Speech Coalition, which is the leading trade association for the adult entertainment industry and was the victorious party before the United States


22. Theresa Flynt is heavily involved with her father’s business. As described in a press release issued by the Association of Sites Advocating Child Protection after she joined that organization’s advisory council in 2007:

Theresa Flynt is one of the most well-known female executives working in the adult industry. Responsible for creating the Hustler Hollywood chain of stores, she oversaw the design, building and day-to-day operations of the retail powerhouse. Since then, Theresa has served as Hustler’s Executive Vice President of Licensing and Brand Development and headed up Hustler Video’s Marketing Division. She has graced the cover of AVN Online and been featured in O, The Oprah Magazine, Playgirl, Los Angeles Magazine, Glamour UK and XBIZ World. Most recently AVN Magazine named [sic] her one of its top 50 influential people under the age of 40.

Theresa holds a BA in Marketing from Mount Saint Mary’s College.


23. The Free Speech Coalition describes its responsibilities as:
Supreme Court in the virtual child pornography case of Ashcroft v. Free Speech Coalition;\(^2^4\) Jeffrey Douglas, a California-based criminal defense attorney who represents a number of clients in the adult entertainment industry,\(^2^5\) and Larry Walters, a Florida-based First Amendment attorney.\(^2^6\) Larry Flynt's two bodyguards were

One, to be the watchdog for the adult entertainment industry guarding against unconstitutional and oppressive government intervention; Two, [sic] to be a voice for the industry telling the truth about the adult entertainment industry not only in the vital role it plays as an economic contributor, but also in its contribution to quality of life in a healthy society; and finally to provide business resources for our members to facilitate successful businesses in this ever-changing and challenging business environment.


25. Adult Video News describes Douglas as:

a Santa Monica lawyer, representing all segments of the adult entertainment industry since 1982. He emphasizes obscenity defense and 18 U.S.C. 2257. He is Chair of the Free Speech Coalition, and Chairman Emeritus of the First Amendment Lawyers Association. A nationally recognized spokesperson for the adult entertainment industry, as well as an expert witness, Mr. Douglas appears regularly as a media commentator, and on invitation, has testified before Congress.


26. Walters describes himself on his firm's website as the managing partner of:

the Walters Law Group, a boutique law firm concentrating in First Amendment, Internet, Intellectual Property and Gaming law. Mr. Walters has developed a noteworthy reputation for representing the interests of the online entertainment community, as well as other more traditional industries. He has practiced law for 22 years, and is recognized as a national expert on legal issues pertaining to Free Speech and the Internet.
stationed on stage, but out of audience view, just in case something got out of control.

This article provides Flynt’s remarks during his February 18, 2010, talk in Chapel Hill on a wide range of subjects. Some comments were made during his prepared speech, some in response to questions posed by the authors of this article who served as moderators for his talk, and still others came during Flynt’s answers to questions posed by some of the more than 400 people who attended his talk.

The authors transcribed an audio recording of the event, which they retain in their possession. Some responses and comments by Flynt are re-ordered here around particular topics, cases, or subjects that he addressed in order to preserve flow in reading. The authors made a few very minor changes for syntax in some places, but did not alter the substantive content or material meaning of any of his responses or any portion of his speech. Some portions of the interview and question-and-answer session were omitted as extraneous, redundant, or simply beyond the scope or the purpose of this article. The authors have added more than fifty footnotes that, in their judgment, are relevant or useful for providing further background information on comments made by Flynt. In some instances, the authors could not locate sources for Flynt’s assertions, so his comments in those situations speak for themselves.

I. LARRY FLYNT IN HIS OWN WORDS

This part is divided into different sections based upon the topics that Flynt addressed during his prepared remarks and during the question-and-answer session that immediately followed.

A. On His Reasons for Defending Free Speech and the First Amendment

I have been in the trenches for the better part of my adult life and have fought to expand the perimeters of free speech. I have been involved in one First Amendment battle after another. When I first started my magazine, I hadn’t even read the First Amendment. I didn’t even know it applied to me. I just wanted to make money and have fun at what I was doing. I got into all of that trouble later, and then suddenly I realized that I’m not hiding behind the First Amendment; I’m exercising the First Amendment.

27. Flynt now is nearing the age of 70, having been “born in 1942 in Eastern Kentucky’s Magoffin County” and residing today in Beverly Hills, California. LARRY FLYNT, SEX, LIES & POLITICS: THE NAKED TRUTH 1 (2004).

28. One very recent battle was a fight to obtain “photos depicting Meredith Emerson’s nude and decapitated body under Georgia’s public disclosure records laws.” Jessica D. Gabel, Hustler Law Will Damage Access, ATLANTA J.-CONST., Mar. 16, 2010, at A11. The Georgia legislature responded to Hustler’s request for the crime scene photographs of the slain woman by approving:

the “Meredith Emerson Privacy Act,” which would prevent the most gruesome crime scene photos from being released through the state’s public disclosure law. House Bill 1322 would add an exemption for video and photographs of a crime scene that depict graphic images of sexual organs or the dismemberment of a crime victim. Only a judge would be able to order such information released.

Bill Rankin & Aaron Gould Sheinin, Hustler Denied Access to Photos, ATLANTA J.-CONST., Mar. 11, 2010, at B1. In 2009, Flynt’s LFP Publishing Group lost a federal court battle over a story it ran that included decades-old nude photographs of Nancy Benoit, who was murdered by her husband, wrestler Christopher Benoit. Toffoloni v. LFP Publ’g Group, LLC, 572 F.3d 1201 (11th Cir. 2009), cert. denied, 130 S. Ct. 1689 (2010). For a general discussion of Larry Flynt’s many First Amendment battles, see Calvert & Richards, supra note 10, at 173, which provides an overview of Flynt’s battles and discusses “the profound depth of Mr. Flynt’s passion about the First Amendment as an absolute shield for free speech.”
We’ve had free speech for so long that it has lost its value. Janis Joplin once sang the lyrics, “Freedom is just another word for nothing left to lose.” That was over thirty years ago. Today those words have more meaning than even then.

Many people are confused on the issue of free speech because they have their own version of what it means. But you have to be able to walk the walk when it comes to defending free speech. If someone can stand up beside you and scream at the top of his lungs about everything that you’ve been opposed to for your entire life, and you can tolerate that speech, then you know what the First Amendment is all about.

If you take a poll about what people think about the First Amendment, ninety-eight percent of them would say we should have free speech. But, if you ask them what about hate speech, flag burning, and gay rights and so forth, they would say, “Whoa, wait a minute. I didn’t know you were talking about that.” Everybody seems to have to qualify their feelings about speech. When you’ve got a Constitution that’s one-size-fits-all, it doesn’t necessarily work


32. This propensity for qualifying First Amendment rights includes the United States Supreme Court, which has carved out several exceptions from the blanket of free speech provided by the First Amendment. *See* Ashcroft v. Free Speech Coal., 535 U.S. 234, 245-46 (2002) (opining that “as a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity, and pornography produced with real children.”).
that way, but that’s the way we have to treat people when they’re concerned about individual liberties and civil rights.

B. On How Politics and the Judiciary Impede Free Speech

I’m concerned that many of the freedoms we gained during the Warren Court back in the sixties and seventies have been placed in jeopardy with the new conservative Supreme Court, appointed primarily by [George W.] Bush. Bush’s legacy will not be Afghanistan, Iraq, or even Hurricane Katrina. It’s going to be those two toadies he put on the Supreme Court. In the next twenty-

33. See, e.g., BERNARD SCHWARTZ & STEPHAN LESHER, INSIDE THE WARREN COURT, 1953-1969, 232 (1983) (suggesting that the U.S. Supreme Court, under the leadership of Chief Justice Earl Warren, built “a wall of protection around the media, making recovery of damages for libel by public officials (and later public figures) extremely unlikely”).

34. A toady is “a servile flatterer; sycophant, esp. one who does distasteful or unprincipled things in order to gain favor.” Toady Definition, YOURDICTIONARY.COM, http://www.yourdictionary.com/toady (last visited Oct. 31, 2010).

35. This is an apparent reference to Chief Justice John Roberts and Associate Justice Samuel Alito. As Professor David A. Strauss of the University of Chicago Law School recently wrote:

President George W. Bush’s two appointees, John Roberts and Samuel Alito, were, according to published accounts, chosen after a careful and highly ideological search. There is no reason at all to expect that they will disagree with the views of the Bush Administration on the issues that matter to that administration — abortion, gay rights, affirmative action, criminal justice, and government aid to religion.


Chief Justice John Roberts, according to his official biography posted on the website of the United States Supreme Court:

five to thirty years, they’re going to be spewing their conservative philosophy to the whole world.

I think it’s sad, particularly if you go back and look at *Bush v. Gore*,\(^\text{36}\) and see that the five justices who voted to give the election to Bush were all Republicans. Many Americans just held their noses and walked away.

What saddens me is when I see this happen to our judicial system and the gridlock that we have in Washington, along with the “tea baggers,”\(^\text{37}\) or whatever it is they call themselves. If you

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Associate Justice Samuel Alito, in turn, was:


*Id.*

36. 531 U.S. 98, 111 (2000) (showing that the five who voted to end the recount were Chief Justice Rehnquist, Justice Scalia, Justice Thomas, Justice Kennedy, and Justice O'Connor).

assembled all of them together, you wouldn’t find a total IQ of one. I understand that everybody has the right to petition the government for redress of grievances\(^{38}\) — that’s what they’re doing — but I would like just one of those people who attended those rallies to at least have something coherent to say about the government.

Many, many years ago, Lenin,\(^{39}\) the famous leader of Russia, said the problem with democracy is that it will destroy itself from within. As I watch the country, in my lifetime, it seems that we are moving closer to that melting point. Our judicial system is overtaxed. We have a situation in Washington where the Democrats and Republicans won’t even talk to each other, much less figure out how to get a bill passed. The people who are paying the price are the working people in America.

These guys in government have their retirements and their bonus programs. When they leave Congress, they can take whatever money is left in their campaign kitty with them. For most of them, if they’re not millionaires when they enter Congress, they are when they leave. The only way for the American people to

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38. The First Amendment to the United States Constitution provides, in relevant part, that “Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.” U.S. CONST. amend. I. Professor Emily Calhoun of the University of Colorado Law School writes that:

The principle that there is a fundamental right to petition government for redress of grievances has a long history. It was recognized in the Magna Carta in 1215, and in subsequent centuries its importance was repeatedly reaffirmed. The principle was transported to America, in part via charters for colonial government, where it became firmly embedded in the American political and legal system. Petitioning was a primary source of bills in pre-constitutional America.


clean up this situation is to create a revolving door in Washington. They need to vote them out the very next time. That’s the only salvation I can see for the country.

There’s a system in Australia now where people are fined if they don’t vote.⁴⁰ I love that because a lot of people say, “I don’t believe in government, so I don’t vote.” But if they realize that a fine is going to be enforced and they will have to pay it, they would vote. When you consider that only half the eligible voters vote in any election, having a system where everyone votes would change the whole political structure. The government doesn’t want to hear this. They don’t want people to start thinking that way. But our country has gotten into such a dire situation that things need to be done.

C. On Hustler Magazine v. Falwell⁴¹

I have been in prison about nine times and been to the Supreme Court⁴² — all for the First Amendment. Those battles were not easy. I have been shot and paralyzed as a result of them.⁴³ That happened during an obscenity⁴⁴ trial. But the most important

⁴⁰ See Australia Electoral Commission, Voting Within Australia - Frequently Asked Questions, http://www.aec.gov.au/faqs/voting_australia.htm (last visited Oct. 31, 2010) (noting that “voting is compulsory for every Australian citizen aged 18 years or older. If you do not vote and do not have a valid and sufficient reason for failing to vote, a penalty is imposed.”).
⁴² As Flynt once put it, “I have been sent to prison a couple of times, and I have spent so much time in court that it has become my second home.” FLYNT, supra note 27, at 8.
⁴³ Flynt and his attorney, Gene Reeves, were shot on March 6, 1978, in Lawrenceville, Georgia by “serial killer Joseph Paul Franklin, a white supremacist who claims he was enraged by an interracial nude photo in Hustler.” Beth Warren, What Ever Happened to . . . Gene Reeves: Ex-Lawyer Fully Healed But Forever Changed, ATLANTA J.-CONST., Aug. 6, 2007, at J3. Reeves was serving as Flynt’s local counsel at the time during an obscenity prosecution, and “Flynt paid Reeves’ $18,000 medical bill and called to check on him even though the two only knew each other for about a week.” Id.
⁴⁴ Obscenity is one of the few categories of expression that is not protected by the First Amendment’s guarantee of free speech. See Roth v. United States, 354 U.S. 476, 485 (1957) (writing that “obscenity is not within
case I’ve had is Hustler Magazine v. Falwell. The case was in Virginia, and even though the jury found there was no libel, they ordered me to pay him $200,000 for hurting his feelings. I figured, “What’s next, his dog’s feelings? His wife’s feelings?” These people will sue over anything.

My attorney said that you can’t take this to the high court — it doesn’t make sense — because, first of all, they’re not going to accept it and, second, if they do, you’re going to lose. We went to the Fourth Circuit, and we lost there. The pressure was even greater on me to just abandon the idea of petitioning the Supreme Court for certiorari. I said, “No, there’s got to be justice somewhere.”

We could not get one single member of the national media to file an amicus brief when we petitioned the Supreme Court for cert. Once they granted it, everyone wanted on the bandwagon, the area of constitutionally protected speech or press”). The U.S. Supreme Court held in 1973 that the test for obscenity focuses on whether the material at issue: (1) appeals to a “prurient interest in sex,” when taken as a whole and as judged by “contemporary community standards” from the perspective of the average person; (2) is “patently offensive,” as defined by state law; and (3) “lacks serious literary, artistic, political, or scientific value.” Miller v. California, 413 U.S. 15, 24 (1973).

46. As described by Chief Justice William Rehnquist in the opinion of the Court:

The inside front cover of the November 1983 issue of Hustler Magazine featured a “parody” of an advertisement for Campari Liqueur that contained the name and picture of respondent and was entitled “Jerry Falwell talks about his first time.” This parody was modeled after actual Campari ads that included interviews with various celebrities about their “first times.” Although it was apparent by the end of each interview that this meant the first time they sampled Campari, the ads clearly played on the sexual double entendre of the general subject of “first times.”

Id. at 48.

including NBC, ABC, CBS, The Washington Post, The New York Times, all of them. They realized that this case would have implications for all of them. After all, if a plaintiff couldn’t prove libel, but a jury could still award damages for infliction of emotional distress\(^48\) — hurting a person’s feelings — there would be exposure for all the media to this.

I didn’t recognize the constitutional importance of Hustler v. Falwell at the time. I had already thought parody was protected speech. But I had to face off with Falwell in a courtroom. Here I am in the Supreme Court, and it’s him, his wife, and his kids. It was like a Norman Rockwell painting. I’m this crippled pornographer over here, and I thought, “I’ve got no shot.”

When the Supreme Court heard the case, there was a unanimous decision in my favor. Chief Justice William Rehnquist, the most conservative justice on the Court at the time, wrote the opinion. He said less than admirable things have been done under the guise of the First Amendment, but this does not give the government the right to suppress it.\(^49\) I thought I was reading something William O. Douglas\(^50\) wrote. That’s one time that the Supreme Court got it right.

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\(^48\) See Karen Markin, The Truth Hurts: Intentional Infliction of Emotional Distress as a Cause of Action Against the Media, 5 COMM. L. & POL’Y 469, 476 (2000) (providing that the tort of intentional infliction of emotional distress “consists of four elements: (1) the defendant’s conduct must be intentional or reckless, (2) the conduct must be outrageous and intolerable, (3) the defendant’s conduct must cause the plaintiff emotional distress and (4) the distress must be severe”) (quoting RESTATEMENT (SECOND) OF TORTS).

\(^49\) Rehnquist wrote that “in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment.” Hustler, 485 U.S. at 53.

D. On His Relationship with the Late Jerry Falwell

I was doing the Larry King Show with Jerry Falwell and the next thing I feel is his hand on my leg. I knew he wasn’t gay, so I thought he was making a gesture. This was after fighting for twelve years in the courts. We finally got together on that show. He asked me to speak with him at a university down in Florida. I went there and he couldn’t get a flight back out. I have a private jet, so I dropped him off in Lynchburg [Virginia].

About a month later, my secretary announced to me that Reverend Jerry Falwell is in the lobby and would like to speak with me. He came into my office and stayed there for six hours. I told him everything I felt he was doing wrong.

A couple of months later, he got caught up in that Teletubbies business where he said that the Teletubbies were gay. This was all over the news. So I called Reverend Falwell and said, “Look, you’re the best known evangelist in the world. Will you quit getting on TV and spewing out stupid stuff like that because it costs you credibility?” After that, he would always talk to me about

51. Lynchburg is the home of Liberty University, which Jerry Falwell founded in 1971 and now “is the largest and fastest growing Christian Evangelical university in the world.” Liberty University, About LU: Message From the Chancellor, http://www.liberty.edu/aboutliberty (last visited Oct. 31, 2010).

52. This television show, which was created by Ragdoll for the BBC: uses bright colours, engaging stories and fun games, to which even the youngest child can relate. Based on a fundamental understanding of how very young children develop, Teletubbies allows young children to feel happy and secure. From babies to toddlers, children love Teletubbies and Teletubbies love children. Their appeal lies in their unique ability to create an environment within which children can have fun and grow with confidence.


issues. If he was going to attack somebody, like Ellen DeGeneres — he wanted to call her Ellen DeGenerate\(^5\) — he would call.

I developed an odd sort of affection for Falwell. I do think he was sincere about his ministry.\(^5\) I just felt he was over the top in terms of the way he sold himself.

\textit{E. On Sex and Censorship}

It’s easy for me to understand why sex has become such a political buzzword. The church has had its hand on our crotch for over two thousand years. The government is exceedingly moving in that direction.\(^6\) They believe if they can control your pleasure center, they can control you. Ever since the Victorian era, people have had their leather-bounded editions of pornography. But it’s when it became available to the masses that all of a sudden there was a problem.

Most people feel a democracy is going to protect their rights, but here’s a reminder: Hitler didn’t grasp power. He was elected by a majority of the people — look what a monster he became — just like George Bush was elected. When Hitler first came to power, at the top of his agenda was censorship. So when he started burning books, he didn’t start with the classics. He started with the so-called garbage that no one wanted to read — pornography, but eventually it lead to Voltaire and Shakespeare.

\(^{54}\) Falwell, in fact, stated that “[I]t’s important for us to do our part during the upcoming ‘Ellen’ broadcast, where the character of Ellen Morgan, played by Ellen DeGeneres — some have said ‘DeGenerate’ — announces her lesbianism.” John Carmody, \textit{The TV Column}, \textit{WASH. POST}, Mar. 27, 1997, at B4.

\(^{55}\) Falwell was the founding pastor of the Thomas Road Baptist Church in Lynchburg, Virginia. \textit{See} Thomas Road Baptist Church, History of TRBC, http://new.trbc.org/visitors/history (last visited Oct. 31, 2010) (noting that the “Thomas Road Baptist Church founded Lynchburg Christian Academy in 1967 and Liberty University in 1971. From its inception, this unique educational system has stressed academic excellence and the local church in its Christ-centered, action-oriented curriculum.”).

\(^{56}\) This apparently is one of Flynt’s favorite lines. \textit{See supra} notes 10–11 and accompanying text (describing Flynt’s use of variations of this statement on other occasions).
These censors always have really good intentions, but if you watch each and every one of them, in terms of the path it leads them down, it always leads to trouble.

Freedom of speech is not freedom for the thought you love. It's the freedom for the thought you hate the most. You have to get your head around that. To live in a free society, we have to tolerate things we don't necessarily like, whether it's people of other religious persuasions or whether you simply don't like their haircut.

The greatest right that any nation can afford its people is the right to be left alone. We should wear that like a badge because every American feels that way. Unless they are breaking the law, they want to be left alone. Too much intrusion by government on people's lives just doesn't work.

F. On the Obama Administration

I think Obama is a good man who wants to do the right thing. Unfortunately, the Republicans and the conservative Democrats have made it almost impossible for him to get any worthwhile legislation through Congress. I would say if he doesn't break that barrier down in the next couple of years, he's going to be a one-term president. But who would replace him? Do you want a repeat of Bush? Sarah Palin?

In terms of the impact of the Obama administration on the adult industry, I think it meant something. I thought Eric Holder, the attorney general, and Obama had more priorities for white-collar crime and crime in general on the streets. They weren't really anxious to pursue victimless crimes. That was the impression I got. So far, not much has been going on. They've had so much else to deal with.

G. On Exposing Hypocrites

As for hypocrisy in government, I give [South Carolina Governor Mark] Sanford a pass.\(^{58}\) He fell in love. But most of the hypocrites in Washington that have their mistresses and continue to vote the way big business wants them to vote, I like to expose them.\(^{59}\) Every time I have the opportunity to out one of them, I do. For the last twenty-five years, I have probably outed more politicians than all of the mainstream media put together.

I remember one in particular was Bob Livingston.\(^{60}\) He was speaker-elect in the House during the Clinton Administration. It was when the Monica Lewinsky thing was going on, and he was railing against Clinton every single day. We found that there was a judge in his district that he was having an affair with, as well as a member of his own staff and a lobbyist in Washington. We just couldn’t believe this guy had all this going on in his private life and he’s attacking Bill Clinton and wanted the House to vote for impeachment. When we exposed this\(^{61}\) and he was forced to resign, 

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58. See Philip Rucker, *In S.C., Governor's Wife is 'the Hero in This Story'*, *WASH. POST*, June 29, 2009, at A3 (describing Sanford’s “affair with an Argentine woman” that caused “a sex scandal that gripped the nation and embarrassed his state”).

59. For instance, Flynt exposed the fact that U.S. Senator David Vitter, a Louisiana Republican, contacted a Washington escort service operated by Deborah Jeane Palfrey, the now-deceased, so-called D.C. Madam. See Debra J. Saunders, *It's the Cheating, Stupid*, S.F. CHRON., July 19, 2007, at B7 (reporting that “[T]hanks to porn sleaze-meister Larry Flynt, Americans learned that the alleged prostitution ring run by Deborah Jeane Palfrey — the D.C. madam — called Vitter five times between 1999 and 2001. Vitter promptly issued a statement apologizing for ‘a very serious sin’ — then went into seclusion”).

60. See generally James Gill, *Scumbag' Does in Livingston*, TIMES-PICAYUNE (New Orleans, La.), Dec. 27, 1998, at B7, available at America's Newspapers, Ref. No. 9812270061 (describing how Flynt exposed Livingston as a hypocrite for having “four illicit affairs in the last 10 years” yet receiving “an award from some Christian group for his devotion to ‘family values’”).

61. In October 1998, Flynt paid $85,000 for a full-page ad in the *Washington Post*, offering up to $1 million to anyone able to provide evidence of “illicit sexual relations with a congressman,
he did an interview with *The New York Times*. The *Times* asked him what he thought about Larry Flynt. He said, "I think he’s a bottom feeder." So the *Times* called me for a comment and I said, "That’s right, but look what I found when I got down there."62

H. On a Government Bailout for the Adult Entertainment Industry

I didn’t hold my breath! I knew I wasn’t going to get a bailout,63 but I just wanted to make a point about how stupid the government was. We’ve got a remedy for what went on with the banks and the automobile companies. It’s called bankruptcy. So why do you bail those idiots out? Let them go bankrupt and someone will come along and pick up the pieces.

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senator or other prominent officeholder.” He received 2,000 responses. Within a week, the two private investigators he had hired narrowed the pool down to forty-eight and then, a month later, to twelve lucky finalists, whose stories were well-documented enough to pursue.


62. Katharine Q. Seelye, *Resignation Was Prompted By Desire to Send a Message*, N.Y. TIMES, Dec. 22, 1998, at A29 (“Through a spokeswoman today, Mr. Flynt rejected the characterization of himself as a bottom-feeder. ‘It takes one to know one,’ she quoted Mr. Flynt as saying. ‘He got down in the mud first. I just jumped down with him.’

I. On the U.S. Supreme Court’s Decision in Citizens United v. Federal Election Commission

When the Supreme Court hands down a decision any more, I can only look at those two guys, [Chief Justice John] Roberts and [Justice Samuel] Alito. They’ve run amok. That decision is because of them.

Seventy-six percent of the people in a recent poll feel the Supreme Court should not allow corporations or foreign governments to finance public campaigns. That’s now going to be allowed. I’m just hoping someone courageous enough in Washington will get a new law passed right away to stall off that trend. So my position on that is that Congress has to draft a new law that will be acceptable to the Supreme Court.

J. On the Mainstream News Media’s Watchdog Role

The mainstream media don’t play the watchdog role at all. When I watch the news, I never watch it for what’s in it. I watch it for what’s being left out.

64. 558 U.S. ____ , 130 S. Ct. 876 (2010). In this case, the high court struck down a federal law restricting independent expenditures by corporations and unions that wish to expressly advocate for the election or defeat of a candidate. Id. at 917. See 2 U.S.C. § 441b (2009) (setting forth the terms of the statute at issue in Citizens United and making it a felony for all corporations, including nonprofits, either to expressly advocate for the election or the defeat of candidates or to broadcast electioneering communications within thirty days of a primary election and sixty days of a general election).

65. As U.S. District Judge Robert E. Payne recently observed, the press plays a “government watchdog role protected by the First Amendment.” Ostergren v. McDonnell, No. 3:08cv362, 2008 U.S. Dist. LEXIS 65010, at *28 (E.D. Va. Aug. 22, 2008), aff’d in part, rev’d in part sub nom., Ostergren v. Cuccinelli, 615 F.3d 263 (4th Cir. 2010). In this view, the press is tasked with “scrutinizing government action and ensuring that the public has information regarding political issues and other topics of public interest. Ensuring that the press can be a government watchdog increases transparency of government actions, thus contributing to government accountability and discouraging corruption.” Emily Berman, Democratizing the Media, 35 FLA. ST. U. L. REV. 817, 824 (2008).
I know most of the investigative people in the mainstream media, and I can assure you they’re always doing stories for us under a pseudonym because they can’t get anything published or broadcasted there. The powers that be are strictly bottom-line people who don’t want the news department to make any waves.

I am opposed to censorship, but Bill O’Reilly is the best excuse for it. I think that whole bunch at FOX, including Glenn Beck, frightens the hell out of me. I would take a liberal any time before I would take one of those barnstormers.

K. On Reforming the Political System/Entering the Political Process

When you go into Congress now, whether you’re a Democrat or Republican, the first thing you’re told is how you’re going to vote. Your desire to improve government has been compromised right at the door.

The only way people can be effective in changing government is when the rules of government are changed. The filibuster rule is the most stupid thing I’ve ever heard of. They try to block everything Obama is trying to do with that rule. It should be a majority rule and they should have a straight up-or-down vote on everything. But as for how long we’ll have to wait for that, I don’t know.

I’ve got to be frank — I don’t think most young people would be happy as a member of Congress with the way the rules are currently structured. People should get involved with the social structure, like the Southern Poverty Law Center or groups like that around the country. You can do a lot of good working for people who really need your help. If you go into Congress and didn’t like the ways things are being done, then you would be making a great statement if you flipped them the bird.67

66. The entity, based in Montgomery, Alabama, and founded in 1971, “is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.” Southern Poverty Law Center, Who We Are, http://www.splcenter.org/who-we-are (last visited Oct. 31, 2010).

L. On the Problems of Third Parties in Politics

A third party in America is the worst thing that could happen. Thirty years ago I was a strong advocate for third parties, but then I became familiar with the politics of a country in Europe named Italy. It’s got something like 100 political parties. No one has a majority and no one has anything close to a majority. Everything must be done by agreement.

Think about how awful it would be if one-third of our Congress was made up of tea baggers,\(^6\) a third Democrats and a third Republicans. We would be in worse shape than we are now because no one would agree on anything. Even if the Republicans wind up getting control — I doubt they will — but, if they do, don’t forget Obama has the veto power. That’s the same thing as a filibuster as far as the Senate is concerned. So the Democrats can still keep the Republicans under control.

M. On Drawing the Line in Adult Entertainment

The two Supreme Court Justices that irritate me the most were, first, Potter Stewart, who said about obscenity that “I can’t define it, but I know it when I see it”\(^6\) and, second, Oliver Wendell Holmes, who made that classic statement that free speech is not absolute because you cannot falsely scream fire in a crowded theater.\(^7\) You can falsely scream fire in a crowded theater, but if

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\(^6\) See supra note 37 and accompanying text (discussing this term).

\(^6\) The actual language Justice Potter Stewart used in Jacobellis v. Ohio, 378 U.S. 184 (1964), was:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.

\(^6\) at 197 (Stewart, J., concurring).

\(^7\) Schenck v. United States, 249 U.S. 47, 52 (1919) (“The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”).
someone's hurt as a result of what you do, then you can be prosecuted for that.

But you get some of these justices who seem like they are old and seasoned, but they act like juveniles on the Court when it's time to come up with clever one-liners. Some of these things carry through decades in the judicial system and do more harm than good.

Of course, there's a line about what I will and will not do in adult entertainment productions. First, I would never do anything involving children simply because when you violate the rights of someone who is not old enough to speak for him or herself, that's a crime. I really believe that. Other than that, I really feel that what goes on between consenting adults is really their business, and I don't draw a line anywhere.

N. On How the Internet Has Changed the Adult Entertainment Business

We knew back in 1993 that technology was going to change the face of publishing and video production. We launched our website at that time and started diversifying into video and retail stores.71 It's good that we did because today we have a strong, viable company. DVDs are pretty much a thing of the past, especially when you can download any movie you want. The Internet is good, but you have to work with it. You've got to be out in front of it. You can't be following it because you'll be left too far behind.

The glut of free content has affected the business — particularly on the Internet. But we're not concerned with that because you can't give something away for free forever. Those in the small shops are doing it out of desperation. In the next year or so, they'll fall out of favor.

There are a couple of directors in Hollywood that have given porn a bad name, if that's possible. Max Hardcore is one of them. He's doing about four years in prison right now. In most of the films that he would do, the women were subjugated to various forms of depravity, like taking a woman's head and sticking it in a bathtub or flushing it in the toilet. There's nothing sexual about that. When you get in a courtroom and women are on the jury, they won't convict him on a sex tape, but they'll convict him on something like that. I don't think you can exploit women.

People say to me that I'm exploiting women in my magazine and the movies. That's like saying Sports Illustrated exploits sports. I've never known of a girl who has worked for me that ever came to me or any of my representatives and said, "What you're asking me to do is humiliating and I feel exploited." If that would happen, the director would be fired and she would not be a part of that film. This is what you have to watch for because what we're doing is all about taste. Everyone's taste is different.

We had a case a few years ago, and there was some pretty rough and tough stuff there, and the jury was all women — average age of sixty. Now, that's a nightmare for any lawyer. That jury returned a verdict in twenty minutes and found him not guilty.

72. See United States v. Little, 365 F.App'x 159 (11th Cir. 2010) (upholding the 2008 conviction of Little, known as Max Hardcore in the adult industry, for the distribution of obscene materials, but remanding the case for reconsideration of pecuniary portion of the fine imposed upon because U.S. District Judge Susan Bucklew erred in factoring in sales of the DVDs outside the Middle District of Florida where the trial took place).


74. See Mark Kernes, Max Hardcore Sentenced to 46 Months in Federal Prison, AVN.com, Oct. 3, 2008, http://business.avn.com/articles/32647.html ("Director Paul Little, aka Max Hardcore, was sentenced today to 46 months in a minimum security prison on federal charges of distributing obscene videos through the mail and the Internet.").

75. See Michele Munz, Jury Finds Explicit Videos From Store Are Not Obscene, ST. LOUIS POST-DISPATCH, Oct. 27, 2000, at 1, available at 2000
When the jury was polled on the issue of the verdict, they said, “Look, we don’t like it. It’s not our cup of tea, but we just don’t feel that we have the right to tell our neighbors that they don’t have the right to view the material.” I tell that story whenever I get a chance because I thought it was phenomenal because it’s the first time in my life that I’ve seen that we may be winning this war.

P. On the Internet, Pornography and Sexual Predators

Chris Hansen of NBC News is working regularly with the FBI and local law enforcement, and they’re right on top of the Internet stuff and they’re busting them every week. The Internet is out of control and it needs to be monitored.

The point I am trying to make is not that the Justice Department should not go after child abuse or people being exploited on the Internet. I think those cases will all be prosecuted as they come up. But issues like pornography and prostitution are simply not being pursued by this Justice Department, and I don’t think it’s fair to say that they’re lax for not doing so. They’re going after white-collar crime in a big way because that drains a lot of money out of the economy. They’re taking seriously those kinds of infractions.

Q. On Age Restrictions for Viewing Adult Content

I get in a lot of trouble over this. I think the legal age of consent should be lowered because I talk to people around the country about when they first viewed adult content. They said it was when they were eight years old and they found it in their father’s car or father’s room. One guy came up to me, shook my

WLNR 888088 (noting that the verdict was reached “over lunch in about 2 1/2 hours” and centered on two movies, Rock Hard and Anal Heat, which the jury found were not obscene).

76. This is an apparent reference to a now-canceled NBC program called “To Catch a Predator,” in which NBC and Chris Hansen work “with local police departments and an on-line ‘watchdog’ group called Perverted Justice to identify and arrest ‘sexual predators.’” Conradt v. NBC Universal, Inc., 536 F. Supp. 2d 380, 383 (S.D.N.Y. 2008).
hand, and said, “I want to thank you for helping me make it through puberty.”

I know that teenagers are using the magazine to masturbate with and I really don’t think it’s a crime. I don’t think it is harmful. I don’t even think they’ll go blind!

As far as what the legal age of consent should be, I just think eighteen is a little high.

R. On Getting the “Church’s Hands Off Our Crotch”

Quit listening to that garbage. Religion has caused more wars than anything since the beginning of time.77 Billions of people have been killed all in the name of one god or another. Why in the world would you want that god in your life? It has been established in recent surveys that prayer is nothing more than positive thinking. If you’re in the hospital and think you’re dying, just think positively. It’s like having a prayer. Why do you want to give people your money when they can’t do anything for you?

S. On Who He Admires

There are two historical figures that I admire immensely. One is Winston Churchill and the other is John F. Kennedy. With Kennedy’s election, he brought a promise to America that had never been there before. It was sort of like a passing of the torch. There were youthful people in his campaign. He had a lot of original ideas, like the Peace Corps. He was able to solve some real problems that we had, like the Cuban missile crisis. He was a class act all the way around. I was fortunate enough to meet him when I was a seventeen-year-old sailor aboard the USS Enterprise. I didn’t know then that a few years later I would be publishing nude photographs of his wife.78

77. Flynt has written that “the Catholic Church is the most reprehensible of all religions, because it has spread sexual repression throughout the ages, never recognizing that human sexuality is one of the most divine gifts we have.” FLYNT, supra note 27, at 226.

78. Flynt has written that “by April of 1975, I was grossing over $500,000 an issue. And that’s when I made the smartest investment of my life, and
T. On Playboy Magazine’s Hugh Hefner

He peaked with the Marilyn Monroe centerfold in 1953. He’s still there. I think you’ve got to give him his due when it comes to the women’s movement. I think he did a great deal there and in the area of civil liberties, but he was never able to really grow his magazine with his audience. He always felt that by being involved in the magazine himself, he was going to make decisions that the readers want.

He’s eighty years old now and he’s trying to appeal to people who are twenty years old. They’ve got different ideas when it comes to what they want in a men’s magazine. He wasn’t able to stay in touch.

U. On Anonymous Defamatory Speech on the Internet

There is a lot of that type of speech on the Internet and the government simply cannot police it all. Unfortunately, a lot of the victims do not have the wherewithal to bring an action against it. Eventually, the Internet is going to have to be regulated. Regulation can be a bad word or a good word. I think, in this particular case, it’s a good word. The Internet is a vast wasteland and it has to be regulated in some fashion.

II. Conclusion

“I’m just a smut peddler with opinions.”

That’s how Larry Flynt described himself in his 2004 book, *Sex, Lies & Politics: The Naked Truth.* Flynt has spent the better part of the last four decades making his opinions known in an eclectic array of venues, ranging from his flagship publication *Hustler* magazine to the campuses of some of the nation’s — indeed bought those nudes of Jackie Kennedy Onassis, which I ran in the August 1975 issue. The rest, as they say, is history.” *Id.* at 5.

79. *Id.* at 34.
80. *Id.*
the world's — most prestigious universities.81 He is well aware that he is controversial.82 Yet, at the same time he is disarming. As Flynt describes the scene when people first meet him: "They expect a madman or perhaps a crass, foul-mouthed boor. But they find someone else. I am neither mad nor boorish. I don't fit their stereotype — at least not entirely."83

Indeed, those who meet Flynt often find what First Amendment scholar Robert O'Neil called "an indefatigable fighter for free expression."84 Although Flynt admitted to the audience at the University of North Carolina that when he started Hustler magazine in 1974, he "hadn't even read the First Amendment,"85 by the time the millennium changed, he had spent "roughly $50 million"86 defending it.

Some of those legal fees were generated in court battles that would benefit the mainstream media much more than his own publications, such as when he sued Secretary of Defense Caspar W. Weinberger after the United States invaded the island of Grenada in 1983 and refused to let the media cover the offensive in the early stages,87 or when he similarly sued Donald Rumsfeld for frontline access in Afghanistan and Iraq.88 Yet, as Flynt made clear in his remarks in Chapel Hill89 and elsewhere, his relationship with the

81. See supra notes 4-14, 17, 19-20 and accompanying text.
82. LARRY FLYNT, AN UNSEEMLY MAN: MY LIFE AS PORNOGRAPHER, PUNDIT, AND SOCIAL OUTCAST 157 (Dove Books 1996) ("I still choose to be controversial. Fundamentalists still excoriate me in print. The radical fringe of the feminist movement still calls me 'every bit as dangerous as Hitler.'").
83. Id.
84. O'Neil, supra note 1, at 142.
85. See supra Section I.A, p. 31.
86. See Calvert & Richards, supra note 10, at 166 (describing how he "had the accounting department along with the law firms try to get [him] a rough figure").
87. Flynt v. Weinberger, 762 F.2d 134, 135 (D.C. Cir. 1985) (deciding the appellants' request for injunctive and declaratory relief was moot because the press ban was lifted and the military action had ended).
89. See supra Section I.C., p. 37 (noting that in the Hustler Magazine v. Falwell case, Flynt and his attorney "could not get one single member of the
mainstream media is a strained one. He once wrote: "The press has been much more interested in my antics than in my principles. Nevertheless, it has been my principles that have motivated me, and in the end those principles have protected their freedoms." 

For Flynt, it is his motivation to pursue the truth that sets him apart from the rest of the journalistic pack. As he once observed, "[t]he last thing I could ever do is publish something that wasn't true, because it'd kill me. And I know that. So I function at a higher standard than mainstream media." And that truth-seeking often includes unmasking hypocrisy, especially among politicians. Flynt reminded the audience in Chapel Hill of his revealing of the sexual affairs of Speaker of the House-elect Bob Livingston at a time when Livingston was publicly castigating President Bill Clinton for his encounter with Monica Lewinsky. As Flynt remarked in an interview with the authors of this article: "If somebody takes a public position contrary to the way they are living their private life, as far as I'm concerned, they are fair game. It's the hypocrisy that we're going after."

Flynt regularly embraces other themes in his speeches and writings as well. He preaches tolerance of opposing viewpoints. As he made clear at the University of North Carolina, "freedom of speech is not freedom for the thought you love. It's the freedom for the thought you hate the most." In a way, this sentiment might be viewed as a rebuke to the scores of individuals and groups, in and out of government, who have sought to shut down the very business that Flynt represents. Flynt made this point in his 2004 book, writing: "Americans like to tell the world that we live in the land of national media to file an amicus brief when we petitioned the Supreme Court for cert.

90. FLYNT, supra note 82, at 209.
91. See Robert D. Richards & Clay Calvert, The Ethics of Exposing Sexual Affairs: An Inside Look at the "Flynting" of Politicians, 19 MEDIA ETHICS 11, 11 (2007) (quoting Larry Flynt) (defending the practice of paying for information and "providing insight on his motives for offering $1 million to anyone who 'had a sexual encounter with a current member of the United States Congress or a high-ranking government official'").
92. See supra Section I.G., p. 42.
94. See supra Section I.E., p. 41.
the free. But how free are we when our sexual tastes are being constantly monitored? When we are being told, as if we were children, what we can or cannot purchase, watch, or read?"95

And while Flynt is well versed on a myriad of topics from today's political scrapes to the future of adult entertainment in the age of the Internet, it is the court case that pitted the preacher against the pornographer — *Hustler Magazine v. Falwell*96 — that he views as his most important contribution to law and public discourse. Perhaps what makes the legal victory in that case so remarkable is the polarity of the litigants — what Flynt described in his speech as a Norman Rockwell painting against the "crippled pornographer."97

Flynt recalled, in an interview with the authors of this article, how he felt about the case at the time:

The ad parody was clearly identified as a parody and not to be taken seriously. I initially thought that, legally, we were on solid ground. Then, when we found out that the trial would not take place in California but would take place in Falwell's backyard in Lynchburg, my feelings started to change about the significance of the case and our ability to win. Although it was somewhat of a victory at the trial level when they threw out the libel claim—but they still left in the intentional infliction of emotional distress—we thought we would win in the Fourth Circuit. We didn't. So, when we got it to the Supreme Court, there was no reason to feel optimistic.98

95. *FLYNT*, supra note 27, at 204.

96. *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988) (holding that the First Amendment protects offensive speech against claims of intentional infliction of emotional distress unless there is a showing of "actual malice").

97. See supra Section I.C., p. 38.

98. See Calvert & Richards, supra note 10, at 164 (noting that initially Flynt did not recognize the importance of this case) (footnote omitted).
Despite his feelings of doubt, the Supreme Court did rule in his favor — unanimously — and helped to carve out a lasting legacy for the “crippled pornographer” from Magoffin County, Kentucky. First Amendment scholar and current Furman University President Rodney Smolla, who meticulously tracked the case and wrote an entire book about it, summed up the significance of the decision this way:

The Supreme Court’s opinion in *Falwell v. Flynt* is a triumphant celebration of freedom of speech. Far from signaling the disintegration of America’s moral gyroscope, the opinion reaffirms the most powerful magnetic force in our constitutional compass: that essential optimism of the American spirit, an optimism unafraid of wild-eyed, pluralistic, free-wheeling debate.

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99. *Hustler*, 485 U.S. at 47.
100. RODNEY A. SMOLLA, JERRY FALWELL V. LARRY FLYNT: THE FIRST AMENDMENT ON TRIAL (St. Martin’s Press 1988) (following the case and its characters from Falwell’s discovery of the ad parody to the Supreme Court’s ruling and aftermath).
101. Id. at 303.