

IFRT

Report

No. 42

Summer/Fall 1997

Intellectual Freedom Round Table of the American Library Association

Chair's Message

Fay Golden, 1997-98 IFRT Chair

We all have heard politicians solemnly declare that "eternal vigilance is the price of freedom." They generally are thinking in terms of guns, tanks and bombers. I have come to realize that they are right about eternal vigilance, but more in terms of watching what our elected representatives, national, state, and local, are up to. Some ordinarily intelligent and sincerely well-meaning people have devised or endorsed bad legislation in answer to the prevalent conservative tenor of today's culture. Not only them, but some much more right wing legislators like Jesse Helms or Attorneys General like Ed Meese have made frightening attacks on constitutionally protected rights. Then there are the agencies, run by entrenched bureaucrats, that churn out regulations by the carload to encroach on such principles as privacy and confidentiality in everyday communication for the citizens of our country.

Although we cannot be always effective in combatting these tendencies in a broader scope, we can be sure that our libraries are not part of this creeping surveillance. The IFRT program for the 1998 annual conference in Washington, D.C., will deal with the threats that we can address. It will be useful to hold this discussion in the federal capital, where it may be possible to invite government officials to speak. I am looking for three volunteers to help with the Program Committee, and I would especially like someone from the D.C. area to join us in planning.

In the next month, I will be inviting people to become members of IFRT committees. The goal is to have all appointments made by the middle of October. I would appreciate hearing from anyone who is interested in being involved in the work of IFRT. Committees available are: Bylaws and Organization; Membership Promotion; Program; and the State and Regional Achievement Award. Some members have already volunteered and they will be hearing from me shortly. I hope that many others will call me soon. One of the exciting things about membership in IFRT is that this Round Table is concerned with current events vital to the survival of our libraries and our civilization. Of course, many of us think that the two words are synonymous!

Please call or email me to help us all be vigilant.
(315) 457-5477 or golden@lpl.org.

1998 Midwinter Meeting Schedule

Saturday, January 10
2:00 - 4:00 p.m.

Monday, January 12
2:00 - 4:00 p.m.

1997-98 IFRT Officers:

Fay Ann Golden, Chair
Carolyn Caywood, Chair-Elect
Douglas Koschik, Treasurer
Rhonda Hiebert, Secretary
Shirley May Byrnes, Director
Christine Jenkins, Director
Candace D. Morgan, Director
Melissa Riley, Director

The Deadline for submitting nominating petitions for Council, Divisions and Round Tables is December 15, 1997. Contact ALA for more information.

Chair-Elect's Message

Carolyn Caywood, 1997-98 Chair-Elect

The ALA convention in San Francisco coincided with events that, taken together, offer a forecast for intellectual freedom issues in what remains of this century. First was the well-earned victory in the Supreme Court over the ill-conceived Communications Decency Act. As clear and obvious as the decision is in retrospect, it nevertheless took huge resources from librarians to ensure that the judges had the information to understand the nature of the Internet and interpret the First Amendment accordingly. And, that case is only the beginning of a long struggle over freedom in this new medium.

Since the court decision eliminated the likelihood that government would clean up the Internet, pressure has increased to use software "filters" on public access to the Internet. ALA's Council responded by adopting a resolution proposed by the Intellectual Freedom Committee which points out that the use of filters to block constitutionally protected speech is incompatible with the *Library Bill of Rights*. David Burt, a leading proponent of library filters, has set up a website to promote this solution at <http://www.filteringfacts.org>. His comment on July 26 on the ALAOIF listserv is particularly revealing.

"Every library has the right to include or exclude access to any electronic resource based on its appropriateness or inappropriateness to a library's mission and collection development policies. ...Really I'm just trying to save you people from yourselves, because your misguided and overly zealous adherence to intellectual freedom principles has you heading for a train wreck."

While people who try to save us from ourselves always remind me of the Inquisition trying to save the souls of heretics, David Burt does us a service by crystallizing the reasoning we must face. His use of the idea of selection is in stark contrast to that developed by Lester Asheim in his classic essay, "Censorship or Selection." Asheim himself passed away during the ALA conference and his essay is now over thirty years old, but it still offers

a solid foundation for libraries as we deal with new media.

Family Friendly Libraries' Karen Jo Gounaud on the filt4lib listserv on August 6, adapted the "it takes a village..." aphorism to library selection. "At this point in the debate, Mr. Burt lands on a spot that deserves consideration: using filters as a tool to maintain collection development standards already in place. I would add, AND already expected by and reflective of the 'village' your library system is in. ...Most of the complaints we hear from library patrons upset by the introduction of unfiltered, unrestricted Internet into their public library systems reflect their observation that what the rest of their 'village' practices — treating some materials like erotica as strictly adult territory — is now suddenly abandoned by their tax-funded community library system."

Yet another event in June was the seizure of videotapes of the movie *The Tin Drum* in Oklahoma City. That a movie that won an Academy Award in the 70s could be deemed child pornography in the 90s reveals both how the law has been changed in recent years and also Gounaud's "village" in action. Protecting children seems to be common to both filter and video controversies, but underlying that concern is a desire that the library reflect and endorse "village" values instead of offering the true diversity of human opinion.

This would be a good year to reread a children's fantasy from 1959, *The Gammage Cup* by Carol Kendall. It too tells of a village, so satisfied and complacent that it expels its five nonconformists in order to be completely perfect. Those five are naturally the only ones capable of noticing when trouble comes and of finding a way to save the community. In the real world, we need to keep listening to all viewpoints about libraries so that we explain our principles convincingly to our communities.

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Supreme Court Victory

In a landmark 9-0 decision, the Supreme Court struck down the Communications Decency Act (CDA) on June 26, 1997. In its sweeping affirmation of First Amendment principles, the Court held that communications over the Internet deserve the highest level of constitutional protection. The decision affirmed the June, 1996, injunction issued by a three-judge panel in Philadelphia in the consolidated cases American Library Association v. U.S. Department of Justice and Reno v. American Civil Liberties Union.

The Court's ruling affirmed that Internet communications warrant the same level of constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. Writing for the court, Justice John Paul Stevens held that "the CDA places an unacceptably heavy burden on protected speech" and found that all provisions of the CDA are unconstitutional as they apply to "indecent" or "patently offensive" speech. The Court also ruled that the Internet "constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox." The ruling stressed

that the CDA would "reduce the adult population to reading only what is fit for children."

The Court noted that the Internet differs from broadcast media because users of the Internet are not "assaulted" by material, but must seek out materials on their own. It was also noted that "unlike the conditions that prevailed when Congress first authorized regulation of the broadcast spectrum, the Internet can hardly be considered a 'scarce' expressive commodity. It provides relatively unlimited, low-cost capacity for communication of all kinds."

In its ruling, the Court asserted that content-based regulations cannot be applied to the Internet. "As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship."

Reactions to the Decision

Bruce J. Ennis, ALA's lead attorney from the law firm of Jenner & Block, who argued the case before the Court said, "In its decision today, the

Supreme Court has firmly established that the Internet deserves the highest level of constitutional protection. Because of today's decision, the Internet will be allowed to flourish without government censorship and interference. In this decision, the Court has made clear that Congress cannot restrict constitutionally protected speech on the Internet."

"The Supreme Court's ruling is a victory for librarians, Internet users and everyone who cares about free speech. It means Americans will enjoy access to the same information in cyberspace that we have on library and bookstore shelves," said Mary Sommerville, President of the American Library Association.

Barry and Michele Fagin, founders of Families Against Internet Censorship, in Colorado Springs, Colorado, said, "This is a terrific, pro-family decision. The Court has placed the responsibility for protecting children where it belongs — with us, parents."

A Win for Libraries

Significantly, the Court acknowledged that the CDA would have impacted the ability of libraries and non-profit organizations to provide content to their patrons. The most critical holding for librarians is that libraries that

make content available on the Internet can continue to do so with the same constitutional protections that apply to the books on library shelves. Library postings on any topic, as well as the on-line catalogue, are constitutionally protected, even if some of the material may be considered controversial or offensive.

The Court's conclusion that the "vast democratic fora of the Internet" merit full constitutional protection will protect libraries providing access to the Internet. The Court recognized the importance of enabling individuals to speak to the entire world, and to receive speech from the entire world. Libraries can provide that

opportunity to those who otherwise might not have it, and the Supreme Court's decision will go a long way toward protecting that access.

The full text of the Supreme Court's decision in Reno v. ACLU is available at http://www.ciec.org/SC_appeal/decision.shtml.

Other On-Line Victories

ALA v. Pataki

Calling the Internet analogous to a highway or a railroad, Judge Loretta Preska of the United States District Court for the Southern District of New York, issued a preliminary injunction against the enforcement of a state statute that attempted to regulate the new medium.

The complaint alleged that the statute violated both the First Amendment and the Commerce Clause. Judge Preska ruled under the Commerce Clause saying that the Internet is analogous to a highway or railroad. "This determination means that the phrase 'information superhighway' is more than a mere buzzword; it has legal significance, because the similarity between the Internet and more traditional instruments of interstate commerce leads to analysis under the Commerce Clause." The Judge then ruled that the statute contravenes the Commerce Clause for three reasons: "First, the Act represents an unconstitutional projection of New York Law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protection of children from indecent materials is legitimate and an indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can

legislate in this area, subject, of course, to whatever limitations other provisions (such as the First Amendment) may require."

In her ruling, Judge Preska did not address the First Amendment issues raised by a coalition of organizations, including the American Library Association (ALA) (named plaintiff), the American Civil Liberties Union, the Westchester (N.Y.) Library System and other plaintiffs. Instead, she held that the Commerce Clause provides "adequate support" for an injunction against this statute.

Acknowledging that the New York statute was "closely modeled" on the federal Communications Decency Act (CDA), Judge Preska declined to rule on First Amendment grounds, saying, in her order, "I believe any determination of plaintiff's First Amendment challenge should...await...the guidance to be provided by the Supreme Court's forthcoming opinion."

ACLU v. Miller

The American Civil Liberties Union (ACLU) won a preliminary injunction against a state statute aimed at prohibiting anonymous or pseudonymous communication and unauthorized use of trade names, logos, and trademarks over the Internet. The Court found that the statute was not tailored narrowly enough to achieve the state's goal of preventing fraud and that "its plain language ... applies regardless of whether a speaker has any intent to deceive or whether deception actually occurs." The court refused to heed the state's

argument that an intent to deceive should be read into the statute.

The court found that the statute is over broad, and would prohibit a significant amount of

constitutionally protected speech. It was also ruled void for vagueness for its failure to define "false identity" and other terms, which would leave open the possibility of arbitrary and discriminatory enforcement and self-censorship.

RESOLUTION ON THE USE OF FILTERING SOFTWARE IN LIBRARIES

- WHEREAS,** On June 26, 1997, the United States Supreme Court issued a sweeping re-affirmation of core First Amendment principles and held that communications over the Internet deserve the highest level of Constitutional protection; and
- WHEREAS,** The Court's most fundamental holding is that communications on the Internet deserve the same level of Constitutional protection as books, magazines, newspapers, and speakers on a street corner soapbox. The Court found that the Internet "constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers," and that "any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox"; and
- WHEREAS,** For libraries, the most critical holding of the Supreme Court is that libraries that make content available on the Internet can continue to do so with the same Constitutional protections that apply to the books on libraries' shelves; and
- WHEREAS,** The Court's conclusion that "the vast democratic fora of the Internet" merit full constitutional protection will also serve to protect libraries that provide their patrons with access to the Internet; and
- WHEREAS,** The Court recognized the importance of enabling individuals to receive speech from the entire world and to speak to the entire world. Libraries provide those opportunities to many who would not otherwise have them; and
- WHEREAS,** The Supreme Court's decision will protect that access; and
- WHEREAS,** The use in libraries of software filters which block Constitutionally protected speech is inconsistent with the United States Constitution and federal law and may lead to legal exposure for the library and its governing authorities; now, therefore, be it
- RESOLVED,** That the American Library Association affirms that the use of filtering software by libraries to block access to constitutionally protected speech violates the *Library Bill of Rights*.

Adopted by the ALA Council, July 2, 1997

**OKLAHOMA LIBRARY
ASSOCIATION RESOLUTION IN
SUPPORT OF LIBRARIES**

Whereas, the Oklahoma Library Association supports the essence of democracy that citizens have the right of free inquiry and the equally-important right of forming their own opinions, and it is of the utmost importance that free access for persons to all types of information be preserved and defended, and

Whereas, the Oklahoma Library Association has worked with Oklahoma libraries to provide collection development policies which reflect the right to read and the right to view, as well as reflect the interest of the communities served, and

Whereas, the Oklahoma Library Association supports the concept that parents should be responsible for guiding their children's choice of reading materials, and

Whereas, the Oklahoma Library Association supports the concept that a work of art should be judged as a whole, not in pieces, and

Whereas, the Oklahoma Library Association supports the concept of due process of law, now therefore. . .

Be it Resolved, that the Oklahoma Library Association expresses its concerns that the recent actions in Oklahoma County concerning *The Tin Drum* in the Metropolitan Library System are dangerous, alarming and unwarranted, and

Be it Resolved, that the Oklahoma Library Association supports Oklahoma libraries continuing to develop collections which support all interests and viewpoints.

Adopted July 18, 1997.

Censorship in Oklahoma

The 1979 Oscar-winning film *The Tin Drum* has become the center of a growing controversy in Oklahoma City, Oklahoma. State District Court Judge Richard Freeman ruled June 25 that the film has scenes of child pornography and is obscene under Oklahoma state law. Based on his ruling, Oklahoma City police seized videotapes of the film from video shops and homes.

The Tin Drum is the story of a young boy who wills himself to stop growing because of his anger over the behavior of adults in Nazi Germany. The film, which is widely regarded as a classic, was directed by Volker Schlöndorff and won an Oscar for best foreign film in 1979. The scene which generated concern implies oral sex between a young boy and a teenage girl.

The controversy began when a local group, Oklahomans for Children and Families (OCAF), asked the Oklahoma City Metropolitan Library System to remove the video from its collection. The library refused, saying it did not consider the film pornographic. OCAF then had a member check out the video, and turned over the library's copy to Judge Freeman, who said he had no choice but to deem the film obscene under Oklahoma's law. Based on his ruling, the Oklahoma City police went to video stores to seize copies of the film; they also sought the names of individuals who had rented the film. In at least one case, they were given names and addresses and visited the homes of those individuals to seize the videos. Michael Camfield, development director of the Oklahoma ACLU, was one of three individuals asked to surrender a video, which he had rented from a local Blockbuster Video.

While the police seizures occurred in Oklahoma City, some video-rental stores across the state pulled *The Tin Drum* from their shelves until the matter is resolved. In Tulsa County, the state's second largest, District Attorney Bill LaFortune said he would not seize copies from the library or video stores, saying he found the film "does not violate the state's obscenity statutes when general constitutional standards are applied."

A lawsuit has been filed by the ACLU on Mr. Camfield's behalf, citing violations of his First, Fourth, and Fourteenth Amendment rights. The Fourth Amendment guarantees the right to be free of unreasonable search and seizure; the Fourteenth secures the right of due process. The suit also invokes the federal Video Privacy Protection Act, which prohibits anyone from obtaining or divulging information about customers' rentals without their explicit written permission.

"No one disputes that child pornography is evil, but we cannot turn our cultural decisions over to people who would put a fig leaf in front of a Michelangelo statue," said Michael Salem, Oklahoma ACLU co-operating attorney. Furthermore, he stated, "It is a violation of federal law to acquire the records of a customer at a video store without a court order or a search warrant."

The Video Software Dealers Association has said it is also filing suit, focusing on violations of the Fourteenth Amendment and the Video Privacy Protection Act. It also contends that the film is not obscene under Oklahoma law.

The Video Privacy Protection Act was enacted in 1988, prompted by the revelation that, during his contentious Senate confirmation hearings for the Supreme Court, reporters had obtained a list of films rented by Robert Bork and his family.

Blockbuster video is undertaking it's own investigation. "It is a company policy never to give out names. . . . We're in touch with our legal counsel," said Jonathan Baskin, senior vice president for corporate communications. "We take this very seriously. This is not only a legal issue for us — it's a moral issue. The employees know the policy. We don't yet know what went on in the store."

The Video Software Dealers Association brief provides

further background on the case. Apparently, the situation began when a student at Bethel College and Seminary objected to a course assignment to view *The Tin Drum*, *Like Water for Chocolate*, and *Do the Right Thing*. She alleged the films were pornographic and not appropriate for viewing at Bethel. She filed a suit which was dismissed in its entirety as "an improper attack on the general quality of educational experience Bethel College provided its students." An individual in Oklahoma City who heard a talk radio discussion of the case borrowed the film from the library and turned it over to the Oklahoma City police.

Since the filing of the ACLU and VSDA suits, the district attorney for the Seventh Judicial District of Oklahoma, Robert Macy, has filed a Petition for Declaratory Judgement and a motion for injunction of *The Tin Drum*. The suit requests that the film be found obscene and/or child pornography, in whole or in part, and asks that rental or distribution of the film be banned. Blockbuster Video, Hollywood Video and the library system were listed as defendants. While Macy filed his suit in state court, it has since been moved to federal court by Hollywood Video because of the First Amendment issues involved.

At a meeting on July 19, resolutions of support for Library Director Lee Brawner and the library staff were presented by the Metropolitan

Library Commission and the Friends of the Library. Brawner was given the opportunity to respond to the professional and personal attacks OCAF have made against him. Brawner asserted that "the assault is purely political at its base; it employs a classic political tactic, namely to plant the image of the library as dangerous and evil and then come rescue it by taking it over. These advocates of restriction and censorship talk about 'family values,' and what it means to be a 'good person,' namely the values defined by them. They have created a litmus test for pretty much every issue, thought or belief and have mounted an attack on public libraries. Our libraries have always supported parental concerns. ...Citizens have a constitutional right to consider many views and then to make their own informed decisions. Day after day, letter after letter, call after call, these good Oklahoma County library users tell us they *do not want anyone or any organization deciding what information they and their families can read or access at their libraries.*"

Metropolitan Library Commissioner Linda Rogers took on OCAF and its leader Bob Anderson. "Month after month OCAF has attended our meetings and demanded the removal, exclusion and limitation of materials from the collection. It is not our duty as a Commission to evaluate materials for their inclusion in or exclusion from the library's collection. We have an established procedure for any

patron to request a review of any material which he feels is appropriate for adding to or removing from the collection. Even though this point has been made clear many times during our meetings, Mr. Anderson continues to ignore the established procedure. He insists on receiving special consideration and has been extremely critical of this Commission when he has not been granted this exception. ...Why would a man who stood before this commission on February 20, 1997, and stated that he had not used a library in some 25 to 30 years assume that any person with ordinary common sense would want him to make any kind of decision regarding the value of any library material?"

Rogers also criticized Anderson for a letter he wrote to her citing current library policy as the cause of an increase in rapes, sexual molestation, sexual harassment, out-of-wedlock pregnancies and teen suicides. Both Brawner and Rogers received standing ovations.

On July 18, the Oklahoma Library Association adopted a Resolution in Support of Libraries. (See page 6)

A statement condemning *The Tin Drum* has been issued by the National Coalition Against Censorship (NCAC). Joan E. Bertin, Executive Director of NCAC, said, "The police seem to be under the impression that Oklahomans for Children and Families represents the community. They are wrong;

our Oklahoma supporters are telling us they want to decide for themselves what they can see, read and hear."

"The removal of *The Tin Drum* from the Oklahoma City library and six video stores is not an isolated incident. It is the latest act in a campaign of censorship," said Judith F. Krug.

David Mendoza, Executive Director of the National Campaign for Free Expression (NCFE) said the Oklahoma City case is a classic example of how censorship works: first there is an attempt to suppress materials that have few defenders, such as adult materials, which is then expanded to include widely acclaimed works of art. "This is not just about comic books or *The Tin Drum*. This is about a private organization enlisting the police force to invade the lives of private citizens in order to impose its morality on all of Oklahoma County. OCAF will not stop with *The Tin Drum*. This is one thing NCFE has learned about censors. If the community does not defend its First Amendment rights now, OCAF will become everyone's 'Big Brother,' and their list of forbidden art and literature will only grow," Mendoza said.

For more information on Oklahoma City, visit the Oklahoma Department of Libraries web site at <http://www.state.ok.us/~odl/>.

Member Involvement Wanted!

As a membership organization, the success of the Intellectual Freedom Round Table is dependant on your participation. If you are interested in serving on a committee, please contact IFRT Chair Fay Golden at (315) 457-5477 or golden@ipl.org.

Available Committees are Bylaws and Organization; Membership Promotion; Program; and the State and Regional Achievement Award.

The 97-98 Nominating Committee is beginning its work and looking for members interested in running for an IFRT office. Terms begin with the 1998-99 program year. Available positions are Chair-Elect, Secretary, and two Directors. Each position requires a two-year commitment. If you are interested in running for any of these positions, please contact Nominating Committee Chair Fred Stielow at stielow@ulysses.sebridge.org.

The *IFRT Report* is an irregular publication of the Intellectual Freedom Round Table of the American Library Association and is sent to members of the Round Table. Membership information and/or correspondence about your subscription should be addressed to IFRT, Office for Intellectual Freedom, American Library Association, 50 E. Huron, Chicago, IL 60611; ifrt@ala.org; 800/545-2433 x 4223. Letters to the editor are welcome.