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HARLOT'S GHOST AND JFK: A FICTIONAL CONVERSATION WITH NORMAN MAILER, OLIVER STONE, EARL WARREN, AND HUGO BLACK*

Rodney A. Smolla†

ROD SMOLLA: It is my honor and pleasure to be delivering the Thirty-Eighth Donahue Lecture.

I would like to first introduce and ask you to welcome my fellow panelists, who have graciously agreed to appear with me this evening on the program. They are, in the order in which they are seated on the stage, first, to my far left:

Oliver Stone. Mr. Stone is one of America's most powerful and provocative filmmakers. Among his films are *Platoon*, *Born on the Fourth of July*, *Wall Street*, and *The Doors*. His direction and his films have won numerous Academy Awards. His film *JFK*, depicting a massive conspiracy leading to the assassination of President John F. Kennedy, has been by any account one of the most controversial films ever produced in the United States.

Seated next to Mr. Stone, is:

Earl Warren. Earl Warren was Chief Justice of the United States from 1953 to 1969. Warren's career in California politics culminated in ten years as the state's Governor. President Eisenhower appointed him Chief Justice of the Supreme Court. The "Warren Court" ushered in an

* This article is based on a speech which Rodney Smolla delivered as a part of the Donahue Lecture Series. The Donahue Lecture Series is a program instituted by the Suffolk University Law Review to commemorate the Honorable Frank J. Donahue, former faculty member, trustee, and treasurer of Suffolk University. The Lecture Series serves as a tribute to Dean Donahue's accomplishments in encouraging academic excellence at Suffolk University Law School. Each lecture in the series is designed to address contemporary legal issues and expose the Suffolk University Community to outstanding authorities in various fields of law. This article is based on the Donahue Lecture delivered at Suffolk University Law School on November 19, 1992.

† Arthur B. Hanson Professor of Law, and Director, Institute of Bill of Rights Law, College of William and Mary, Marshall-Wythe School of Law. Author's note: This is a work of fiction. The statements attributed to Norman Mailer, Oliver Stone, Earl Warren, Hugo Black, Gore Vidal, and Rod Smolla are the product of the author's imagination, and should not be understood as factual. For elaboration on this point, please see the discussion in the Appendix to this Article, and notes 1-21, *infra*.

entire new epoch of American constitutional law, creating dramatic changes in areas such as racial equality, rights of the criminally accused, freedom of speech, and separation of church and state. President Johnson appointed Chief Justice Warren to serve as Chairman of the President's Commission on the Assassination of President John Kennedy, popularly known as the "Warren Commission." The Commission found that President Kennedy was shot by Lee Harvey Oswald, who acted alone, and who was unconnected to any conspiracy.

Seated to the right of Chief Justice Earl Warren is:

Norman Mailer. Mr. Mailer is one of the nation's most distinguished men of letters. Beginning with his critically acclaimed first novel, *The Naked and the Dead*, published in 1948, Mr. Mailer has written over twenty-seven books. He won the Pulitzer Prize and the National Book Award in 1968 for *Armies of the Night*. He won the Pulitzer Prize again in 1980 for *The Executioner's Song*. His most recent novel, *Harlot's Ghost*, is a prodigious literary achievement that makes substantial use of the devices that are largely the subject of this panel discussion. The novel, an exploration of the American Central Intelligence Agency, is a work of expansive imaginative power. The novel includes hundreds of characters, some of whom are fictional creations, and others of whom are real persons, such as John Kennedy, Fidel Castro, J. Edgar Hoover, E. Howard Hunt, Frank Sinatra, Sam Giancana, Allen Dulles, and countless others.

And finally, seated to the right of Norman Mailer, is:

Hugo Black. Hugo Black served as Associate Justice on the United States Supreme Court from 1937 to 1971. Black had previously been involved in politics in Alabama, where he served as United States Senator for ten years, before being appointed to the Court by President Franklin Roosevelt. Justice Black emerged as one of the most eloquent jurisprudential voices during the Warren Court years, and is particularly remembered for his staunch commitment to freedom of speech.

Mr. Stone, Chief Justice Warren, Mr. Mailer, and Justice Black, welcome.

The topic for discussion today is the artistic device of blending real historical events and characters with fiction. We will explore and critique this device from both an artistic and legal perspective. I want the panelists to feel great freedom to roam at large over the topic, but I do wish to use, as our two principal exhibits for discussion, Oliver Stone's movie *JFK*, and Norman Mailer's novel *Harlot's Ghost*.

I should begin by clarifying for the audience that Earl Warren and Hugo Black are familiar with these works. Justices Warren and Black, you've seen the film, and read the book, correct?

HUGO BLACK: Yes, we have full access to all films and books. It's quite extraordinary, really, one can absorb these works at a fantastic speed, with astonishing clarity and comprehension! I am able to keep track of current events throughout the world, to read and digest not only new opinions of our Supreme Court, but of the many other constitutional courts that have emerged in other democracies throughout the world. It is exhilarating. I often read two or three books a day—though it still took me a week to finish *Harlot's Ghost*. I've also seen *JFK*.

ROD SMOLLA: That's interesting. I'd always considered the speed of thought a constant in the universe, like the speed of light.

HUGO BLACK: I didn't say we were in this universe.

ROD SMOLLA: And Chief Justice?

EARL WARREN: My habits are a bit different than Hugo's. I lean toward sports. I still believe that the sports pages record man's achievements, and the news pages his failures. We have access to every sporting event taking place on the globe, you know.

ROD SMOLLA: It sounds like the "Mother of all ESPNs." But you have read the book and seen the film?

EARL WARREN: Yes. I read Mr. Mailer's novel, in anticipation of this panel; very amusing, to say the least. And I saw *JFK* even before it premiered—we have special access to the reviewer's screenings, you know, and so—

NORMAN MAILER: —And where might that be, Chief Justice?

EARL WARREN: What? What are you talking—

NORMAN MAILER: —Are you viewing these events from the rapturous fields of the Elysium, or the bottomless pits of perdition?

EARL WARREN: I don't understand what you are driving—

HUGO BLACK: I think he wants to know if you are in heaven or in hell, Chief.

EARL WARREN: Professor Smolla, I agreed to this on the condition that it would be a dignified, academic discussion. I have no intention of sitting here to be insulted and offended by Mr. Mailer.

NORMAN MAILER: I intended no offense. I was asking out of existential curiosity—what happens when we die? Or I guess I should say even more pointedly, what happens when a man like Earl Warren dies? Heaven? Hell? A great void?

I've always believed in reincarnation, myself. Earl died in 1974. What form of life might he be now? Perhaps he has reappeared as a young campaign worker for Jerry Brown. But it sounds like I may have to

adjust my metaphysics. So let me just rephrase: Can you at least verify, Chief Justice, that there *is* a heaven and a hell?

EARL WARREN: Professor Smolla, again I object. This is not why we are assembled—

ROD SMOLLA: —Your objection is sustained, Chief Justice. Mr. Mailer, we have already agreed on the ground rules. No afterlife questions.

Now let's please get to the heart of the matter. First, is it artistically legitimate for novelists and filmmakers who chose to use historical events and persons as the grist for their artistic works, to deviate from the known history, creating fictional characters, events, dialogue, actions, and motives? And, apart from artistic legitimacy, should real persons who find themselves fictionalized have recourse in courts of law, through lawsuits for libel or invasion of privacy?

Perhaps I can start with Oliver Stone. In *JFK* you present a film in which Lyndon Johnson, the FBI, the CIA, the anti-Castro Cubans, Clay Shaw, and countless other shady characters are linked in a conspiracy to kill President Kennedy. Did the harsh reaction to *JFK* by many critics and members of the press take you by surprise?

OLIVER STONE: Not really. Remember that much of the reaction came from the press, the pundits, the reviewers—the cultural elite who like to hold themselves out as the only legitimate interpreters of the American experience. I knew before the film was released that there were a thousand and one vultures out there, crouched on their rocks.

ROD SMOLLA: Do you believe the press was part of the conspiracy? Why would the press have it in for you?

OLIVER STONE: Members of the media establishment get upset when art becomes political, especially when they disagree with the politics and fear the viewpoint advocated by the artist. When this priesthood is challenged as the sole or privileged interpreters of our history, they bludgeon the newcomers, wielding heavy clubs like 'objectivity' and charging high crimes like 'rewriting history.'

ROD SMOLLA: What, if anything, do you think your film accomplished?

OLIVER STONE: It certainly accomplished one thing; Congress passed, and the President signed, a law that will mandate disclosure of many of the secret documents surrounding the Kennedy assassination.

ROD SMOLLA: The new law sets up a five-member Review Board with the power to obtain records on the Kennedy assassination from any governmental office, including the CIA and the FBI. The Board can

hold hearings and subpoena witnesses or documents. Are you happy with the new law?

OLIVER STONE: I'm happy, as far as it goes. It still did not go far enough.

ROD SMOLLA: In what respect?

OLIVER STONE: The Board retains the power to decide that some documents should not be released. So if any documents are kept secret, suspicion will continue. The best way to allay all suspicion is to release absolutely everything, and damn the consequences.

ROD SMOLLA: But the law clearly contemplates wide-ranging disclosure. Surely you don't think that now, thirty years later, anyone involved in this Board could still be complicit in a conspiracy or cover-up?

OLIVER STONE: Why should I be so sure of that? The Board will be a political body, appointed by the President and confirmed by the Senate. Who knows what documents they will see? Who knows what pressures will be visited on them to keep some matters secret? If you doubt the inexorable governmental impulse to cover up the truth, I refer you to the statements made by President Bush on the day he signed the law.

ROD SMOLLA: Aren't George Bush's statements now moot, in light of the election of Bill Clinton to the presidency?

OLIVER STONE: Presidents will be Presidents.

ROD SMOLLA: What does that mean? Look, even George Bush announced that he agreed with the intent of the law, and that was why he was signing it. I mean George Bush was not exactly afraid to use his veto power.

OLIVER STONE: He signed the law, and simultaneously attempted to preserve for himself—or now, for Bill Clinton—the prerogative to disregard it. Let me quote from my notes of his public statement, released when he signed the bill. "Because of legitimate historical interest in this tragic event," Bush stated, "all documents about the assassination should be disclosed, *except where the strongest possible reasons counsel otherwise.*" And who is to determine if these reasons exist? The new Commission? Not necessarily. Bush asserted the power to *override* the law and exercise what he said was his constitutional authority to keep secret "executive branch deliberations, . . . law enforcement information" and "national security information."

ROD SMOLLA: Are you suggesting that George Bush was part of the plot?

OLIVER STONE: I'm not saying that he was working with the CIA in 1963, or that he was in Dealey Plaza in Dallas. But he *was* later the

Director of the CIA. He probably does know a lot that he has never revealed. I'd suggest more that he may be an "accessory after the fact."

ROD SMOLLA: But on the basis of what? What evidence? Other than your imagination?

OLIVER STONE: Just listen to Bush's own words—painful as that sometimes might be. On the day he signed the bill, he proclaimed, "My authority to protect these categories of information comes from the Constitution and cannot be limited by statute. Although only the most extraordinary circumstances would require postponement of the disclosure of documents for reasons other than those recognized in the bill, I cannot abdicate my constitutional responsibility to take such action when necessary." Now I read that statement, and I smell one big Oval Office rat.

HUGO BLACK: Professor, may I interject something here?

ROD SMOLLA: Yes, Justice Black by all means, please—

HUGO BLACK: —I am appalled, I should say, *shocked*, at this statement by George Bush! He obviously has not read, or does not understand, the United States Constitution. I wrote for the Court when we held that Harry Truman had no power to seize the steel mills, "In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute." Now here comes George Bush, *signing* a law that mandates disclosure of the Kennedy assassination records, and *stating* the grounds on which documents may be withheld, and giving the *Commission* the sole power to make that decision. George Bush could have vetoed the law, but he signed it, and that ends the matter. He has no constitutional authority to override the law.

EARL WARREN: Now, now, Brother Hugo—

HUGO BLACK: —Don't give me that Brother Hugo routine, Chief. And don't try to defend George Bush. Indeed I must tell you, Chief, that some of the things that are coming out make me very concerned about *your* role in all of this, and what you may have done to the institutional integrity of the Court.

EARL WARREN: These conspiracy theories are a vicious and evil libel, a libel that touches me personally. I was *Chief Justice of the United States Supreme Court!* I led the Court in *Brown v. Board of Education*. I helped create the revolution in our constitutional law that altered the fabric of society. To suggest, to accuse, *me* of complicity in the assassination of John Fitzgerald Kennedy, whom I deeply admired and loved,

to think that *I* would do something like this, engage in a cover-up, it's just unthinkable, it's outrageous, it's malicious, twisted and evil! To place this *blood libel*, this *mark of Cain*, on *me*. Mr. Stone, you defiled all I stood for, you turned wretched all that my entire public life embodied, you—

OLIVER STONE: —No one is saying you were part of the plot to kill John Kennedy, Chief Justice. My film does not suggest that.

EARL WARREN: Your *film*, as you call it, does not even deserve the name! Your film is filth! Garbage! And to cast *Jim Garrison* as the actor to play *me* in the film! What could you have been thinking? The insult, to have *Garrison* play me! The blasphemy!

NORMAN MAILER: You're not God, Mr. Warren. You can't be blasphemed. You were just a politician who became a Supreme Court Justice, which is an extension of politics by other means. Now as long as we've got you here, I want to ask you about the cover-up—about the pressure Lyndon Johnson brought on you, about—

EARL WARREN: —Your question has a preposterous premise. There was no cover-up, no pressure from President Johnson.

NORMAN MAILER: He pressured you to head the Assassination Commission, you admit that much, don't you?

EARL WARREN: He persuaded me. There was no pressure. There was nothing sinister. On Friday, November 29, one week after the assassination, I received a request for a conference with Nicholas Katzenbach, who was the Deputy Attorney General, and Archibald Cox, who was the Solicitor General. I agreed to see them immediately. They stated that President Johnson, in an effort to bring order out of confusion, decided to create a bipartisan commission of distinguished Americans to investigate the entire affair. The President wanted me to serve as Chairman. I refused.

ROD SMOLLA: But Johnson got you to change your mind, right?

EARL WARREN: Lyndon Johnson was not an easy man to refuse. I tried to explain to the President that I didn't think it was proper, under our system of separation of powers, for a sitting Supreme Court Justice to serve on a presidential commission.

HUGO BLACK: Well at least you got that much right.

EARL WARREN: Now Hugo, please try to put yourself in my place. I explained to Johnson that in my view the acceptance of diplomatic posts by Chief Justices John Jay and Oliver Ellsworth had not contributed to the welfare of the Court, and that the service of five Justices on the Hayes-Tilden Commission had demeaned it. I informed President John-

son that I did not think it had served any worthwhile purpose when Justice Owen Roberts had been appointed chair of the commission that investigated Pearl Harbor, and I reminded him that—as you well know, Hugo—the action of Justice Robert Jackson in taking a leave of absence from the Court to serve as the prosecutor for the United States in the Nuremberg war crimes tribunal had created great bitterness and discord on the Court.

HUGO BLACK: I never forgave Robert Jackson for that.

NORMAN MAILER: But Chief Justice Warren, you *did* serve. You capitulated under the “Johnson treatment.”

EARL WARREN: Later that same afternoon President Johnson called me and asked if I would come to the White House.

NORMAN MAILER: And you went.

EARL WARREN: Of course I went. How could I not respond to a presidential request?

HUGO BLACK: Just say no! That’s how you respond. You knew what LBJ wanted. You should never have gone, Earl, never have gone. I fear it was the start of an immense evil.

EARL WARREN: It was the start of an immense service. An immense service to the nation, of which I am proud. None of you were there. None of you know what it was like, what it was about. None of you—

OLIVER STONE: —And who’s fault is that? We don’t know because of a conspiracy of silence, deceit, and abuse of power. That’s why we don’t know.

NORMAN MAILER: I’d like to know what happened in the Oval Office between you and LBJ that day, Mr. Warren. I have a pretty good idea what it must have been like. Johnson tells you that the nation has endured the greatest shock since the assassination of Abraham Lincoln. He tells you that the nation is in crisis, in paralysis. There are wild rumors circulating; everyone thinks that there was some kind of conspiracy, that Lee Harvey Oswald and Jack Ruby are somehow linked. He tells you that these rumors, and the possibility of investigations and commissions springing up all over Texas and all over Congress to investigate the episode could result in accusations running in every direction. Certain people are already starting to suggest that maybe the Russians were behind it. Others wonder out loud if some Americans wanted Kennedy removed from the scene—perhaps even Americans in positions of governmental power. And to add a little verisimilitude, Johnson lets you know that Lee Harvey Oswald just may have some ambiguous relationships to the CIA, or the KGB, or both.

He fills you in on a few dirty little secrets involving Cuba and Fidel Castro. Seems like our government tried *eight times* in recent years to kill Castro. We were using the Mafia to help with the job—using them at the same time Bobby Kennedy is trying to put Jimmy Hoffa and Carlos Marcello in jail! And there are connections between Oswald and the whole Cuban mess. So it could easily—*very* easily—come out that Oswald is not a deranged individual operating on his own, but a *spy*, an intelligence agent, maybe working for us, maybe working for them, maybe working for both us and them. And if that gets out, and gets believed, we could be toe to toe all over again with the Russians and the Cubans in nuclear con-fron-ta-tion. I'm thinking maybe he told you these things, in the privacy of the White House, Mr. Warren. And that you and Lyndon Johnson arrived at an understanding of what the Warren Commission would and would not discover before it ever even began its operation.

EARL WARREN: There was never any such conversation. There was never any such understanding.

OLIVER STONE: Sure. And Oswald acted alone. And one magic bullet caused seven different wounds to John Kennedy and John Connally, and ended up in almost pristine condition. With all due respect, Chief—give us a break, do you really expect us to swallow—

EARL WARREN: —Oh, I don't expect you to swallow anything. Because you're a damn fool. Worse than a fool. You feed on paranoia and suspicion. You exploit and devour for your own aggrandizement. You make what was altruistic and public-spirited seem sinister and corrupt. I did not want the job, I took it because I saw it was in the best interests of the country.

NORMAN MAILER: Let's assume we trust you—let's assume we fully accept that you thought you *were* acting in the best interests of the country. But what did you perceive those interests to be? The truth? What if the truth was too horrible to contemplate? What if the truth took you to the edge of the abyss? I think Johnson made you see that it was in the best interests of the country for the Commission to *avoid* much of the truth. I also think that there was a solemn accord between you and Johnson when you left the White House that day—an accord that you probably thought was for the good of the nation.

EARL WARREN: There was never any such accord. Your suggestions are unthinkable. Lyndon Johnson wanted the truth. He wanted it as much as anyone. He wanted me to lead the Warren Commission in any direction I deemed appropriate. The Commission was to report the true facts, whatever the consequences. You say you write fiction, but you

write lies. You are a dangerous man, Mr. Mailer. Perhaps not as dangerous as Mr. Stone, here—but that is only because movies have replaced books as the leading modern agents for deception and propaganda. Your imagination is every bit as insidious and self-serving as Oliver Stone's. The two of you are of a piece. To sell books and movies, you indulge yourselves in the wildest and most paranoid of fantasies, and then market them as if they were history. You spread suspicion, distrust, and lies, for your own titillation and profit. You're both disgusting.

OLIVER STONE: But why should we believe you? Your Commission's report is shot full of contradiction, cover-up, and lies. I think Norman has probably got it right. You were a man with a mission, from the start. Why else would you change your mind and agree to the job?

EARL WARREN: I am not denying that some aspects of the conversation between Lyndon Johnson and myself were quite as Mr. Mailer imagines it. LBJ did observe that because Oswald had been killed, there would be no trial, and thus unless the facts were explored objectively and conclusions reached that were respected by the public, it would always remain an open wound, a wound with ominous potential. And yes, he did note the problems of multiple investigations competing for attention, leaving the public bewildered and overwrought.

NORMAN MAILER: What did he tell you about the Russians? The Cubans? About Castro? About Oswald?

EARL WARREN: We never got into specific facts. That would have been unseemly and inappropriate.

NORMAN MAILER: Well whether or not we believed you then, Chief, we don't believe you now.

ROD SMOLLA: Let me intervene here, and try to put these issues on a more general plane. Shouldn't filmmakers cross-examine power? Doesn't Oliver Stone, or Spike Lee, provide a much-needed service in modern times? I mean, at least people like Oliver Stone or Spike Lee are trying to say *something* about the issues of the day. So my question is, do artists owe any obligation *at all* to history?

NORMAN MAILER: You are wrong to ask the question in those terms. The film *JFK* is not about history, it's about myth—the story of a huge and hideous event, in which the gods warred and a god fell.

OLIVER STONE: I accept the characterization of *JFK* as myth. Indeed, the movie is not just a war of the gods, but a war of the myths. My myth is no less credible than the myth propagated by the Warren Commission. And I believe *my* myth, my outlaw history, rings more true than the Warren Commission's official history. Most Americans do not believe Oswald acted alone. Most Americans believe there was a conspir-

acy. And much of our modern national life has been a narrative about the abuse of power in high places; Vietnam, Watergate, Iran-Contra, the Savings and Loan debacle, Iraq-gate, the BCCL scandal. I am attacking the *ultimate* modern American myth, the myth of the manifest decency of the American power-elite.

ROD SMOLLA: Mr. Stone, did you have any sense of obligation to the authenticity of the character portraits in your film? How, for example, could you make Jim Garrison—portrayed with understatement so effectively by Kevin Costner—such a sympathetic figure? The real Garrison was a scoundrel, wasn't he? Haven't you totally inverted his character, and manipulated your viewers in an artistically dishonest way?

OLIVER STONE: The movie is not about Jim Garrison. Whatever liberties I took with Garrison were necessary to present the case, because I did not want Garrison's complex personality to get in the way of the story.

ROD SMOLLA: You actually used the real Jim Garrison in your film—you cast him in the role of Earl Warren. What is your view of Earl Warren? I mean, he is a liberal icon. Why would he aid and abet the dark side of the force?

OLIVER STONE: For the reason that conventional liberals always aid and abet the establishment. For their own comfort, and to insure domestic tranquility.

ROD SMOLLA: Norman Mailer, what do you make of the firestorm surrounding *JFK*? Do you approve of Stone's film?

NORMAN MAILER: Oliver Stone has produced a great film, a *powerful* film. But it lacks artistry.

OLIVER STONE: Here it comes.

NORMAN MAILER: *JFK* is crude, Oliver. *All* your films are crude. That is not surprising, for you are a *brute*. But at least you have the integrity of a brute.

EARL WARREN: If I can break up this incestuous fest, let me say that I think these self-serving statements are ludicrous. Fact is fact, and fiction should be fiction. The distinction should be maintained. When the distinction is not honored, there is a great rift in the artistic universe. When you mix fact and fiction you do not get a hybrid. You do not get a "higher truth," or a "deeper truth," you get pure fiction. The fiction overtakes the fact, overwhelms it. So what you get is fiction, but fiction that pretends to be fact. That is artistically dishonest, and I don't think it is protected by the First Amendment.

ROD SMOLLA: So you would approve some kind of legal accountability for this type of depiction?

EARL WARREN: Yes—I think there should be legal accountability for the propagation of this kind of conscious deceit and manipulation.

ROD SMOLLA: What kind of legal accountability?

EARL WARREN: Libel suits, for one thing. I think the people libeled in *JFK* should be able to wring Oliver Stone dry for his behavior. He has exploited them, debased them, corrupted their good names. They should have full recourse through the libel laws.

ROD SMOLLA: But Chief Justice Warren, what about the decision in *New York Times Co. v. Sullivan*? You joined in the majority opinion in that case.

EARL WARREN: I would have no difficulty finding against Oliver Stone under the standard announced in the *New York Times* case. We held in that case that public officials could not recover in a libel suit unless they demonstrated, with clear and convincing evidence, that the libel was published with knowledge of its falsity, or with reckless disregard for truth or falsity. I doubt that there are many examples in the history of American film of a director so *intentionally* and *recklessly* misrepresenting the truth. In fact, he just made the whole wild story up.

ROD SMOLLA: Is the *New York Times* standard even appropriate for works of fiction? In one sense, it is *of course* true that works such as *JFK* or *Harlot's Ghost* engage in a form of "intentional" falsification. Their creators *create*—they create dialogue, characters, and motives, by extrapolating from the known evidence.

EARL WARREN: With all respect, Professor, I think that is a crock. We are not talking about traditional fiction here. Oliver Stone did not present *JFK* as a work of fiction. He presented it as truth. He presented it as history. He presented it as journalism. If Stone wants to play with the big boys, he's got to play by the big boys' rules. When a fiction writer attempts to do a cross-over into portrayals of real people and events, he or she should leave the tools of fiction behind. They have no place in the objective milieu of factual reporting.

HUGO BLACK: Can I get into this? I really think the Chief has gone off the deep end here. It seems to me he is effectively ruling an entire genre of speech out of bounds. Docu-dramas and historical fiction are now being labeled beneath the dignity of the First Amendment. I don't see how persons such as Oliver Stone or Norman Mailer could even ply their craft if the Chief is correct.

EARL WARREN: You are not listening closely, Hugo. I am willing to

concede that in a *genuine* work of fiction, the writer does "make up" the narrative, and that it may well not be appropriate to apply the *New York Times* standard in a literal sense when a real person comes along and makes the claim that a fictional character is him, and then stakes his claim on the theory that, because the author admittedly wrote "fiction," it follows that the work must be knowingly or recklessly false. But *I am* saying that when the writer is trying to have his cake and eat it too—to capitalize on a real event, to sell his movie or his book to consumers on the pretense that he is presenting reality to them—and then to *disclaim any responsibility for intentional or reckless distortions*, that it is just plain wrong. It's morally wrong, artistically wrong, and legally wrong.

ROD SMOLLA: And you really believe Oliver Stone engaged in this kind of intentional deception? Look at him. Do you really think he is that big a demagogue? Don't you think he sincerely believed all that he presented in his film?

EARL WARREN: I'd like to put Mr. Stone on the witness stand right now. I'd like to seem him squirm. I've got a list, here, of twenty-seven severely damaging factual misrepresentations in *JFK* that either flatly contradict all the known evidence or are utterly speculative. I'm going to run through them —

ROD SMOLLA: —Chief Justice, I don't know if this is the place—

EARL WARREN: —Let me continue! You let Stone and Mailer ramble on. Here, let me start with a few minor points. Is it not true, Mr. Stone, that many of the key scenes depicted in your movie are pure conjecture on your part? Or even worse—outright fabrications? The character played by Donald Sutherland, the former CIA agent who meets with Garrison and supplies hints and innuendos of an expansive conspiracy did not even exist, isn't that right? Your suggestion that the photo showing Oswald holding the Mannlicher-Carcano 6.5mm rifle was doctored was pure surmise, wasn't it? You omit the unanimous medical finding in the autopsy on Kennedy that all the shots that struck him came from the rear, don't you? You misrepresent eyewitness testimony asserting that Oswald was the man who shot Officer Tippit. You conveniently forget to tell your movie viewers of the evidence that Oswald carried a long thin paper parcel, which he called "curtain rods," into the building that morning. As to the magic bullet, you completely make up the scene in which some mysterious person is depicted placing a bullet on the stretcher—

OLIVER STONE: —I don't really see the point of all this. If you or anyone else wants to put me on the witness stand, with a team of lawyers, I'll be only too happy to indulge you. And I'm very confident I'd win, in

front of any decent jury in the country. All I would have to do is put *you* on the stand.

ROD SMOLLA: That might be difficult.

EARL WARREN: I would simply point to the opinion I wrote in *Curtis Publishing Company v. Butts*, a case that involved an article published in the *Saturday Evening Post* claiming that two college football coaches, Wally Butts and Bear Bryant, had conspired to fix a college football game between Georgia and Alabama. I stated that the *Post* was guilty of "actual malice" under the "knowing or reckless" standard of *New York Times Co. v. Sullivan*. The *Post's* actions paled in comparison to Mr. Stone's hatchet job. Joseph Stalin would have been proud of Stone's techniques. Control the past and you control the future.

ROD SMOLLA: Perhaps you should elaborate.

EARL WARREN: The *Post* was suffering from declining advertising revenues, so an editorial decision was made to change the image of the magazine to boost circulation. The *Post* announced that it intended to embark upon a program of "sophisticated muckraking" designed to "provoke people" and "make them mad." Right after that, the *Post* purchased the "fixed football game" story. It was a story shot through with slipshod journalism. The story relied on a source of dubious credibility and important evidence was ignored—all for the purpose of producing a racy expose that would titillate readers and increase magazine sales. Oliver Stone's actions were exactly parallel to the *Post's*, but magnified one thousand times in their damage to the nation.

HUGO BLACK: For me, this all underscores what is wrong with the rule in *New York Times Co. v. Sullivan*. As I argued in my concurring opinion in that case, we should have adopted an absolute rule prohibiting public officials from bringing libel actions arising from criticism of how they do their public duties.

ROD SMOLLA: What about public figures who are not public officials, Justice Black? Would you apply your absolute rule to them? Take Clay Shaw, for example, a private citizen accused by Jim Garrison of conspiring to kill President Kennedy. Shaw was acquitted in his trial. Yet Oliver Stone comes along and depicts him as if he were guilty, often by creating creepy scenes and dialogue—scenes that apparently come largely from Stone's imagination. If Clay Shaw were still alive, would you grant Oliver Stone absolute immunity from a libel suit filed by Shaw?

HUGO BLACK: Yes, I certainly would. I said as much in the *Butts* case the Chief Justice has already mentioned. I went along with the Court's public figure doctrine in *Butts* and its companion case, *Associated Press v. Walker*, because I decided it would be best to settle on a concrete

set of rules for libel cases. But I expressly noted that I thought the whole enterprise was doomed, and that we should provide absolute immunity for citizens who speak out on public affairs. Clay Shaw may have been a private figure, but when he is accused of plotting to kill the President, then citizens have as much right to say what they will about him as about any public officials who might be implicated.

My larger point, though, is that it is just wrong for the Supreme Court, or any other court, to get into the quagmire of what is good or bad journalism, good or bad novel-writing, or good or bad movie-making. The very kinds of delicate judgments and fine lines that we are discussing on this panel concerning *JFK* or *Harlot's Ghost* prove my point. Let the critics blast away all they want at Mr. Stone and Mr. Mailer. They're tough guys, as you can well see. But judges and juries are not literary and film critics. And more importantly, they are not the arbiters of history.

The Chief Justice accused Oliver Stone of acting like Joe Stalin, of trying to control history. My answer is that *of course* serious filmmakers and novelists try to "control" history, if by control we mean challenge the official version of history. That is often what art is all about. To challenge our settled sensibilities. To make us see the world in a new way. It is also what dissent is all about. What terrifies me is not a filmmaker or a novelist offering a new version of history, but *governmental institutions*—juries and a judges, presuming to declare that history "wrong," and assessing millions of dollars of penalties against the heretics whose errant history causes damage to persons wrapped up in those historical events.

EARL WARREN: Subsequent legal developments in the libel area, both in the Supreme Court and in lower courts, clearly vindicate my views, and not my Brother Hugo's. I note, for example, that recently the Supreme Court in the *Milkovich* case refused to recognize any special First Amendment protection for opinion. And in a case called *Masson v. New Yorker Magazine, Inc.*, the Court dealt with something very close to what we are debating—manufactured quotations.

In *Masson*, a writer had allegedly interviewed a subject, and then composed an article that contained many quotations from the interview. The quotations, however, were allegedly altered—they did not match the statements contained on a tape-recording of the interview. In many cases the alterations were material—to put it quite simply, they made the subject of the story sound like an ass.

NORMAN MAILER: Maybe he was an ass.

EARL WARREN: If I can finish, please, he certainly was a *character*—quite a wild character, I'll grant you. And many of his actual statements

on the tape-recording would have been extremely helpful for the kind of racy story the author wanted to write. But she apparently wasn't content to let his own words do the work, she had to jazz them up, to sensationalize them. She had to make him more *dramatic*, and the Supreme Court slammed her for it.

The Supreme Court said authors cannot intentionally or recklessly alter quotations in a material way, making someone appear worse than they are, and then claim the shelter of the First Amendment. So I put *Milkovich* and *Masson* together, and to me it spells liability for the likes of Norman Mailer and Oliver Stone, if their characters ever sue them. They can't hide behind the facile dodge that "it's just their opinion" they are expressing about these characters, about Clay Shaw, Frank Sinatra, or Howard Hunt, *Milkovich* takes care of that. "Just my opinion" won't cut it anymore. And *Masson* makes clear that they can't put words in people's mouths. If you can't alter a quote, you sure as hell can't make one up.

HUGO BLACK: I disagree with your characterizations of the Court's holdings in *Milkovich* and *Masson*. The Court in *Milkovich* did not repudiate the notion that expressions of opinion are protected by the First Amendment. It merely rejected the terminology of "fact v. opinion," substituting a distinction between "fact and non-fact."

ROD SMOLLA: Why do you think that, Justice Black?

HUGO BLACK: Well first, because Justice Brennan stated that he agreed with the Court's analysis of the law. As Earl Warren well knows, Bill Brennan would *never* sign on to a rule that allows speakers to be punished for their opinions.

ROD SMOLLA: Maybe *Milkovich* was a stealth ruling. Maybe the majority slipped one by Justice Brennan.

HUGO BLACK: Absolutely not. Look at *Milkovich* closely, and it resembles Gertrude Stein's description of the city of Oakland, "There's no there, there." *Milkovich* goes out of its way to reaffirm the principle that under the First Amendment a defamatory statement must be an assertion of *fact*. And the Court cites with approval cases such as *Hustler Magazine v. Falwell*—a case that involved a fantastical statement that no person believed was intended to be understood as factual. So *Milkovich* retained protection for expressions of opinion, though in a somewhat inartful and backhanded way. I would have preferred it if the Court had used the "O-word," and stated flat-out that factual statements are actionable, but statements of opinion are not.

EARL WARREN: I don't see that you have refuted my argument, Hugo, for even if your version of *Milkovich* is more accurate than my

version—something I don't concede except for the sake of argument—I still say that you can't properly characterize the things that Norman Mailer or Oliver Stone do as “non-factual” or as “opinion.” Use whatever terminology you want, I don't care. There is no way that Mailer or Stone should be able to hide behind the notion that they are merely expressing opinions. They are presenting portraits of factual reality. Stone is telling his viewers that the government shot John Kennedy. He is telling them Clay Shaw was part of the project. Those are factual statements. And he and Mailer do these things, worst of all, by putting words in people's mouths, and thoughts in their heads. And *Masson* tell us that's wrong.

HUGO BLACK: *Masson* tells us no such thing. *Masson* involved a non-fiction article. The author was presenting a portrait of a person in a non-fiction piece, and was purporting to quote directly from the subject. *Masson* merely holds that one cannot materially alter quotations in that type of work and get away with it. But there is a world of difference, artistically and legally, between manufacturing dialogue in dramatic or fictional works, and altering quotations in non-fiction. The two do not equate.

EARL WARREN: Well we can go round and round on this Hugo. I think they *do* equate, and I've got a majority of the Supreme Court on my side. So you just go ahead and write a dissenting opinion if you want.

ROD SMOLLA: But to return to a point Justice Black has been pressing here, doesn't your view result in censorship of an entire genre of art—historic fiction—effectively making it impossible for artists to creatively render real events?

EARL WARREN: If they want to be creative, let them be truly creative. Write genuine fiction. Don't use real people and real events unless you are willing to remain true to the historic record. If you have the urge to depart materially from that record, then depart *all the way*. Use fictitious names. Alter the physical appearance, age, sex, and biographies of the characters. Place characters in different geographic settings. Alter relationships and personality characteristics. If you want to be creative, be creative. If you want to write fiction, write fiction. But don't mix it up. Mixed genres are worse than mixed metaphors.

ROD SMOLLA: Shouldn't we be careful to distinguish among various styles of fiction and film? Are we lumping too many things together here? Shouldn't it matter how the artistic work presents itself? And shouldn't it make a difference, for example, whether the work simply draws generally on an historical period, or actually uses real people and events?

HUGO BLACK: These may be valid artistic distinctions. But under the First Amendment, all genres are created equal. I would suggest, for example, that it is utterly unimportant whether or not Robert Penn Warren's *All the King's Men* is an authentic rendering of Huey Long. And it is utterly unimportant whether Orson Welles' *Citizen Kane* is an authentic rendering of William Randolph Hearst. What matters is whether they are *authentic renderings*, period.

EARL WARREN: Renderings of *what*? There is no rendering in the *air*. One renders something else. So if they're not to be taken as authentic portrayals of Huey Long or William Randolph Hearst, of *what*?

HUGO BLACK: They are authentic renderings of what makes a Huey Long or a William Randolph Hearst possible.

EARL WARREN: There is no great fault in using history as the fodder for entertainment. But it deserves no credit as *history*. As myth, perhaps, but not as history. Margaret Mitchell's *Gone With the Wind*, or Harriet Beecher Stowe's *Uncle Tom's Cabin* were not history, they were mythology. Upton Sinclair's *The Jungle* was not history. John Steinbeck's *The Grapes of Wrath* was not history. D.W. Griffith's movie *Birth of a Nation* was not history, when Woodrow Wilson saw the film he described it as 'trying to write history with lightening.' When myth masquerades as history, as it does in Stone's film, the law should intervene.

ROD SMOLLA: Let's shift gears a bit. Aside from the First Amendment issues you have been debating, Stone benefits from the fact that most of the persons who are really defamed outright in the movie are dead. And the traditional common law rule in libel cases is that libel suits are extinguished upon death. Dead men don't wear plaid, and they don't sue for libel.

EARL WARREN: Perhaps that rule should be changed.

HUGO BLACK: Earl, are you serious?

EARL WARREN: I don't think our culture should declare open season on a person once he or she dies. We have always thought of reputation as an asset. Shakespeare wrote that, ". . . he who filches from me my good name Robs me of that which not enriches him And make me poor indeed."

We allow other forms of property, including intellectual property such as copyright, to pass through to a person's estate. Conceptually, I would see no great difficulty in permitting libel suits to be brought for say twenty-five or fifty years after death. The legislature could make the appropriate judgment concerning the length of time. And I think there would be a strong *public* interest in such a change, an interest that goes beyond the interests of the estate. The rule that immunizes a writer from

legal accountability once a person dies creates an incentive to warp history to earn a fast buck. The truth is what really should matter under the First Amendment. Writers should have as much obligation to truth when they are writing about a dead person as when they are writing about persons still alive.

HUGO BLACK: This is a pernicious idea, our First Amendment absolutely prohibits such a thing.

EARL WARREN: The First Amendment is not even implicated, Hugo! That's the beauty of it! The principle that there is no "libel of the dead" is simply a common-law rule. States may change it by legislation as they please. And I should say, Hugo, that I think the momentum of recent libel decisions by the Supreme Court, which we talked about earlier, is on my side here. The Court has essentially said that the fault principles emanating from *New York Times Co. v. Sullivan*, coupled with the First Amendment rule that places the burden of proof on plaintiffs to demonstrate that the statements about them are false, provide *all* the protection necessary under the Constitution.

The Court has been unwilling to invent new First Amendment protections in libel law. For example, it has refused to outlaw punitive damages in libel cases. And whatever you may say to the contrary, I am convinced that in *Milkovich* the Court meant what it said, and refused to recognize a free-standing First Amendment privilege for expressions of "opinion." So I seriously doubt that the Court would strike down legislation allowing libel suits to be brought in the name of deceased persons.

ROD SMOLLA: Let me bring the artists back into this discussion. Norman Mailer, Oliver Stone, what is your response? Are Earl Warren's points well-taken? Or is the artist's only obligation a duty to the personal integrity of the work? I remember in the opening chapter of *The Scarlet Letter* when Nathaniel Hawthorne describes the "small red cloth, much worn and faded," and the "foolscap sheets," containing "many particulars respecting the life" of one Hester Prynne—and then announces: "I must not be understood as affirming, that, in dressing up of the tale, and imagining the motives and modes of passion that influenced the characters who figure in it, I have invariably confined myself within the limits of the old Surveyor's half a dozen sheets of foolscap. On the contrary, I have allowed myself, as to such points, nearly or altogether as much license as if the facts had been entirely of my own invention. What I contend for is the *authenticity of the outline*." Did Hawthorne have it right? The artist's only obligation is to the "authenticity of the outline?"

Let me try to pursue this with Norman Mailer. I'd like to start with a broad question. How could you presume to write about the internal machinations of the CIA? You are an outsider to the Agency.

NORMAN MAILER: I wrote *Harlot's Ghost* with the part of my mind that has lived in the CIA for forty years.

ROD SMOLLA: As wonderful as that sounds, what does it mean? Don't get me wrong, now—I should probably disclose my bias: I think *Harlot's Ghost* is one of the most ambitious and authentic portrayals of American experience in the history of our literature. I think it is a masterpiece. I found that it rang true, but I am not sure *what it was* that caused me to react this way. Perhaps it was just your craft: your characters, your human insights, your language, your images. *Those* are the things that rang true. But can I trust the *other* aspects of the book? Can I trust it as a portrait of the real CIA? As moved as I am with its artistry, I am fretful of its authenticity.

NORMAN MAILER: Look, a writer need not have been part of a culture to understand the tone of its inner workings. Imagine a Russian Jew of the early nineteenth century who happened to be consumed with interest about the nature of the Orthodox Church. He would not have to be on intimate terms with a priest to feel that his comprehension of Russian Orthodoxy was possessed of some accuracy.

ROD SMOLLA: But suppose he writes a novel expressing what he comprehends. Could we trust it?

NORMAN MAILER: That depends on the skill of the novelist. If he was good, you could certainly trust it. To pull it off, of course, would require some inner link, some sense that if he had been born into Russian Orthodoxy, he might have become a monk.

ROD SMOLLA: But do you think you have such an "inner link" to the CIA?

NORMAN MAILER: I do have the link, or I could not have written *Harlot's Ghost* in a manner that you, and many others, found convincing. It would not have been all that impossible for me to have spent my life in the CIA if I had come from a different background and political bent.

ROD SMOLLA: Howard Hunt obviously didn't think you knew what you were talking about. He said of your book, "The writer who presumes to reveal the inner world of espionage without having experienced it is comparable to a young man haunting a brothel exit and asking patrons what it was like."

NORMAN MAILER: Hunt suffers from a failure of imagination.

ROD SMOLLA: But that's the point, isn't it? That Hunt does not have to imagine the CIA? He knows the real CIA.

NORMAN MAILER: Why are you so sure of that? It is true the CIA that I created in *Harlot's Ghost* "exists" only in my mind. But the same

is true for Howard Hunt, and for all the men and women who have spent forty years working within the Agency. They have only their version of the CIA to know, even as each of us has our own America, and no two Americas will prove identical. And I emphatically believe that my CIA is as real—or even *more* real—than most of the lived-in ones.

ROD SMOLLA: Sometimes you use fictional names for your characters. At other times your characters bear the names of the real persons they represent. How did you make those choices?

NORMAN MAILER: The device of taking a real personage, whom all readers will identify, and giving him a fictional name, is often lame and silly. I could have given John Kennedy a fake name in *Harlot's Ghost*—named him “President Fennerly” or something. The character would have lost all its fictional presence. Readers would have read the name as an author’s wink, and thought “Oh yes, I’m with you Norman, Fennerly is really Kennedy, and now we will see what made Kennedy tick.”

ROD SMOLLA: So you are saying, in a sense, that the reader may in some cases treat the character as *more* of a fictional creation when the character’s *real* name is used?

NORMAN MAILER: Something like that—though I am more concerned with my writer’s intuitions concerning the resonance and verisimilitude of the character, than with your lawyerisms. You keep looking at these works from the pathological sense. What happens if the novel triggers a lawsuit? If the character sues, are we better off if we named him or didn’t name him?

I suppose one is usually better off, from a strictly legal perspective, in going through the motions of providing a fake name. I am simply pointing out why, as you have suggested, the doctrinaire channels of the law do not parallel the more open-ended seas of the creative imagination. There are sound *artistic* reasons at times for using the real name, and at times for using a fake name. The decision should be driven by all that drives good fiction writing, including that rather pretentious search for “truth.” But I don’t write a novel, at least not a great novel, by thinking in terms of “What happens if my characters sue me?”

ROD SMOLLA: Let’s lay to rest, for a moment, the artistic decision not to disguise John Kennedy—that seems to be an easy case, both artistically and legally. It would have been pointless to disguise Kennedy’s name, and, of course, he is dead, and from a legal perspective, and until Earl Warren gets his way, the dead cannot sue for libel. But what about Howard Hunt? He is alive. Indeed, the *real* Howard Hunt actually reviewed your book, for the magazine *Gentleman's Quarterly*. That’s prob-

ably a first, a fictional character reviewing the novel he appears in. In any event, why did you decide to use the real name of Howard Hunt?

NORMAN MAILER: To be candid, I struggled with that one. I debated for a time whether to call him Charley "Stunt" Stevens. But I was sure that sophisticated readers and reviewers would quickly identify Stevens as Hunt, and that linkage would become part of the lore surrounding the book. I viewed that as the cruelest invasion of Hunt's integument, for it would actually encourage readers to think that everything I wrote about Stevens—a.k.a. Howard Hunt—was literally true.

ROD SMOLLA: But won't readers make the same assumption when you use his real name?

NORMAN MAILER: No. I am convinced that using the real name often emancipates the imagination of both the writer and the reader. The readers, if you will, are now free to disagree. They can say, "This is not at all my idea of Howard Hunt." Also, I should point out, that my portrait of Howard Hunt is favorable, even flattering. He is no ogre. He comes off, in many instances as stoic, even heroic. Indeed, my portrait of the CIA itself is very balanced. No one could call this an anti-CIA novel. In getting inside the human beings, and in creating a living organism out of what we so often caricature as a cold and sinister bureaucracy, I have, if anything, made the agency more endearing. The novel is not particularly judgmental.

ROD SMOLLA: Has your own book seduced you? Have you been taken in by your own CIA? I understand that when you were invited to speak at a CIA luncheon recently, you even suggested that you were not necessarily opposed to "wet jobs," operations involving murder or assassination. This is from the person who had over the years often blasted the agency as a devious threat to democracy.

NORMAN MAILER: I know some think that I glorified the CIA in *Harlot's Ghost*. But as I've already suggested, I think I merely captured its essential inner truth, and captured it *with a sense of proportion*. It may have seemed a glorification because everyone was posed for a scathing attack. There is too much self-righteousness in America, even too much self-righteousness in picking on the CIA. It is a national disease, and I am trying to fend it off, at least in my own writing. And as to wet jobs, do you think the American people would balk in massive moral indignation at the news that the CIA was working on a secret plan to knock off Saddam Hussein?

ROD SMOLLA: Is it?

NORMAN MAILER: We'll see. I haven't written that part yet.

ROD SMOLLA: Okay—to get back on track—you've explained your

artistic decision to use the real name of Howard Hunt. But what about the legal ramifications? You must admit that you do take liberties with Mr. Hunt's character, attributing to Hunt hundreds of pages of dialogue, dramatic action, and motives that you imagined. How did you get away with that? Weren't you worried he'd sue you for libel?

NORMAN MAILER: There was never any real risk. We used classic cold war deterrence theory on Mr. Hunt, something he understood quite well.

ROD SMOLLA: Please explain.

NORMAN MAILER: According to my lawyers, if Hunt were to sue us, we would rely, among other things, on the defense of truth. Not so much as a *winning* legal defense, but a *detering* legal defense. We'd drag him through hell in what the lawyers call "discovery." We'd put E. Howard Hunt and the CIA on trial, not Norman Mailer. We'd go through everything in his record at the agency. His whole life, actually, because he also must prove that his reputation was damaged. So we'd attempt to establish that he didn't have much of a reputation *to* damage. We could retry Watergate, call Richard Nixon to the stand—Hell, I'm starting to wish he *would* sue! You get the picture, Professor. You're the expert on libel law, I don't have to spell it out for you.

ROD SMOLLA: You're saying he couldn't afford to sue you, because of what you might uncover through the litigation process.

NORMAN MAILER: Put it this way: if you were Howard Hunt, would you like to hand Norman Mailer a subpoena to look into every nook and cranny of your life?

ROD SMOLLA: I'm *not* Howard Hunt, and I wouldn't like it.

Okay, one final theme—let's explore what happens when you *do* decide to create a fictional name for a character that is suggested by a real person. I am interested in what you feel you owe to real personages when you use them as touchstones for fictional characters.

In *Harlot's Ghost*, for example, you create a character named Modene Murphy, a woman who has affairs with John Kennedy, Frank Sinatra, and Sam Giancana. Her glamorous life unravels as the book progresses. She is harassed by the FBI, and ends up in a state of pathetic misery. Modene Murphy is based, is she not, on a real person—Judith Campbell Exner—who wrote a book called *My Story* that detailed her affairs with Kennedy, Sinatra, and Giancana?

NORMAN MAILER: Yes, Judith Campbell Exner was the inspiration for the character Modene Murphy. I thought her book rang true; I believe she did have affairs with Kennedy, Sinatra, and Giancana. I didn't feel, however, that I could provide more insight into her life than she had

already provided in her book, and so I remained true to the skeletal events of her story. Modene Murphy's actions parallel Campbell's actions in many ways, but her persona was entirely of my creation. Her inner feelings, her dialogue, and most of the specific moments described in the book belong not to Campbell, but to Modene Murphy.

ROD SMOLLA: Is that legitimate? It's easy to say that your ultimate obligation is to the "truth," and then make the self-serving assertion that the artist seeks a "higher truth" than the cold and objectively verifiable facts may reveal.

NORMAN MAILER: I don't use the phrases "truth," or "higher truth." Those are your words. All writers hope for a grain of truth, a grain of *perception*, in their writing, but few of us ever achieve it, consistently, and only a pompous fool would stake his literary claims on anything so ostentatious.

ROD SMOLLA: But if you're going to use the raw material of history, such as real persons and events, doesn't the obligation to "truth"—even with a small "t"—require some sense of restraint? Doesn't intellectual honesty require the artist to refrain from making extrapolations or interpretations that cannot be justified by a judicious weighing of the evidence? George Will calls this an "ethic of literature." Isn't he right?

NORMAN MAILER: George Will is wrong, though at least he's literate. You are wrong, and not even literate. You are a lawyer. Lawyers seldom make good novelists—or even decent historians—precisely because they think and speak in phrases such as "extrapolations or interpretations that cannot be justified by a judicious weighing of the evidence."

ROD SMOLLA: Are you telling me you *don't* weigh the historical evidence?

NORMAN MAILER: No, of course a writer of historical fiction "weighs" the evidence. The good writer immerses himself in the evidence; wallows in it, consumes it. But the evidence is the starting point of the process, not the end. The end is wisdom, revelation, creation. The end is the *insight* from the fierce concentration required for creative writing.

ROD SMOLLA: Maybe Henry James had it right when he said that the historian "essentially wants more documents than he can really use." But I want to keep pushing—let me take another pass at you. Whether you are using a real name or a fictional name, when you create a character that is grounded in some sense in an historical person, do you feel bound by any literary or artistic *ethic* at all? Or are you bound only by "what works," in your judgment, creatively?

NORMAN MAILER: I am bound. Whether I would choose to call it an "ethic" or not I don't know—but I don't want to quibble with your question—I accept it in the spirit it is offered. The answer is "Yes." I *do* feel constraints, constraints that are bound up in my obligations to my art, to myself. I set out, in *Harlot's Ghost*, to render a model of reality. It is a complex book, and the rendering was accomplished through many different artistic strategies, some of which we have gone over. But the events described are either real, or *able to respect the proportions* of the factual events. I have imagined, but have not exaggerated. I have fictionalized, but not lied.

ROD SMOLLA: Let's now bring our discussion to a conclusion, by seeing if there are any general cultural lessons to be gleaned from a comparison of *Harlot's Ghost* with *JFK*. I perceive a sort of literary gyroscope operating within Mr. Mailer's novel, keeping it in mean balance. But many who have attacked *JFK* have in effect argued that Stone had no such gyroscope—or that he flicked off the guidance system.

HUGO BLACK: If I can offer a non-legal observation, I think part of the reaction of the critics may be influenced by the difference in the media. Films, because they deal in visual imagery, influence us in different ways than books.

ROD SMOLLA: Should the First Amendment be applied differently to movies than to books?

HUGO BLACK: No, I would not accept that idea, at least not in the context we are talking about—legal accountability for the portrayal of public events. When the First Amendment says, "Congress shall make no law," it means *no* law, with no ifs, ands, buts, or whereases.

I think that the discussion we have had with Mr. Mailer and Mr. Stone demonstrates precisely why the First Amendment should be understood to prohibit the law from forcing artistic and creative choices on writers and filmmakers. But I should hasten to add that while I defend the First Amendment rights of Mr. Mailer and Mr. Stone to speak what they will, that does not mean that I endorse all their concepts of writing and filmmaking. Although I do not believe, as Earl Warren does, that fiction must be kept entirely separate from non-fiction, I do believe that when the distinction is blurred, the result is often intellectually dishonest.

ROD SMOLLA: What do you mean?

HUGO BLACK: I was, for example, deeply offended by the movie *Mississippi Burning*. To me it was outrageous that J. Edgar Hoover's FBI was portrayed as a positive moral force in the civil rights movement. I think that American culture is losing its ability to distinguish fantasy from reality.

ROD SMOLLA: In what sense?

HUGO BLACK: We are experiencing an intellectual breakdown. The breakdown is in part caused by evolving conventions in both the presentation of news and entertainment. News is increasingly packaged as if it were entertainment, and entertainment as if it were news. All these docu-dramas and made-for-television dramatizations of real events have inured us to the notion that there is *virtue* in examining reality the old fashioned way, by *earning* one's truths through rigorous analysis and objective sifting of the evidence.

ROD SMOLLA: Why has this happened?

HUGO BLACK: I think the electronic media is partly to blame. I agree with Marshall McLuhan's thesis that print media encourage rigorous thought and debate, while visual images and electronic communication tend to short-circuit the brain, conditioning us to think of *images* as valid.

ROD SMOLLA: Is this part of the fault you find in *JFK*?

HUGO BLACK: Absolutely. The movie adopts the cinematic syntax of MTV.

ROD SMOLLA: You watch MTV?

HUGO BLACK: Only as an artifact of culture. *JFK* is a bombardment of splintered visual images. There are thousands of cuts—thousands of different camera angles and setups in the film. It is a jangle of special effects, splices, edits, flashbacks, flash-forwards, all masterfully calculated to hypnotize. There will be a whole generation of Americans, young people born after Kennedy was shot, born even after Vietnam, who will be mesmerized by Stone's film, who will identify with Stone as an MTV prophet, and who will think that Stone's warped vision of the assassination, of *America* itself, is genuine.

ROD SMOLLA: Does this mean you believe the Warren Commission?

HUGO BLACK: I didn't say that. I've always been skeptical of the notion that Oswald acted alone. I've always been skeptical of the "magic bullet" theory invented by Arlin Specter. But to go from the possibility that Oswald acted in concert with others, to the sweeping paranoia of Stone's film is a travesty.

NORMAN MAILER: If I can get into this, I'd like to say that I agree with much of what Hugo Black just said, particularly about the corrosive effects of an electronic culture. The pounding beat of MTV, the rhythms of crass commercialism that dominate our television screens—in which a thirty second commercial is now considered rather long—have dissolved the national attention span. I see a future, for example, in which the

novel no longer lives in the culture in the way we know it. A novelist twenty years from now may be the spiritual and economic equal of the poet—a person who writes for the love of the art, or out of single-minded determination to express creative impulses—but with no realistic hope of a widespread audience or financial reward.

ROD SMOLLA: Oliver Stone, out of fairness, perhaps you deserve the last word.

OLIVER STONE: I'd just like to say that I'm afraid that, ultimately, Hugo Black is no different from Earl Warren. With respect, Justice Black, you are unable, when all is said and done, to shed your own establishment biases.

What you said a moment ago about *JFK* is very revealing, for it exposes the *real* paranoia—not my paranoia, but the paranoia of those who actually run America. The establishment is afraid that my films will infect the nation's youth with the virus of radicalism. You are afraid that a new generation will not buy into the storybook picture of democracy that you want us to believe in.

HUGO BLACK: Now that's just not—

ROD SMOLLA: —Justice Black, I must cut you off. I'm afraid our time is up. Oliver Stone, Norman Mailer, Earl Warren, and Hugo Black, thank you for joining us.

APPENDIX

In Mark Twain's essay, *James Fenimore Cooper's Literary Offenses*,¹ he sets forth eighteen rules governing the literary art in the domain of fiction.² These rules require "that the personages in a tale shall be alive, except in the case of corpses, and that always the reader shall be able to tell the corpses from the others."³ The rules further require "that the personages in a tale, both dead and alive, shall exhibit a sufficient excuse for being there."⁴

In the tale I have concocted above, I have taken some liberties with Twain's rules, though I hope to good end. At the least, I hope that the characters Oliver Stone, Norman Mailer, Earl Warren, Hugo Black, and Rod Smolla all exhibited a sufficient excuse for being there.

In attributing thoughts and statements to the characters, I have tried to follow "Mailer's rules." The dialogue is partly lifted from actual essays, interviews, or quotes on the public record, and partly an invention on my part. When I have put words into the mouths of people, I have attempted to remain true to their characters, opinions, and motivations as I honestly perceive and imagine them.⁵

For those interested in the devices used in *Harlot's Ghost* and *JFK*, I certainly would recommend beginning with reading the novel and seeing the film.⁶ I also strongly recommend the fascinating essay at the end of *Harlot's Ghost*, in which Norman Mailer discusses many of the themes in the dialogue above.⁷ You may also wish to sample some of the reviews and reactions to *Harlot's Ghost*,⁸ and *JFK*.⁹

1. Mark Twain, *James Fenimore Cooper's Literary Offenses*, in *AMERICAN LITERATURE: THE MAKERS AND THE MAKING*, 1329-35 (Cleaneth Brooks et al. eds., 1973).

2. *Id.* Twain observes: "There are nineteen rules governing literary art in the domain of romantic fiction—some say twenty-two." *Id.* at 1329. Twain's vicious attack on Cooper's novel *The Deerslayer* claimed that "[i]n the *Deerslayer* tale Cooper violated eighteen of them." Mark Twain, *James Fenimore Cooper's Literary Offenses*, in *AMERICAN LITERATURE: THE MAKERS AND THE MAKING*, 1329-35 (Cleaneth Brooks et al. eds., 1973).

3. *Id.*

4. *Id.*

5. One possible exception is the character Rod Smolla. Whether he would actually make the comments and observations I attribute to him in a real dialogue with Mailer, Stone, Warren, or Black, I do not know.

6. NORMAN MAILER, *HARLOT'S GHOST* (1991); *JFK* (Warner Bros. 1991).

7. See NORMAN MAILER, *HARLOT'S GHOST* 1283-93 (1991); see also Norman Mailer, *Earl and Lyndon: An Imaginary Conversation*, *VANITY FAIR*, April, 1992, at 200 (fictional account of discussion between President Johnson and Chief Justice Warren concerning Warren Commission).

8. See Bonnie Angelo, *His Punch is Better Than Ever*; Norman Mailer, *TIME*, September 30, 1991, at 68-70; Josh Getlin, *The Mellow Miler*, *L.A. TIMES*, October 3, 1991, at E1; Walter Goodman, *Mailer Plugs Himself Instead of His Book*, *N.Y. TIMES*, January 24, 1992, at C28; John Leonard, *The Trouble With Harry*, *THE NATION*, November 18, 1991, at 622; Lee Lescaze, *Spies Strut Their Stuff*, *WALL ST. J.*, October 1, 1991, at A18; Shaffin Shariff, *In Bad Company: A Celebrity Weighs in with a Hefty Novel*, *MACLEAN'S*, December 2, 1991, at 90;

Earl Warren did meet with Lyndon Johnson alone on Friday, November 29, 1963, and during that meeting Johnson did convince Warren to head the assassination commission.¹⁰ Congress did pass, and President Bush did sign, a law releasing the Kennedy assassination records,¹¹ though the law provides a number of substantial exceptions to its disclosure requirements.¹²

Wilfrid Sheed, *Armageddon Now*, N.Y. REV. OF BOOKS, December 5, 1991, at 41; see also Norman Mailer, *A Critic With Balance: A Letter from Norman Mailer*, N.Y. TIMES BOOK REV., November 17, 1991, at 7; Maureen O'Brien, *Advertisements: On the Publicity Trail with Norman Mailer*, PUBLISHER'S WKLY, October 25, 1991, at 22-24; Elaine Sciolino, *Mailer Visits CIA and Finds He's in Friendly Territory*, Really., N.Y. TIMES, February 3, 1992, at A10.

9. See David Ansen, *A Troublemaker for Our Times*, NEWSWEEK, December 23, 1991, at 50; Kenneth Auchincloss et al., *Twisted History*, NEWSWEEK, December 23, 1991, at 46; Tom Bethell, *Reality Check for Another Movie Myth*, L.A. TIMES, December 1, 1991, at M5; Vincent Canby, *When Everything Amounts to Nothing*, N.Y. TIMES, December 20, 1991, at C1; William Grimes, *What Debt Does Hollywood Owe to Truth?*, N.Y. TIMES, March 5, 1992, at C15; Tom Hapden, *JFK Storybook*, L.A. TIMES, December 30, 1991, at F1; Christopher Hitchens, *Minority Report*, THE NATION, February 3, 1992, at 114; Stuart Klawans, *JFK Naked Lunch*, THE NATION, January 20, 1992, at 62; Andrew Kopkind, *JFK: The Myth*, THE NATION, January 20, 1992, at 40; Charles Krauthammer, *'JFK': A Lie, But Harmless*, THE WASH. POST, January 10, 1992, at A19; John Leo, *Oliver Stone's Paranoid Propaganda*, U.S. NEWS & WORLD REP., January 13, 1992, at 18; Janet Maslin, *Oliver Stone Manipulates His Puppet*, N.Y. TIMES, January 5, 1992, at H13; Arthur Schlesinger, Jr., *'JFK': Truth and Fiction*, WALL ST. J., January 10, 1992, at A8; Kenneth Turan, *'JFK' Conspiracy in the Cross Hairs*, L.A. TIMES, December 20, 1991, at F1 & 17; Lance Van Gelder, *Oliver Stone's Quest*, N.Y. TIMES, March 6, 1992, at C8; Tom Wicker, *Does JFK Conspire Against Reason?*, N.Y. TIMES, December 15, 1991, at H1; George F. Will, *'JFK': Paranoid History*, WASH. POST, December 26, 1991, at A23.

Oliver Stone has set forth a vigilant self-defense. See Oliver Stone, *Who is Rewriting History?*, N.Y. TIMES, December 20, 1991 at A35; Oliver Stone, *Stone's 'JFK': A Higher Truth?*, WASH. POST, June 2, 1991, at D3; Oliver Stone, *The JFK Assassination—What About the Evidence?*, WASH. POST, December 24, 1991, at A21; Lance Morrow & Martha Smilgis, *Plunging into the Labyrinth*, TIME, December 23, 1991, at 74; see also *Oliver Stone and the Appetite for Conspiracies*, THE ECONOMIST, December 21, 1991, at 32; *Stone Claims Key Support on Opening J.F.K. Files*, L.A. TIMES, March 5, 1992, at A17.

10. See EARL WARREN, *THE MEMOIRS OF EARL WARREN 356-58 (1977)* (Earl Warren's account of this meeting).

11. President John F. Kennedy Assassination Records Collection Act of 1992, Pub. L. No. 102-526, 106 Stat. 3443 (1992). *Id.*; see George Lardner Jr. & Joan Biskupic, *President Signs Bill Requiring Disclosure of JFK Documents*, WASH. POST, October 28, 1992, at A23 (stating President Bush signed bill requiring government-wide disclosure of assassination information).

12. Pub. L. No. 102-526, 106 Stat. 3443 (1992). The Act permits material to be withheld from the public in five situations. *Id.* The first exception to disclosure, dealing with national security and intelligence, permits material to be withheld if "the threat to the military defense, intelligence operations, or conduct of foreign relations of the United States . . . is of such gravity that it outweighs the public interest" and would reveal "an intelligence agent whose identity currently requires protection;" or "an intelligence source or method . . . the disclosure of which would interfere with the conduct of intelligence activities;" or "any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States, the disclosure of which would demonstrably impair the national security of the United States[.]" *Id.* at 3449. The second exemption shields the identity of confidential sources if disclosure would pose a substantial risk of harm to the source. *Id.* The third protects against invasions of personal privacy "so substantial that it outweighs the public

There is a rich academic literature on the principal Supreme Court cases discussed in passing in this dialogue.¹³ Cases such as: *New York Times Co. v. Sullivan*,¹⁴ *Curtis Publishing Co. v. Butts*,¹⁵ *Associated Press v. Walker*,¹⁶ *Milkovich v. Lorain Journal Co.*,¹⁷ and *Masson v. New Yorker Magazine*¹⁸ have played critical roles in the development of media and First Amendment law.

William Styron, one of the nation's literary treasures, has written a fascinating essay on the questions surrounding the use of history in "fic-

interest" *Id.* The fourth protects against disclosures that "would compromise the existence of an understanding of confidentiality currently requiring protection between a Government agent and a cooperating individual or a foreign government," the disclosure of which "would be so harmful that it outweighs the public interest[.]" *Id.* The final exemption protects against disclosure of security procedures of the Secret Service, and in substance parallels the exemption for national security and intelligence operations. *Id.*

Given the potential breadth of these exemptions, many of which go to areas that might well touch upon key aspects of Oliver Stone's conspiracy premises in *JFK*, it is not at all clear that the new act will provide the relief pleaded for in the final scenes of the film. Of the exemptions, President Bush's assertion of constitutional power to withhold material *over and above* the material that might be withheld under the provisions of the law is especially striking. See George Lardner Jr. & Joan Biskupic, *President Signs Bill Requiring Disclosure of JFK Documents*, WASH. POST, October 28, 1992 at A23 (quoting statement released by President Bush).

13. See DONALD M. GILLMOR, POWER, PUBLICITY, AND THE ABUSE OF LIBEL LAW (1992); ROBERT D. SACK, LIBEL, SLANDER, AND RELATED PROBLEMS (1980); BRUCE W. SANFORD, LIBEL AND PRIVACY (2d ed. 1991); RODNEY A. SMOLLA, SUING THE PRESS: LIBEL, THE MEDIA, AND POWER (1986); RODNEY A. SMOLLA, LAW OF DEFAMATION (1986); Arthur L. Berney, *Libel and the First Amendment—A New Constitutional Privilege*, 51 VA. L. REV. 1 (1965); William O. Bertelsman, *The First Amendment and Protection of Reputation and Privacy—New York Times Co. v. Sullivan and How it Grew*, 56 KY. L.J. 718 (1967); William O. Bertelsman, *Libel and Public Men*, 52 A.B.A. J. 657 (1966); William J. Brennan, Jr., *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 HARV. L. REV. 1 (1965); T. Barton Carter, *Right of Reply Versus the Sullivan Rule: Time for a Second Look*, 27 LOY. L. REV. 41 (1981); Lewis C. Green, *The New York Times Rule: Judicial Overkill*, 12 VILL. L. REV. 730 (1967); Harry Kalven Jr., *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 SUP. CT. REV. 191; Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment*, 90 MICH. L. REV. 470 (1991); Anthony Lewis, *New York Times v. Sullivan Reconsidered: Time to Return to "The Central Meaning of the First Amendment"*, 83 COLUM. L. REV. 603 (1983); Jerome L. Merin, *Libel and the Supreme Court*, 11 WM. & MARY L. REV. 371 (1969); Harold L. Nelson, *Newsmen and the Times Doctrine*, 12 VILL. L. REV. 738 (1967); Bruce L. Ottley, et al., *New York Times v. Sullivan: A Retrospective Examination*, 33 DEPAUL L. REV. 741 (1984); Willard H. Pedrick, *Freedom of the Press and the Law of Libel: The Modern Revised Translation*, 49 CORNELL L.Q. 581 (1964); Samuel R. Pierce Jr., *The Anatomy of a Historic Decision: New York Times Co. v. Sullivan*, 43 N.C. L. REV. 315 (1965); Norman L. Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel*, 85 MICH. L. REV. 1116 (1986); Rodney A. Smolla, *Let the Author Beware: The Rejuvenation of the American Law of Libel*, 132 U. PA. L. REV. 1 (1983).

14. 376 U.S. 254 (1964); see Anthony Lewis, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* (1991) (providing outstanding treatment of case).

15. 388 U.S. 130 (1967).

16. 388 U.S. 28 (1967).

17. 497 U.S. 1 (1990).

18. 111 S. Ct. 2419 (1991).

tion," focusing on his controversial masterpiece about American slavery, *The Confessions of Nat Turner*.¹⁹ And for an engaging overview of the issues discussed in this piece, I highly recommend an excellent article by Harvard historian Daniel Aaron, that also recently appeared in *American Heritage* magazine.²⁰

Daniel Aaron discusses, among others, the work of novelist Gore Vidal. Although I wanted to include Vidal in my fictional panel discussion, the characters of Norman Mailer and Gore Vidal would not agree to appear on the same panel. In lieu of his presence, I had the following

19. See William Styron, *Nat Turner Revisited*, AMERICAN HERITAGE, October 1992, at 64 (discussing need to take liberties with facts to write historical fiction).

20. See Daniel Aaron, *What Can You Learn from a Historical Novel?*, AMERICAN HERITAGE, October 1992, at 55 (discussing tension between professional historians and historical novelists). Many legal academic commentators have addressed the issue of liability for libel or invasion of privacy arising from fictional portrayals. See generally David A. Anderson, *Avoiding Defamation Problems in Fiction*, 51 BROOK. L. REV. 383 (1985); Peter L. Felcher & Edward L. Rubin, *Privacy, Publicity & the Portrayal of Real People by the Media*, 88 YALE L.J. 1577 (1979); Marca Franklin & Robert Trager, *Literature & Libel*, 4 HASTINGS COMM. & ENT. L.J. 205 (1985); Martin Garbus & Richard Kurnit, *Libel Claims Based on Fiction Should be Lightly Dismissed*; 51 BROOK. L. REV. 401 (1985); Paul A. LeBel, *The Infliction of Harm through the Publication of Fiction: Fashioning a Theory of Liability*, 51 BROOK. L. REV. 281 (1985); R. Bruce Rich & Livin D. Brilliant, *Defamation in Fiction: The Limited Viability of Alternative Causes of Action*, 52 BROOK. L. REV. 1 (1986); Rosen & Babcock, *Of and Concerning Real People and Writers of Fiction*, 7 HASTINGS COMM. & ENT. L.J. 221 (1985); Isidore Silver, *Libel, The 'Higher Truths' of Art and the First Amendment*, 126 U. PA. L. REV. 1065 (1978); Note, *'Clear and Convincing' Libel: Fiction and the Law of Defamation*, 92 YALE L.J. 520 (1983); Monica Smyth, Note, *Defamation in Fiction: The Need for a New Test*, 24 SANTA CLARA L. REV. 449 (1984); Note, *Welcome to the Nineties*, *Bindrim v. Mitchell*: Now Drop Dead, 12 HASTINGS COMM. & ENT. L.J. 517 (1990).

State and federal courts have also addressed these issues. See *Pring v. Penthouse Int'l Ltd.*, 695 F.2d 438 (10th Cir. 1982) (holding defendant's article to be complete fantasy, thereby dismissing plaintiff's defamation action); *Geisler v. Petrocelli*, 616 F.2d 636 (2d Cir. 1980) (holding plaintiff had cause of action against defendant for libel, slander and invasion of privacy); *Middlebrooks v. Curtis Publishing Co.*, 413 F.2d 141 (4th Cir. 1969) (upholding decision that fictional character was not portrayal of plaintiff where marked dissimilarities existed); *Fetler v. Houghtin Mifflin Co.*, 364 F.2d 650 (2d Cir. 1966) (denying summary judgement where issue of fact existed regarding fictional character as plaintiff); *Davis v. Costa-Gavras*, 654 F. Supp. 653 (S.D.N.Y. 1987) (denying relief where dramatizations of actual events failed to show actual malice); *Davis v. Costa-Gavras*, 619 F. Supp. 1372 (S.D.N.Y. 1985) (allowing libel action where film alleged plaintiff's involvement in murder of U.S. citizen); *Miss Am. Pageant, Inc. v. Penthouse Int'l Ltd.*, 524 F. Supp. 1280 (D.N.J. 1981) (holding plaintiff failed to establish actual malice by defendant towards plaintiff); *Aguilar v. Universal Studios*, 174 Cal. App. 3d 384, 219 Cal. Rptr. 891 (1985) (denying relief because plaintiff failed to establish that fictional character was portrayal of plaintiff); *Bindrim v. Mitchell*, 92 Cal. App. 3d 61, 155 Cal. Rptr. 29, cert. denied, 444 U.S. 984 (1979) (awarding damages where sufficient evidence showed plaintiff and fictional character were one in the same); *Frank v. National Broadcasting Co.*, 119 A.D.2d 252, 506 N.Y.S.2d 869 (N.Y. App. Div. 1986) (denying plaintiff's action for defamation and civil rights violations against late-night television show); *Springer v. Viking Press*, 90 A.D.2d 315, 457 N.Y.S.2d 246 (N.Y. App. Div. 1982), *aff'd.*, 60 N.Y.2d 916, 458 N.E.2d 1256, 470 N.Y.S.2d 579 (1983).

fictional phone conversation with Mr. Vidal, whom I reached at his villa in Italy:

ROD SMOLLA: Gore Vidal, thank you for agreeing to talk to me, and for allowing me to record our conversation.

GORE VIDAL: You're welcome.

ROD SMOLLA: Mr. Vidal, historians have attacked your book *Lincoln: A Novel*.

GORE VIDAL: Those historians are squirrels.

ROD SMOLLA: Squirrels?

GORE VIDAL: Hagiographers. Sniveling little fact-gatherers bent on advancing their careers. Their skin is as ivory pale as the towers they work in. They haven't lived, and don't understand life. They lack the capacity to understand the culture, or to understand a man like Abraham Lincoln. The Lincoln of my novel is truer than the Lincoln of any modern historian. The Lincoln in my novel is a human being.

ROD SMOLLA: But your squirrel-critics claim you've cheated. Your book contains distortions and inaccuracies. You rely on outdated or discredited scraps of scholarship to create facts, events, and motives that cannot be objectively verified, that nobody *knows* to be true.

GORE VIDAL: To quote Henry Adams, the historian is "little better off than a novelist, with imagination enfeebled by strapping itself to a fact here and there at long intervals."

ROD SMOLLA: I wonder if you would agree with my instinct that romance is gone from modern university life—at least it's gone from History Departments. University historians don't write *books* anymore, they write *monographs*—flat, factual, objective, *scientific* excavations of the past?

GORE VIDAL: William Faulkner once said, "The past isn't dead. It isn't even the past." Well if the past isn't dead yet, historians too often seem anxious to kill it. Only our fiction writers seem willing, or capable, of keeping the past alive.

ROD SMOLLA: Gore Vidal, thank you for talking to me.