WASHINGTON LIBRARY ASSOCIATION

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Up Front

The WLA President speaks



CAROL GILL SCHUYLER

Current Challenges to Intellectual Freedom

Michael and I have just returned from Greece and Turkey. In our wanderings, we visited the ancient libraries of Hadrian in Athens, Celsus in Ephesus, and Pergamum (where they began using parchment instead of papyrus and shared their volumes with Alexandria when its library burned). Libraries, in one form or another, have existed for thousands of years and are integrally interwoven with history. We also sat in the same seats in which the creators of democratic society sat as they discussed the importance of equality, individual freedoms, and the commitment of every citizen to maintain those societal rights. To do anything else was not considered an option.

This *Alki* issue focuses on intellectual freedom, a principle that all libraries should defend. As we live and work in an environment that makes preserving intellectual freedom more difficult, this duty becomes more important.

I attended the USA PATRIOT Act teleconference in December. One presenter was former Washington State Assistant Librarian Gary Strong, now the director of Queensborough Public Library in New York. He talked about striking a balance between informing library customers of the potential governmental invasion of their intellectual freedom and confidentiality within the library— the "chilling effect"—and maintaining a hospitable and welcoming environment where they can feel safe. No longer can we take our library rights for granted, as we have in the past.

In my "day job" I teach all our employees a policy class, which includes a discussion of the *Library Bill of Rights*. Reviewing its sections provides a clarity and definition that reminds us of the challenges that we face in providing excellent customer service. Each section deals with a component of intellectual freedom and the right of every individual to unrestricted access to information. The bar to defend this unfettered access is constantly being placed higher.

During the teleconference someone commented on how the government loves acronyms (as do libraries). Here are the ones most impacting intellectual freedom. CIPA forces libraries to choose between reimbursement of communication funds and filtering of Internet access. Washington libraries currently address Internet access in many ways—parental choice for minor children, complete open access, and choice between open and filtered access. These alternatives reflect community values, not government mandates. UCITA threatens our ability to purchase and distribute certain forms of information. The USA PATRIOT Act impacts libraries in two ways. It allows the government to determine what information—in both electronic and print formats— may be considered "sensitive" and thus unavailable to the public. It also allows for search and seizure of library records, including circulation and Internet use records. At the state level, "harmful to minors" bills raise their heads nearly every legislative session. As an association, we have placed a high priority on stopping these bills in committee. We want to preserve for children equal access to all information.

The other intellectual freedom arena we must attend to is the resistance to censorship. Daily we face formal and informal censorship: challenges to materials, decisions to avoid potentially controversial items, and citizens who appoint themselves "weeders" of "inappropriate" items. It takes time and energy to defend a collection's diversity and the rights of its users—whether public, academic, special or corporate—to open information.

Philosophy and politics are often uncomfortable companions. I am proud to work in a state where so many people so strongly protect intellectual freedom. I remember the heated debate (which set off the hotel fire alarm!) on revising our intellectual freedom statement three years ago. Such debate occurs only where people believe passionately and are willing to take a stand. Our profession has traditionally been typed as "mild," but in defense of intellectual freedom our "Clark Kent" becomes "Superman." Though telephone booths are increasingly hard to find in a forest of cell phones, we must always be willing to don our red capes. Supporting intellectual freedom keeps libraries and those who use them strong.

I want to take this opportunity to thank Catherine Lord and Martha Parsons for producing the Intellectual Freedom Resources page on the WLA website. It is a very valuable addition to your intellectual freedom toolkit. Visit it if you haven't already.

This is my last *Alki* message to you as your president. Thank you for the past two years. I am very proud to have served in this role.

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From the Editor



CAMERON A. JOHNSON

Intellectual Freedom in Fearful Times

In his article on the radical-harboring Blue Moon Tavern, Seattle historian Walt Crowley mentions the Canwell Committee—the Washington Committee on Un-American Activities—which during the 1940s conducted anti-communist witch hunts against University of Washington faculty members. Sadly, today one can imagine a UW professor being charged with aiding terrorism after discussing U.S. Middle East policy with students informally after class. In fearful times, even *discussing* issues can kindle suspicion and provoke repression of people and ideas.

I once heard former astronaut Buzz Aldrin say that American society is "risk averse." He was speaking of the space program, but his idea applies generally in this time of endless war against secret enemies. Intellectual freedom is *about* risk. Dare we risk letting citizens study irreverent ideas, read controversial literature, pursue their studies wherever they lead, and separate truth from lies and propaganda? Is this freedom worth the risk? Those who say 'no' oppose or discount the creative potential released by knowledge and information made freely available: Letting go allows for serendipity and permits surprising syntheses of ideas. It allows expansive possibilities and permits wise participation in self-government.

The ideas behind "intellectual freedom"—free speech, free expression, inherent rights of citizenship—originated in ancient Greece and congealed in the Enlightenment's recognition of common men as worthy of political power. These ideas have *always* faced opposition and can never be taken for granted.

Ethical conflicts force us to choose between basic values, as Ken Himma notes in his essay on a hypothetical ideal internet filter. The City of Everett chose in 1916 to outlaw political oratory by the Industrial Workers of the World, a crackdown that culminated in the infamous Everett Massacre. Everett Public Library historian David Dilgard's article finds that history has judged this suppression harshly.

Intellectual freedom has had a tumultuous history in libraries, and each generation of librarians has had to fight its own battles and add its own legacy. In 1969 the ALA spun off the Freedom to Read Foundation (FTRF) to support and defend librarians whose jobs are jeopardized by defending First Amendment rights. The WLA's own Candace Morgan received the FTRF's highest award last year. Her interview with *Alki* reveals the humility and wisdom gained by a career-long intellectual and practical engagement with our profession's most difficult problem.

In this issue's other interview, Sanford Berman talks about the stifling of free speech in our own workplaces, and advocates participation by library staff in decision making. Berman also touches on libraries' ignoring alternative and small press materials, thus conceding our collection space to publishing conglomerates.

The idea of freely accessible information has always collided with notions of property, and this conflict has intensified as digital information has become easier to monitor and control. Jonathan Franklin's thoughtful piece on the Uniform Computer Information Transactions Act (UCITA) focuses on the intellectual freedom threats posed by large corporations using proposed contract law to outflank traditional fair use.

Cass Hartnett and Judy Solomon's timely article reveals the federal government's troubling attempts to censor, restrict, and even to forestall release of depository information. Once a source of good quality, non-biased, low-cost information, the federal depository program is now in jeopardy.

Carla McLean's and Emily Hull's article on library computer seizures reveals the practical and ethical problems arising from alleged online lawbreaking in libraries. Even if police cannot, libraries must recognize meaningful distinctions that separate cooperation with authorities on the one hand and protections of patron civil liberties on the other.

In light of this issue's theme, we have not included a "Who's on First?" column. In our July conference issue, our rotating authorship of this column falls to KCLS' Catherine Lord.

December's theme is about challenges to libraries and how to face them. We call it "Avoiding the Dire Hole: Making the Case for Libraries." The March 2004 theme is "Non-Librarian Librarians." More will come on these themes later.

We thank outgoing WLA President Carol Gill Schuyler for her many contributions to *Alki* and for her hard work on behalf of all of us in WLA. The *Alki* Board says goodbye to Bryn Martin and Eva Lusk, Eva after years of dedicated service. And we add Mary Wise and Brian Soneda.

And I want to thank all the authors, copy editors, and production people for their fine contributions to this issue.

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TAMI ECHAVARRIA ROBINSON

WLA's National IF Award Winner Candace Morgan

In the opening general session of the American Library Association 2002 Annual Conference, the Freedom to Read Foundation presented the prestigious Roll of Honor Award to Washington librarian Candace Morgan, Associate Director of the Fort Vancouver Regional Library. The award recognizes her "vision, leadership, her unwavering commitment to intellectual freedom, her First Amendment advocacy and activism at the local, state and national levels, for passionately and eloquently representing librarians to the public, media, Congress, courts and beyond, and her tireless efforts to train library boards, staff members and others around the country regarding intellectual freedom and library ethics." Alki *caught up with Candace and asked her to tell us about herself and the award. Tami Echavarria Robinson of the* Alki *Editorial Board conducted the interview by telephone and email.*

Tami Echavarria Robinson, for Alki: *Please tell me about your background.*

Candace Morgan: I got my undergraduate degree at the University of California at Riverside. I was a political science major. Constitutional law was one of the areas I pursued. I was very interested in doing things to make sure that individuals had the information they needed to be a functioning part of our political, social and economic system, and decided that being a librarian would be the way. So I went to Columbia University and got my library degree. I went to work for the Chicago Municipal Reference Library. Lots of people came in to find out information about the government. Richard J. Daley, Sr. was mayor and there were lots of controversies about the availability of information to the citizens. He did not control the information in the Chicago Municipal Reference Library, a special library that was at that time independent. I left there in 1971 for the Illinois State Library. I became head of the reference department, for the Illinois Network and the legislative support part of it, and the government reference. I was there until 1977, when I became head of public services at the Oregon State Library. I did that until 1983, when I was approached about being an assistant director in charge of the branches at Fort Vancouver Regional Library. Fort Vancouver Regional Library was a model, in my opinion, of a public library that had those goals of providing the information necessary for people who use the library to participate fully in the political, social, economic, cultural spheres of life.

Alki: *You have been a chair of the ALA Intellectual Freedom Committee and a member of the WLA Intellectual Freedom Committee. How did you get involved in this particular focus in your professional development?*

CM: When I worked for the Illinois State Library, we were a regional depository and a repository for state documents. And the Nixon Administration started recalling documents which had things that they didn't agree with. A government documents roundtable of the American Library Association was starting, so representatives from the documents department and I became part of the founding members of GODORT, with an aim of getting documents to the people, and resisting to the extent we could legally do so, government attempts to block access to those documents. I served on an advisory committee to the public printer for government documents. Much of the goal was to make sure that nothing in terms of the federal procedures were being used to suppress information and not make information available in depository libraries, so people can get access to the documents. I also became aware, in both the state libraries and even more at Fort Vancouver Regional Library, about organized attempts to censor or restrict the kinds of materials that public libraries have, and became very interested in the Intellectual Freedom Committee of ALA. I was appointed to be an intern to the committee and the chair simultaneously. It was a time when many of the interpretations of the *Library Bill of Rights* were being reviewed and revised. During that time the Internet became an issue, as well as guidelines for dealing with patron conduct, economic barriers interpretation, and access to electronic resources. As the chair of the Intellectual Freedom Committee you are automatically on the Freedom to Read Foundation board. After I was no longer on the committee, I was elected to the Freedom to Read Foundation board and served as the chair of that board.

I have always been very interested in training boards, staff, public, etc. on issues related to access to information, to intellectual freedom. I've done a lot of workshops, mostly in the Northwest, and developed an interest in the intellectual freedom concerns relating to copyright and all those issues related to the balance between intellectual property rights and access rights, and some public presentations on the FBI guidelines, the USA PATRIOT Act, and the balance between the obligation for providing access to information but also protecting confidentiality and privacy of those who are using that information.

I try to emphasize the state constitutional provisions to protect intellectual freedom, especially in

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Washington and Oregon. One of the important protections of individual liberties in our constitutional structure is federalism. The U.S. Supreme Court has found that states can provide a greater protection of individual liberties than provided by the U.S. Constitution. This has happened through interpretation of the Oregon Constitution by the Oregon Supreme Court and the Washington Constitution by the Washington Supreme Court. We have to provide at *least* as high of a protection in the states of civil liberties, but we *can* provide more. As an example, Washington state is one of the very few states that has a protection of privacy as part of its state constitution. Privacy is not explicitly mentioned in the U.S. Constitution, but Washington's constitution actually calls out privacy as a constitutional principle. It's important for us to remember this when we are dealing with the issues relating to the USA PATRIOT Act and the FBI guidelines, if we work in public libraries or publicly supported libraries, and as Americans. It is important for us to respect the law, follow the law, but also for us to be advocates and be on alert for abuse of the law, and for being part of challenges to laws that may be threatening basic constitutional rights.

Alki: *What is the significance of the Roll of Honor Award?*

CM: The Roll of Honor recognizes contributions to the mission of the Freedom to Read Foundation and to the freedom to read in general. The foundation is associated, and shares offices and some staff, with the American Library Association. But it has to earn its money to pay for the legal actions that it takes on behalf of the freedom to read. It's broader than just librarians. The interests and representation on the board are the legal profession, bookstores, video stores, university professors, school teachers—people involved in making it possible for there to be a freedom to read—when they're facing legal challenges. The American Library Association provides support when there is a case that is directly central to the library profession and to those that are members. Examples are the Communications Decency Act challenge and the Children's Internet Protection Act challenge. The Freedom to Read Foundation is involved, either as direct litigant or in filing a friend of the court brief, in a number of cases in which the legal principles will have an impact, if they are wrongly decided, on providing freedom to read.

Alki: *What does it mean to you personally?*

CM: It was an extraordinarily great honor. I never really dreamed I would be selected. Because it's a very illustrious group of people that have been selected and it is a great honor to be selected by your colleagues, all



Candace Morgan

of whom put in a tremendous amount of effort, time and monetary support for the freedom to read. So it was very significant to me.

Alki: *Why do you think you were chosen to receive the award?*

CM: Because of my background and my interest in the legal issues, my experience at different kinds of libraries, and in a public library where these issues are being frequently discussed with the community, I have been able to help people understand the legal issues. Certainly we rely heavily on attorneys. But libraries, librarians, library boards and library friends have to own and understand those issues themselves through the eyes of the public library mission. I've spent a lot of effort trying to develop documents and training that will help with that, and a framework for looking at those issues that will help us make the best policy we can. Along the way, I got a master's in public administration about constitutional principles associated with public libraries in America, that heritage, and how they play out in current library administration. And I've been contributing various aspects to things the American Library Association and the Freedom to Read Foundation are doing. So I think it was that plus the three years as the president of the foundation during a critical time.

Alki: *In the present time, when there are no accolades for standing up for causes, why do you care about civil liberties?*

CM: Because there are still many people who feel very deeply about all aspects of civil liberties, and particularly about freedom of speech and freedom of religion, who do give very positive reinforcement for those who are spokespersons for those issues. I believe that the reason why this country has existed the length of time it has, why we have had only one civil war, why we are relatively stable over this long length of time, is the enduring value of freedom and the role that freedom played in the founding of this country, and in allowing us, all of us, with many different points of view, many different backgrounds, to coexist in a positive fashion. So I think that's important to me that it continue. And it's important that the

role of the public library be instrumental in making it possible for each individual to enjoy the full benefits of freedom. That's why I do what I do.

Alki: *Who has been your professional mentor in this realm of intellectual freedom?*

CM: Most important, actually, are library users. I think the vast majority of library users value the role that the library has in maintaining their freedoms. Again and again I am impressed by people who, without any discussion from a theoretical point of view from librarians, speak from their heart about the importance of those freedoms. I have learned a lot from the various attorneys and individuals who associate with the Freedom to Read Foundation, the American Library Association, the Electronic Freedom Foundation, and the American Civil Liberties Union. I learn things every day also from Fort Vancouver Regional Library's staff because when I listen to their real life stories of what they do to help people find information, my faith in these values that we embrace and care about so much is renewed constantly.

Alki: *Can you think of any mistakes in dealing with a civil liberties question?*

CM: I can certainly tell you a kind of pattern one always has to be careful of. When someone is challenging a civil liberties value, always listen very carefully about what the person is actually saying. Not to react from the theoretical or constitutional standard, but from the specifics of the circumstance. It's not necessary for me to argue the value of the particular book that offends them, or why it's in the library collection. Take a deep breath. And remember, pay very close attention to what the person really wants. And try to suggest steps that they can take to get what they want as long as those steps don't abridge other people's freedoms.

Alki: *Does Fort Vancouver Regional Library's Internet policy require filtering? If so, under what circumstances?*

CM: Yes, the library board voted to amend the *Access to Electronic Information Policy*. This change will take affect during the first quarter of 2003. The previous policy was that filtering is available as a choice, but that it would not be mandated on anyone. Parents could make the choice for their child. The exact wording of the new policy is: "Minors age 12 and under shall have filtered access to the Internet." An important factor is that parents may take action to change the library-imposed default. Under the new policy, when a child becomes a teen at age 13, he or she may make a choice of whether to have filtered or unfiltered Internet access. However, a parent may still take action to require filtered or no Internet access until that teen turns 18.

Alki: *How do you feel about it?*

CM: I will support the policy and put full effort into its implementation. However, I personally agree with the three board members who voted against this change. Filters block access to some information that is both useful to children and is constitutionally protected for them. Now that the library is imposing filtering on children under 13, I expect that we will review the level of filtering as we implement the new software. Testimony that the board heard and the library's incident reports do not reveal problems with children accessing sexually explicit materials themselves. We continue to work on ways to minimize inadvertent viewing. The library is not the only place that children use the Internet. The role of the library should be to help children learn how to make good decisions for themselves when searching the Internet. Filters provide a false sense of security and do not teach children anything.

Alki: *What can like-minded librarians do or say when their institutions make policies that seem to affect civil liberties?*

CM: Do not leave your job because of the situation. Use common sense and logical arguments when policies that affect civil liberties adversely are under consideration, in an attempt to minimize the damage. When policies are adopted, pay attention to the practical impact of the policies as they are implemented and be sure that the legislative authority is aware of the impact. Be patient and do not inflate reports of the impact.

Throughout the history of this country, civil liberties have suffered during times when there are actual or perceived threats to national security or to individual safety. Abridgements of basic freedoms are on the rise at this time, in all our institutions. Freedom is the central value upon which this country was founded and is the major reason why our form of government has survived and adapted to change. In the past those who abridge freedom eventually go too far and the trend is reversed.

Alki: *Let me ask you a personal question: what do you do in your time off to unwind?*

CM: I'm a climber. So I run to keep in shape, run and lift weights on a regular basis. And I backpack, I do alpine climbing, rock climbing, when possible ice climbing, the full range of climbing. Because it's very hard to find time to read, I've taken to books on tape, which I listen to a lot. I'm a gardener. I have an organic garden that is a whole city lot that I have taken great pleasure in.

Family is also important. My husband and I actually backpack together for twelve days in the high Sierras every summer. If I had to miss that, it would be very difficult for me in terms of keeping up my spirits and energy. Finally, I have a wonderful two-year-old grandchild giving me the opportunity to introduce the principles of intellectual freedom to a new generation.

WALT CROWLEY

Bards, Rebels, and the Blue Moon

What is it about taverns? It seems that bards and rebels have been associated with bars—and associating in them—since the first neglectful Sumerian let a jug of wet grain ferment in the sun six millennia or so ago.

The Greeks and Romans waxed poetical over the grape, and hatched empires and revolutions while bending their elbows. London's Fleet Street dives overflowed with scribblers and plotters. The ideas of the American Revolution came to a head in the colonial taverns of Boston, Philadelphia, and New York. After a long day in the British Museum reading room dissecting capitalism, Karl Marx conspired its overthrow with comrades in Tottenham Road pubs. So it has continued to modern times. Dylan Thomas was as much a denizen of Greenwich Village's White Horse Tavern as of Wales. The Beats of North Beach shared their notes and found their rhythm over pints at Vesuvio's. And when they headed northwest on the road, Seattle's Blue Moon Tavern was usually on their itinerary.

The Blue Moon is located on N.E. 45th Street, just east of present-day Interstate 5. It occupies a brick storefront, nondescript but for a prominent neon sign featuring a scantily clad maiden (recently updated for modern tastes) reclining in the arc of a crescent moon. Despite her precarious pose, her look is one of studied insouciance, almost daring passersby to tell her something new. It would be a challenge.

The Blue Moon was founded in April 1934, within months of the repeal of Prohibition. A young entrepreneur named Hank Reverman teamed with a more experienced restaurateur, Monty Fairchild, to establish a tavern to cater to the faculty and students of the University of Washington. Because state law banned the sale of alcoholic beverages within one mile of campus at the time, they leased a vacant storefront just outside the mandated dry zone. They were going to name their joint the Big Dipper until they stumbled across the neon sign of a bankrupt cafe called the Blue Moon.

Walt Crowley is director of the online historical encyclopedias www.Washington.HistoryLink.org and www.HistoryLink.org, and is the author of numerous books and articles on local history and politics.

The Moon built its early reputation as a hangout for UW athletes who regularly "broke training" there to quench their thirst. Reverman hired local prize fighters Freddy Steele, Cecil Payne, and "Doc" Snell to keep order if any intramural rivalries flared up, but otherwise became known as a friendly and tolerant host.

New owners Maude Walsh and Vera McCracken carried on this tradition when they bought the Moon in 1940. The tavern welcomed servicemen of all ranks—and all colors—as one of the few Seattle establishments outside of the Central Area ghetto which would serve blacks during World War II. Before departing for the Pacific theater, a pair of sailors paid off their tabs by painting a colorful Smokey Stover-style cartoon mural which survives today.

Perhaps this spirit of unprejudiced hospitality made the Moon, more than any other campus-area watering hole, "a grubby oasis" (in poet Carolyn Kizer's phrase) for social, cultural, and political nonconformists. From its first days, a smorgasbord of socialists, communists, technocrats, anarchists, and assorted visionaries and crackpots could be found lined up along the Blue Moon bar.

Their numbers grew along with general patronage as thousands of returning veterans matriculated at the UW under the G.I. Bill. Tensions also increased as the Allied victory soured into a Cold War







Right: *The 1960s saw the Blue Moon as the haven for beats and the rising counterculture. "Paul Dorpat christened the* Helix*, Seattle's underground newspaper, at a Blue Moon booth, and novelist Tom Robbins placed a collect call on its public telephone to Pablo Picasso, who declined to accept the charges." The Blue Moon instituted a lending library in the 1980s. Photo courtesy of Walt Crowley.*

and politicians began sniffing out "un-American activities" on and around the UW campus. Fortunately, new landlords Jack and Jim David cared as much about the color of their customers' politics as their predecessors did about the color of their skins.

Thus, the Moon became a refuge for more than a few political pariahs during the late 1940s and early 1950s. UW Professor Joseph Butterfield, purged from the faculty with two colleagues as a result of a state witch hunt led by State Rep. Albert Canwell, took up exile there and reportedly translated the Communist Manifesto into Chaucerian English in a back booth. (Half a century later, in 1998, UW President William Gerberding formally apologized for campus complicity with the Canwell Committee.) Meanwhile, young students such as future historian Murray Morgan met at the Moon to organize the defense of academic freedom.

In the 1950s, poetry flowed as freely as politics and beer at the Blue Moon, thanks in large part to regular visits by Theodore Roethke, who in turn attracted colleagues and students such as Richard Hugo, Stanley Kunitz, Carolyn Kizer and David Wagoner. Their gravity in turn pulled in other aspiring or visiting poets and writers—Ginsberg, Thomas, and Ferlinghetti, among others. At one point in the 1950s, one might find a six pack of past and future Pulitzer Prize-winners bellied up to the Blue Moon bar, sloshing dime schooners along with artists such as Kenneth Callahan, William Cumming, Richard Gilkey, and Lubin Petric, and a small cast of Glenn Hughes' drama students.

Opposite page, top: *The Blue Moon was established in 1934, just outside the state-mandated dry zone around the University. Its earliest patrons were athletes breaking training. A found neon sign from a bankrupt café gave "the Moon" its name.* ***Left:*** *A revered historical and literary landmark, the Moon has harbored poets, writers, professors, and radicals of all free-speaking stripes. A nationwide protest against its proposed closure in 1989 secured an agreement to keep the tavern intact through its centennial in 2034. Photos courtesy of Walt Crowley.*

From this yeasty mash bubbled up first Seattle's local Beats and then its 1960s counterculture. Paul Dorpat christened the *Helix*, Seattle's underground newspaper, at a Blue Moon booth, and novelist Tom Robbins placed a collect call on its public telephone to Pablo Picasso, who declined to accept the charges.

As the New Left succeeded the old, young radicals sought advice from graybeards such as communist-turned-anarchist Stan Iverson and hatched plans for "liberating" the campus and ending the war in Vietnam. Soviet dignitaries visited under the watchful eyes their KGB keepers, and shortly before the fall of the USSR, President Mikhail Gorbachev asked interpreter Ross Lavroff, "So you're from Seattle. How's the Blue Moon?"

The political and cultural ferment continued into the early 1970s, under the benign ownership of Stanford Poll, who expanded the Moon to its present dimensions and introduced its first pool tables. One short-lived manager tried to introduce ferns. They quickly withered, killed either by the saturnalian atmosphere of burning tobacco (and other flora) or the contemptuous glare of anti-bourgeois patrons, or both.

The Moon's glow dimmed with the rise of drug use during the late 1970s and early 1980s. It was rescued from near-eclipse in 1983 by former bartenders and patrons Gus Hellthaler, John Caldbick, and Bob Morrison, who incorporated appropriately as Three Fools, Inc., and formally re-launched the Moon's mission on its fiftieth birthday. The Blue Moon instituted a lending library in the 1980s, with initial volumes provided by book dealer John Houston. Books come and go on the honor system and the collection has grown steadily.

Then came news in 1989 that the tavern's new property owner, a dentist, had sold the building to developers planning a condominium for the site. The call to arms went out to save the Moon as an official cultural landmark. More than 1,000 citizens signed petitions endorsing the Moon's preservation and the story made headlines in such distant publications as *The New York Times* and London's *Observer.*

Political, literary, and cultural illuminati including Congressman Jim McDermott and future governor Mike Lowry sent letters of support. Author Calvin Trillin reported that when he told a colleague at *The New Yorker* that he was defending a Seattle tavern as a literary landmark, she replied without prompting, "Oh, you must be talking about the Blue Moon." Local journalists Jean Godden, Emmett Watson, and

(Continued on page 15)

JONATHAN FRANKLIN

The Perils of Clicking 'I Agree': UCITA and Intellectual Freedom

Sandy is working as a selector at a small public library when she sees an advertisement for a new database on health issues for the public. It comes from a reliable source and has a low monthly rate. After investigating further, she decides to subscribe to the database and make it available to her library's patrons. After reviewing terms of the library's license, she is asked to enter the relevant credit card information and agree to the terms set forth in the license.

When she finally gets through these steps, she decides to try using the database as a patron would. She is shocked to see that each user must click "I agree" to a multiscreen licensing agreement that includes a line stating, "The user waives all rights to duplicate or create a derivative work of any content in this database." No cutting and pasting. No printing. No educational fair use.

How can this language be permissible in a contract?

Under the Uniform Computer Information Transactions Act (UCITA), which is proposed state contract law that would set the rules for licensing software and all other forms of digital information, this kind of unexpected and restrictive contract provision is likely to become commonplace. UCITA is written in a way that encourages publishers to license works, rather than sell them. Additionally, it does not penalize publishers for including limitations on the use of the licensed work that go beyond copyright law or other free speech laws.

UCITA defines "computer information" very broadly, encompassing not just software, databases, e-books, access contracts, and MP3s, but also toasters with embedded software and books that come with CD-ROMs. Under UCITA, the publisher or content owner licenses rather than sells outright its computer information product, allowing the licensor to exert considerable long-term control over a licensee's access and use to the information.

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It is not surprising, then, that this inherently restrictive approach clashes with fundamental notions of intellectual freedom, which, for the purposes of this article, are defined as

> the right of every individual to both seek and receive information from all points of view without restriction. It provides for free access to all expressions of ideas through which any and all sides of a question, cause or movement may be explored.

The fundamental problem with UCITA for those concerned with intellectual freedom is that it binds the party clicking 'I agree' to almost any clause the licensor includes in the non-negotiable license. UCITA provides too much incentive for the licensor to circumvent copyright law and other laws designed to facilitate the free flow of information and to foster future innovation. For the software, music, movie, and e-book industries, why permit users to do certain things, such as playing the same digital music in their car and on their portable player, when instead the company could require listeners to buy two identical copies by prohibiting transfers between devices?

The goal of UCITA is *not* to shrink intellectual freedom. That result is just a byproduct of UCITA's overarching philosophy of placing almost no limitations on what can be contracted between two parties, even when they are of unequal power and the weaker party is not given the opportunity to negotiate. UCITA effectively encourages publishers to maximize their short-term profits at the cost of longer-term socially beneficial goals such as innovation, research, and free speech.

Unlike copyright law, which applies to everyone, contracts are binding just between the parties to the contract. There are some situations where parties need the freedom to contract around existing rules or laws. Sometimes it is useful to have this flexibility, such as when two large multinational corporations need to agree to a complex deal by negotiating the specific terms in the contract, thereby reducing uncertainty about particular provisions. The problem arises when parties of unequal power enter into "take-it-or-leave-it" contracts drafted by the more powerful party. These non-negotiable contracts are of particular concern when the product being licensed is not fungible, as is the case with most intellectual content. Unlike in many areas where there are products that directly compete with one another and are comparable, with information there is often only one source because there is not a sufficient market to support competing sources for the same content.

Amazingly, clickwrap licenses are presumed valid under UCITA, even if the terms are not available until *after* the party has clicked on the 'I agree' button. Once the licensee is bound, UCITA has only two ways of invalidating terms in contracts: unconscionability (Section 111) and fundamental public policy (Section 105(b)).

Unconscionable terms have to shock the conscience. An example would be stating a right to take the computer equipment on which the breach occurred. It is unlikely that a court would find a term waiving the user's fair use rights unconscionable because unconscionability is such a high legal standard. Copyright and free speech are fundamental public policies. However, UCITA is drafted such that these policies would have to clearly outweigh competing policies, such as freedom of contract. Although success on this point would be likely, the cost of litigation would be so high and the disputed amount would be so low, that many such terms would have a chilling effect even if what they stated was impermissible.

Scope

Although this article has discussed narrow and traditional examples of computer information, UCITA defines it as

> information in electronic form which is obtained from or through the use of a computer or which is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy. (SECTION 102(10))

Under this definition, MARC records, scanned documents, barcodes, and CD-ROMs with instruction manuals are all computer information, so the limitations discussed above could affect an extraordinarily wide range of products. In fact, it is even broader than those listed above, because UCITA also applies to "mixed transactions" such as a book bundled with a CD-ROM or a toaster with an embedded software system. The thought of not being able to resell a toaster due to UCITA is worth contemplating . . . and rejecting. The number of goods that have software or hardware embedded in them is only likely to increase, and is likely to include e-book readers, scanners, and other devices used to disseminate ideas.

The Right to Reverse Engineer

Reverse engineering is effectively the "right to read" in the domain of computer science. UCITA would permit software licensors to ban all reverse engineering except when directly related to interoperability. Interoperability means that a program needs information about another program's file format to be able to import or export data created by or for the other program. For example, reverse engineering Microsoft Word to permit another word processing program to import and export documents in Microsoft Word format would be an act of reverse engineering directly related to interoperability. With UCITA in effect, future generations of software engineers will be unable to explore or fix the code of others. While this might seem tangential to the issue of intellectual freedom, it is in fact central. If such avenues were cut off, it would be the equivalent of being able to see a play without being able to read the script.

The Right to Loan

Under UCITA, although books are excluded, CD-ROMs, DVDs, software, e-books, and other digital content can be licensed with a prohibition against reselling, giving, or loaning (SECTION 503). Under UCITA, it is permissible for a library's contract for digital content to prohibit the loaning of licensed material.

Intellectual freedom incorporates the idea of disseminating information to relevant parties at the relevant time. The Copyright Act establishes two fundamental doctrines that relate to the right of access to information. The first, which is *fair use* (codified at 17 U.S.C. § 107), permits copying that meets the four factor test which includes (but is not limited to) criticism, commentary, education, and new reporting. The second, which is *first sale* (codified at 17 U.S.C. § 109) permits purchasers of a book to dispose of the book as they see fit, which means loaning it, reselling it, or giving it away. The first sale doctrine is based on the notion of the sale. UCITA twists this notion by saying that software and digital media content is *not* sold, but licensed.

Just as a book is both a physical good and a container for protected intellectual property, an MP3 file is both a physical good (it is a disk) and a container for protected intellectual property (the file residing on the disk has a header and other digital content that is not directly related to the protected intellectual property). UCITA, on the other hand, perpetuates the idea that digital content is somehow different from analog content or goods. It perpetuates the myth that, even if a digital file is conveyed for perpetual use by a single user in exchange for a one-time fee, the transaction is a license rather than a sale. The implication for resellers and libraries is grave.

(Continued on next page)

UCITA—History and Status

The effort to harmonize the law surrounding the licensing of computer software has been around for over ten years. The current draft is loosely based on Article 2 of the Uniform Commercial Code, the section of state law that governs the sale of goods. Only in the past few years has UCITA, after numerous drafting committee meetings and debates, begun to reach state legislatures. It must be enacted state by state because contract law is state law, as opposed to copyright law, which is federal law. Software and media companies support UCITA. Fortune 500 software users, libraries, consumer groups, insurance companies, and others oppose it. Even if libraries were exempted from UCITA, a strong coalition would still oppose it.

UCITA has been adopted in only two states, Maryland and Virginia. It has been rejected by numerous state legislatures, yet proponents are planning in 2003 a new round of introductions. If reintroduced in Washington state in 2003, the measure would face organized statewide opposition. Recent amendments to UCITA by the drafters at the National Conference of Commissioners on Uniform State Laws (NCCUSL) leave the 256-page document virtually unchanged. The latest drafts are at **www.law.upenn.edu/bll/ulc/ulc_frame.htm**.

—Jonathan Franklin



The Right to Speak Freely

With very narrow exceptions, UCITA permits contracts to ban public criticism and benchmarking of products. For example, if a publisher releases a product and claims it is not in its final form, the publisher can ban any criticism of that product. This applies not only to small test groups using a product prior to public release, sometimes called a beta test, but also potentially to any commercially available software that is incrementally updated, such as virus protection software. Additionally, UCITA permits contracts to ban benchmarking, or comparing the speed, of competing programs. If such a ban were in place, the press could not report on which software recalculated a spreadsheet faster. Such limitations on speech are far too broad; but again, the cost of challenging them in court is so great that even if they were unconstitutional or otherwise impermissible, the cost of litigation would be substantial. In such cases, their mere presence in the license would have a chilling effect.

Disclosure of Terms

Up to this point, we have discussed how contracts valid under UCITA typically circumvent fair use, first sale, and free speech. UCITA also permits users to enter into a contract before they know what all of the terms of the contract will be (i.e., the non-disclosure of terms of a contract prior to agreeing to the contract). This means that from the time a user presses 'I agree', that user is bound to a set of contract terms not yet revealed, making it impossible for that person to act as an informed consumer. Users cannot compare similar products and make an informed choice without knowing what exactly they are being offered. Part of intellectual freedom is access to information, and UCITA permits a licensor to prevent users from gaining access to certain kinds of information.

Choice of Forum and Law

Having explored the major flaws in UCITA from an intellectual freedom perspective, it is important to note that even if a state has not adopted UCITA, contracts assented to in that state could still bind parties to its framework. Almost all contracts have 'choice of law' and 'choice of forum' clauses. If these clauses name a state that has adopted UCITA, a person clicking 'I agree' in Washington state might still be bound by the UCITA interpretation of the contract even though no UCITA legislation has passed in our state. If you are negotiating a contract for your library, you should probably try to change the 'choice of law' and 'choice of forum' clauses to Washington state, or strike the clauses completely, or insert explicit "opt-out" language stating that UCITA, and the law of any state that has adopted UCITA, does not apply to your transactions. For example, even though Maryland is a state that has adopted UCITA, the University of Maryland routinely inserts clauses into its contracts that opt out of UCITA. Finally, some state legislatures are adopting "bomb-shelter" provisions that protect the citizens and businesses of their state from having UCITA apply to their transactions.

Digital Rights Management Systems

Even though digital rights management systems already exist, the reach of those systems will be lengthened and strengthened if UCITA is widely adopted under the guise of enforcing the licensor's existing legal rights. In today's world, users often disregard licenses. They assume that they will not get caught, and for the moment they are largely right. However, we cannot assume this will remain true in the future. UCITA is only one of many legislative efforts by software publishers and other content owners (i.e., the movie and recording industries) to solidify their control over their products' use. Content holders continually pressure Congress to mandate, or at least further legalize, technological tools that could go well beyond the Digital Millennium Copyright Act (DMCA) in enforcing terms embedded deep within the clickwrap license. These embedded tools could—without requesting permission from the user—disable cutting and pasting, track use of screen shot software, delete printer settings, install digital rights management software, or perform other similar acts identified deep in the license. While such a dystopian vision might not come to pass, the rhetoric of enforcing legal rights could be the camel's nose in the tent, the beginning of increasingly onerous technological controls that affect not only intellectual freedom, but also privacy, personal security, and censorship.

International Implications

As more and more computer information crosses national borders, licensors would like to be able to enforce their contracts in other countries. UCITA's opponents fear that, if UCITA is widely adopted in the United States (a major licensor of computer information), the U.S. will then pressure Europe and Asia to adopt a UCITA model as part of a larger trade agenda. At the same time, other countries are considering legislating in this area. Licensors are concerned that foreign legal codes less favorable to them than UCITA might evolve outside the U.S. and become the standard legal regime for these contracts.

Conclusion

In conclusion, UCITA is a long and complex law that threatens intellectual freedom on several fronts. In 2003, many state legislatures could consider adopting UCITA. We should oppose adoption in our state, because UCITA gives too much power to licensors who will fence in information, prohibiting its dissemination by libraries and universities, and thereby injuring both our present and our future.For more information about UCITA and how to get involved in the debate, see:

www.ucita.com/
www.eff.org/
www.ala.org/washoff/ucita/



CASS HARTNETT AND JUDY SOLOMON

Government Documents: We Do Not Want What We Haven't Got*

One might think that our federal government documents and records are safe, secure, and permanently available because our country has a system of depository libraries and a history of open access to government information from our early beginnings. This assumption is dangerous, because many factors are combining to jeopardize access to government information in Washington state and throughout the country. We may never know what we are missing: Some government material may never be made public or may be distributed only to select groups or individuals. We need the concerted effort of librarians, journalists, educators, and our other allies to reverse or curb these trends.

Let us explain. Long considered the information safety net of American democracy, the Federal Depository Library Program (FDLP) distributes documents through the U.S. Government Printing Office (GPO)—everything from the smallest consumer health pamphlet to a thousand-page technical report—to 1,200 designated libraries. "Since 1813, depository libraries have safeguarded the public's right to know by collecting, organizing, maintaining, preserving, and assisting users with information from the Federal Government" (U.S. GPO, *About the FDLP*). By statute, each government agency must come forward with—or the GPO has to seek out—publications of interest to the public. Excepted are "those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security" (44 U.S.C. 1902). The language of the depository statute is open, leading citizens to believe we are entitled to know whatever our hearts desire about our government, within the stated guidelines.

We should be very concerned about what is *not* making it into the depository program. The *New York Times* (Clymer) and others report that our government is becoming increasingly secretive. Along with post-9/11 fears, the massive reorganization and review of our government via the Department of Homeland Security will probably increase the bureaucratic tendency towards inertia and discourage publication of meaningful material for public consumption. This tendency to not publish is our greatest worry, since we may never know what we are missing. The age-old ethic of 'right to know,' ingrained in our professional psyches, may now be replaced with questions about 'need to know'—as if an invisible voice somewhere were asking, "Why would you need to know *that* about your government?"

Librarians consider it natural to be interested in something for the sheer pleasure of learning. The authors of this article are convinced that most Americans share this value. Americans like knowing things—our society makes a bestseller out of a book about the history of the screwdriver, and makes top-rated television programs out of shows rewarding knowledge of minutiae. The desire to learn about scientific or other data *collected by the government* or about the *government itself* (an entity that operates at our expense and for our collective good) should never be seen as questionable but instead as a basic exercise of intellectual freedom. Americans have spent over two hundred years crafting a government known for its openness via the depository program, state libraries, presidential libraries, a system of national archives, and now five national libraries. We also have the Freedom of Information Act, the Government in the Sunshine Act, and the Privacy Act, to name a few supporting statutes.

> *Do we now envision giving exclusive government document printing rights to Kinko's, the West Group, or Simon & Schuster?*

It is not alarmist to say that the government depository program is in jeopardy. Though our nation's public printing office does outstanding work providing permanent access to government documents (Peterson, Cowell and Jacobs) through the GPO Access website (**www.access.gpo.gov/su_docs**) and by producing high quality, inexpensive, ink-on-paper printing for our country, it frequently goes through cycles of unsteady and inadequate funding. Will the

* *With due respect to Sinead O'Connor's 1990 album* I Do Not Want What I Haven't Got.

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next generation of leaders support the GPO, transform it into something new, or abandon it altogether? This year, GPO, overseen by the Congressional Joint Committee on Printing, has found itself in a bitter power struggle between the legislative and executive branches of government. In the 13 November 2002 *Federal Register*, the Federal Acquisition Regulation (FAR) Council put forth proposed rules that would allow agencies to use printing and duplicating services outside the Government Printing Office ("Federal Acquisition Regulation"). Government information specialists agree this would weaken the depository library program and cost taxpayers more money for less access to federal documents.

The U.S. Superintendent of Documents already has a difficult job procuring depository publications from agencies and describing the documents with full MARC cataloging (a real gift to the rest of the world, as the depth of our library catalogs would suffer greatly without these records). Hiring different private companies for printing and duplicating will not improve the situation. The FAR Council is concerned that GPO has a monopoly on printing, while librarians, including the authors, insist that this is a mischaracterization. GPO already contracts out most of its printing to small and minority-owned businesses. The most compelling argument against the FAR proposals is that Americans desire to have a public printer. Citizens asserted this in 1860 when a public printer was established to wrest control away from private printers who had overcharged the government for their work (U.S. GPO, *A Short History of the GPO*). Do we now envision giving exclusive government document printing rights to Kinko's, the West Group, or Simon & Schuster? If more documents are farmed out to private printers—as was the *Journal of the National Cancer Institute*—will more Americans really be able to get free, full-text access to information produced by their own government now and in the future?

Recent news stories reveal that journalists, scientists, political analysts, and even the Congress feel that they are being cut off from government information to which they have a right. While our officials rightfully struggle with ways to react to unprecedented world events, we are seeing all around us attempts to alter key federal government information policies. These moves are coming from diverse players with differing motives, making a quick summary nearly impossible.

Here is a selection of actions from the litany of changed policies following 9/11.

- Immigration and deportation proceedings are closed to the public.



- The Federal Energy Regulatory Commission, the Centers for Disease Control, the Nuclear Regulatory Commission, and the U.S. Departments of Transportation, Commerce, Defense, and Energy remove major portions of their public websites.
- Attorney General Ashcroft instructs agencies to "consider closely national security, law enforcement, personal privacy and business concerns before releasing information sought under the Freedom of Information Act."
- In October 2001, the U.S. Superintendent of Documents, upon instructions from the U.S. Geologic Survey, calls for a depository collection CD-ROM to be withdrawn and destroyed (Buckley). The disk contained explicit data about the water supply in the conterminous United States.
- Other documents, such as General Accounting Office (GAO) reports on the ease of purchasing handguns with false identification and GAO's exposés of airport security gaps, are pulled from automatic distribution, although these are still available if one is willing to contact GAO and disclose one's identity.
- Congress and the president enact the USA PATRIOT Act, giving law enforcement agencies new wide-reaching powers and, many say, adversely affecting personal rights as has no other legislation in years.
- Just as former president Ronald Reagan's papers are to be released to the public, President Bush signs Executive Order 13233, restricting public access to the papers of former presidents, over the cries (and later lawsuits) of archivists, librarians, historians and congressional members.
- President Bush issues *Military Order of November 13, 2001* authorizing the use of secret military tribunals to try suspected terrorists.
- Officials in three additional agencies (Health and Human Services, Environmental Protection, and Agriculture) are empowered to classify information as secret.
- In a memo, White House Chief of Staff Andrew Card asks agency heads to review their websites for sensitive information on weapons of mass destruction, bringing into new prominence the phrase "sensitive but unclassified information."

- The content of proceedings from a White House advisory group on energy is completely closed to Congress, even in the wake of a lawsuit.

The American Library Association's Government Documents Roundtable (GODORT) tracks these changes in the *Chronology of Disappearing Government Information* (Miller). Other groups monitoring the issue are the ALA Committee on Legislation's Task Force on Restrictions on Access to Government Information (RAGI) and the activist group OMBWatch.

Fugitive government documents have been with us for a long time. Through a lack of knowledge of the depository system or sometimes "just because," agencies fail to register some documents with GPO. Organizations such as the Electronic Documents Working Group look for these fugitives on agency websites and report them to GPO. These groups will be busier as the new round of assaults on longstanding government information policies multiply the number of publications slipping through the cracks. This is alarming to the authors and should be alarming to all librarians. We will no longer have access to information we have routinely received in the past, or we may have to prove our "need" to know the information.

Even worse, we will not know what we are missing.

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Crowley *(Continued from page 8)*

Rick Anderson took up the cause and sociologist Dr. Ray Oldenburg flew in from Florida to hail the Moon as the quintessential "third place" twixt home and work where the bonds of culture and community are forged.

The city Landmarks Preservation Board ultimately stalemated on the Moon's nomination, but the public outcry prompted the Blue Moon's landlords to reconsider their planned Lunar gentrification. After months of behind-the-scenes negotiation, they signed the "Blue Moon Manifesto" in 1990 to preserve the building and extend the tavern's lease through its centennial in 2034.

Which brings us back to our original question: what is it about the Blue Moon or any other tavern that elicits such ardor on the part of political and artistic partisans? Perhaps such places slake a thirst deeper than the obvious, a thirst to associate freely with people and ideas away from family, bosses, and teachers in places that are off limits to censors and other protectors of social orthodoxy.

Beyond being "third places" of cultural assembly where strangers may form brief, egalitarian communities, taverns are the fifth branch of our democracy: legislatures of the common man, supreme courts of public opinion, mass media for the microbrewed, and White Houses where the dispossessed, disgruntled, and plain dyspeptic might preside for a pint or two. Tongues may loosen, inhibitions fade, and thoughts may form in taverns—mostly silly and transient, sometimes serious, occasionally original, even radical. Such creativity isn't guaranteed, of course; a night's conversation at the Blue Moon can be as mind-numbing as a whole day's session of Congress, but at least taverns sell beer.

Yet there is always the potential, the possibility that in a tavern somewhere in America or beyond, a critical intellectual zymurgy is at work, the sort of unique chemistry that has thwarted tyrants, energized the arts, and transformed whole societies. In these parched times, the thought alone makes one thirsty.



Right: *Ironic kinetic sculpture,* Hammered Man*, takes repeated swigs outside the present-day Moon. Photo by Laura McCarty.*

CAMERON A. JOHNSON AND LAURA C. MCCARTY

An Interview with Sanford Berman

Sanford Berman, who during his twenty-six year tenure as cataloging supervisor at Hennepin County Library, Minnesota, attained a legendary status in the library world for his views on cataloging reform, once again made the news four years ago when he was abruptly forced out by the new management at Hennepin. The ordeal was embarrassing, says Sandy, and the initial reprimand unjust. Today he maintains close contacts with former workmates and colleagues around the country, demonstrates for causes he believes in, writes a quarterly column for the Unabashed Librarian*, co-edits a biennial anthology called* Alternative Library Literature*, walks more, sleeps later, and enjoys regular Sunday visits with his grandkids. At the OLA / WLA conference in April 2002, Sanford moderated a panel on workplace democracy and presented a talk called "Must the Poor Be Always Amongst Us and @ Your Library??" On the day after,* Alki's *Cameron Johnson interviewed Berman. Below are some brief excerpts prepared by Laura McCarty from the taped interview.*

Cameron Johnson, for Alki: *What do people assume about you that maybe they shouldn't?*

Sanford Berman: This is a guess, but I think maybe there is an assumption that I'm some kind of bulldog ogre, terribly in your face, machete-wielding, with a beard and very black beret, or something like that. And the truth is that, although not altogether a pussycat, I'm a lot more approachable. And I've always tried to be civil, even in disputes and conflicts. So I think that may be a misapprehension. But I'm not sure.

Alki: *What is your personal definition of library professionalism?*

SB: I reject any sort of elitism based on being a credentialed MLS or MLIS. While the credential is important and ought to be honored and required, I think maybe what we should derive our principal gratification from is what we do, and that is, rendering maximum functional and useful service to our constituencies.

Speaking as a cataloger, that means cataloging with your information desk colleagues in view as your primary bosses and consumers, as well as by extension the public who may simply come into the library and use the catalog or the resources without mediation.

What the force should be is performing the job that you're expected to do, of course, but not necessarily the way the bosses perceive the job. To the degree that you manage that, and are faithful to core principles like the service ethic and *real* neutrality, I think that is professionalism.

Alki: *You mention neutrality… the way I understand neutrality, you don't take any positions, you don't reveal to the library patron how you feel, you try as much as you can to get balanced points of view. Is this a flawed approach?*

SB: It's flawed in this sense: If you practice absolute neutrality in a situation where there is rampant inequality, discrimination based on race, ethnicity, religion, or as I suggested in a program yesterday, class or income status, in effect that neutrality or that passivity contributes to maintaining a status quo that is an unjust status quo. That's why I argued yesterday in the poverty program that librarians, as their ALA "Poor People's Policy" mandates, become far more political.

And indeed one of the contributors to *Alki* in the March [2002—ED.] issue comes to the same conclusion independently. He says that librarians should be more political, that homelessness is the problem, not homeless people, and reducing the causes and the reasons for homelessness is going to reduce what some people regard as the "problem" of homeless and unemployed people hanging around the library and being a nuisance. I think that given an uneven and unequal playing field—that hoary metaphor—neutrality is not permissible in some things. The very idea of neutrality, like particularly in collection development and management, should dictate the greatest possible diversity in views and representation of ideas, social movements, art, and expression.

And yet study after study—many of them printed in the alternative media review journal *Counterpoise*—show that, based on OCLC holdings of small press and alternative press material in that journal,



Left: *Sandy Berman and panelists during the "Free Speech in the Workplace" session at the 2002 WLA Conference. To Sandy's left is Ed House, director of Beaverton Public Library in Oregon, and Jim Scheppke, State Librarian of Oregon. Portland attorney Charles Hinkle is to Sandy's right.*

Cameron A. Johnson is a Reference Librarian at Everett Public Library. Laura C. McCarty is a Friend of the Mukilteo Library. Photos by Ed Vidinghoff.

libraries aren't buying much if any of this stuff. So in other words, what I call the "holy Library Bill of Rights" in effect is undermined by library practice, by omission, by the failure to secure those very materials that would make that "Library Bill of Rights" stricture alive and real and material.

Alki: *Well, part of that is because they do not fit into our regular distribution channels and review media.*

SB: That's the whole reason for a journal like *Counterpoise,* which, unfortunately, I think only 200 or 300 libraries nationally subscribe to. It is now a major source of evaluation and identification of stuff coming out of small presses both in the United States and in some degree abroad, including other formats beyond traditional print. But you're absolutely right, that reliance on merely the mainstream sources is partly what contributes to this narrowing of the spectrum of what's available in what should be vibrant and diverse library collections.

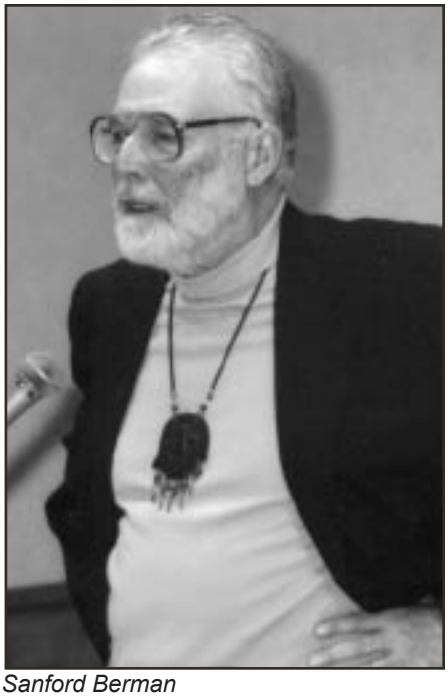
Toni Samek did a book, published by McFarland last year [*Intellectual Freedom and Social Responsibility in American Librarianship, 1967-1974*—ED.], in which she attempts to trace this tension between the idea of intellectual freedom within librarianship and that of social responsibility. What she uses as a sort of benchmark or central theme is the degree to which alternative media have been recognized, embraced, collected, and made available by the library community in support of the *Library Bill of Rights*, and how a lot of so-called intellectual freedom purists don't seem to be as interested in that kind of thing as they are in the latest challenge to Harry Potter. And that there is a disconnect and again a kind of a double standard and hypocrisy in all this.

Alki: *Yesterday there was a panel on workplace democracy and free speech. What did you think about it?*

SB: To be frank, I was appalled. Let me explain for those who may not have been at the panel: It was me making a presentation fundamentally in favor of free-speech rights for library staff. I hope I never sanctioned or encouraged insubordination or willful failure to obey a decision or rule. There were two librarians, both supervisors, one a state librarian, and then also a gentleman from a prestigious Portland law firm who often litigates library intellectual freedom matters who is also a highly reputed ACLU volunteer and civil libertarian.

Their reaction, with various nuances, was like a litany of reasons why managerial prerogatives are sacred, holy, and cannot seriously be challenged: Managers must make decisions, democracy really does stop at the workplace door, it's a nice idea, it's okay for maybe the ballot box but not okay in any really serious way for the workplace. That while there maybe ought to be a right to say "no," it was really incumbent on *managers* to grant that right. That, to the degree that managers are still under the influence of Melvil Dewey and his authoritarian style, maybe some of them would need some retraining, sensitivity workshops, or even therapy.

I thought to myself that all of these are nice, and if it makes them better, more collaborative and responsive managers, terrific,



Sanford Berman

but it still doesn't address the fact that we ought not to be dependent as library staff and as professionals on the whim, vagary, or the mood of supervisors in such serious matters as participation in policy setting and decision making.

Like, I jokingly talked about directors I have known having graduated from the "Mussolini School of Administration." While that was facetious, I mean it, because there tends to be some admiration or embrace of being powerful, of being arbitrary. I think it's got something to do with a "wannabe" mentality, that some of these people would be more comfortable being Borders or Wal-Mart CEOs than actual library directors, and that they have forgotten that nonprofit public services are in spirit and in substance different from a Wal-Mart or a Borders or a Barnes and Noble, and need to be governed in a different way, and have success measured in a different way. It's not just numbers and bucks, but satisfactions brought to the public and the degree to which the public finds the resources and the things they need to make their lives better, more fruitful, and more meaningful at the library—maintaining the library as a truly free and open and neutral space that's free of hype, hucksterism, and political agendas.

Alki: *I've had library directors tell me that staff can have more or less informed opinions, but when it comes down to it, the managers bear the responsibility for policies because they essentially know things that we don't know and can make better decisions.*

SB: I've heard that, too. I find that kind of argument really demeaning and insulting, because if there are things that they know that you don't know, then

why don't you know them? I mean, they should be sharing that information. And in a truly open, collaborative, collegial process, there shouldn't be any cause for their making that kind of claim.

Alki: *I had a library manager approach me yesterday after the program and say, "But that's the way Western institutions are governed, that's the model for Western institutions." What do you think about that?*

SB: Well, which Western institutions? I mean, there's no monolith of Western institutions. There are very heavy currents, even in American prototypical Western experience, of communal activity. The labor movement is a hugely collaborative activity of a century and a half duration already. *That's* a model. There are large strains, just to repeat and reinforce my point, in our own American history and culture, of genuine community, non-hierarchical labor.

The so-called "team-based decision making" approach sounds terrific, too, but often becomes corrupted and distorted because management deliberately selects team members, often people who are likely to be passive and say "yes." Also, they usually establish very narrow parameters for whatever the team is approaching—an issue, policy, or problem to be solved—eliminating the possibility of really open and creative investigation of the larger area.

Alki: *What other alternatives do you see?*

SB: Well, in the Twin Cities there is an institution, the Minneapolis Community and Technical College library, that is not huge, but it is a solid institution. My understanding is they rotate the leadership of that library among the five or six librarians and use genuine consensual decision-making. They, incidentally, deliberately and consciously set aside 20% of their materials budget for alternative media, just to hark back to an earlier theme here. They truly want a diverse collection. I'm not aware that a whole lot of other libraries actually earmark and allocate that kind of resource. But the point is, there's plenty of that if only we tap into it and become aware of it. I think it's as American to do things arm in arm on a nonhierarchical basis as it is to, you know, salute the major general or the CEO or the library director and mindlessly conform to whatever the latest directive is.

Alki: *What about union membership? Do you think it makes a person better able to speak out in the workplace?*

SB: It certainly permits a voice to staff members who otherwise wouldn't have it, by virtue of its being within a legally recognized work organization that affords many protections, for instance, a grievance procedure. I think it is possible through contract language and activity to approach management on a lot of things, like through meet and confer processes, or through labor-management committees, and then again through contract language.

As I mentioned yesterday, the Hennepin local was able to secure language in its contract two years ago that established their right to speak freely on professional and policy issues.

Alki: *Is that working?*

SB: Well, they haven't invoked it yet, as far as I know. The point is, they could. They also have a clause recognizing the professional librarians in the local as policy consultants, in other words, that they should be consulted on library policy. Now, this has been breached routinely at Hennepin, but the point is that the clause is there, and if the local wished and was so motivated, I think they could make that into a grievance, and let that work its way through the process to their ultimate benefit in terms of turning management around and making them more responsive.

Inspired by their example, we tried to form a supervisors' union. There was precedent for that because downtown the social workers had done that. I just have to report, ruefully, that it never materialized. The basic reason is that my supervisory colleagues just did not evince support for it, and there may have been intimidation like, "If we get involved in this we're going to be in shit for the very effort of trying to form it." Then I think there is this "wannabe" mentality, that a lot of these people figured, "I want to go up the ladder so I don't want to have to deal with this kind of entity and give myself a bad image in the process."

Alki: *You've been active in ALA for a long time. Do you think ALA could form a union?*

SB: It's almost an impossibility as ALA is presently structured for it to ever assume a union-like guise or mode, because right now *anybody* can join ALA if he or she is willing to pay whatever the dues are for that kind of a membership. A vendor can join, and many do. And while it's predominately composed of librarians, the fact that there are so many other elements in it, I think, erodes the possibility of its being a labor organization.

Also there's an investment by those people, like yourself, who are unionized, in maintaining whatever your affiliation is now. In fact, something that might come out of current deliberations (of ALA's special committee on unions) is a clearinghouse or caucus to talk about labor issues within librarianship. There really isn't one now.

ALA will never morph in the fashion NEA did into a bona fide AFL-CIO union, an umbrella for librarian locals all over the country. I cannot conceive of that happening. On the other hand, it could certainly be a whole lot more labor friendly than it has been in the past.

Alki: *Well, that's all I had. Do you want to say anything else?*

SB: Just thanks for this opportunity to rant.

DAVID DILGARD

Free Speech in a City of Smokestacks: Everett's Ordinance 1501



The tragic shootout on the Everett waterfront in 1916, often called "The Everett Massacre," in which sheriff's deputies fired into a shipload of Industrial Workers of the World (IWW) members arriving from Seattle to speak in support of a shingle weavers strike, stained and distorted Everett's reputation for many years to come. The 1916 tragedy sprang from the last of the historic "free speech fights" waged by the IWW, though the anti-street-speaking legislation the "Wobblies" challenged in 1913—Everett's Ordinance 1501—rarely receives attention.

The massacre influenced writers, from Walker C. Smith to John Dos Passos, to put forward an image of Everett as an evil, anti-labor enclave. When Jack Kerouac hitchhiked through town forty years after the incident, he was intimidated by the dark legend. From Jack Kerouac, *Desolation Angels* (New York: Riverhead Books, 1995):

> The vibrations in Everett are low— Angry workers stream by in cars stinking exhaust— It's awful, it's hell—…(The Everett Massacre!)… But O Everett! Tall stacks of sawmill yards and distant bridges, and heat no-hope in the pavement—…(p. 110)

It is often forgotten that Everett was actually a bastion of trade unionism from its earliest days, with one of the first labor temples in the Pacific Northwest, an active, articulate labor press, and a city government that sometimes numbered Progressives and Socialists among its elected officials. For most of its early history, Everett also demonstrated a tolerant attitude toward dissent and minority opinion.



Top of page: *Everett's anti-street-speaking ordinance was introduced by Safety Commissioner Albert Brodeck, shown here in a 1911 caricature.* ***Above:*** *Initially centering on Haferkorn's cigar store and a subterranean pool hall, Everett's "Free Speech Corner" at Hewitt & Wetmore was a favorite gathering spot from the late 19th century. By 1916, Haferkorn's shop had been removed and replaced by a new one-story haberdashery. Note the crowd jamming the sidewalk.*

David Dilgard is an historian at Everett Public Library. Photos from the Northwest Room, Everett Public Library.

Though a very young city, only twenty years old in 1913, Everett already had a traditional place for mounting a soapbox and voicing an opinion. The northwest corner of Hewitt and Wetmore Avenues was Everett's "Free Speech Corner." There was more of Soho than Hyde Park about the spot. The corner itself had originally been occupied by a saloon, hotel, and cigar shop, but by 1913 a men's clothing store, Bachelder & Corneil, filled the spot. In the basement below Bachelder's, a popular pool hall held forth, and next door was Weiser's Restaurant and the Orpheum movie house. These amenities meant that plenty of working men could usually be found in the general vicinity, especially in the evenings, on weekends, and during strikes and mill closures.

Standing on a soapbox at Hewitt and Wetmore, you could clearly see the People's Theater half a block away, where Gene Debs spoke on two occasions and where Mother Jones addressed an overflow crowd in the summer of 1914. An argument at a political rally in the theater had erupted into the notorious Nelson-Connella fracas of 1898. Ole Nelson received his mortal wound about twenty feet west of the speakers' corner.

Out of sight one block behind you was the local Socialist Hall. Half a block over your left shoulder was an evangelical mission. High and to your right, on the fifth floor of an imposing bank building a block away, was the elite Cascade Club where bankers and lumber barons could smoke cigars as they watched the proletariat assembled below. Around the corner, beyond the bank, was the bookstore of Glasgow-born Adam Hill, who entertained customers with tales of his personal encounters with Gene Debs and Jack London. Hill stocked all the current radical periodicals. Working class readers and thinkers in the back room discussed literature, politics and the issues of the day and Wobblies met to argue strategies for deposing "the Master Class."

Like much of the north side of Hewitt Avenue, the "Free Speech Corner" could be a harrowing pas-

sage for proper women to navigate. Rough characters and rude behavior were the rule. Snoose and bad language flew with equal abandon. Not only political orators but also con men and street vendors gravitated there and it was the Salvation Army's favorite spot to set up with their band.

For all its popularity, Hewitt and Wetmore was a less than perfect place for large crowds to gather. Sometimes audiences blocked the sidewalk and occasionally they spilled into the street, obstructing streetcars and other traffic. In February of 1913, Everett Safety Commissioner Albert Brodeck introduced legislation banning crowd-gathering activities on the whole four-block stretch of Hewitt Avenue between Rucker and Rockefeller. Initially at least, Ordinance 1501 was represented as an emergency response to a public safety issue.

Notwithstanding the balanced language of the legislation and the absence of any specific reference to the IWW, it was pretty clear at the time that political oratory, not fire-and-brimstone or patent medicine, was what city commissioners were trying to squelch. Speakers from the IWW had begun appearing at Hewitt and Wetmore early in 1913, rallying in support of disgruntled Great Northern Railway Company snow shovelers, who were having trouble getting their paychecks cashed in Everett. Verbal attacks by radical agitators on the Great Northern, a cornerstone of the city's birth and economic well-being, quickly aroused the rancor of the Everett establishment.

The anti-street-speaking ordinance was the handiwork of the first city government elected under a new charter passed in 1912, Everett's third charter in just two decades. Although the charter was to endure for half a century, the first few years were turbulent, marked by a reform movement and a recall election. By the end of 1914, all three of the elected officials who passed the anti-street-speaking ordinance were gone. The law itself remained in place.

When the legislation was first proposed, the Snohomish County Central Labor Council's influential weekly the *Labor Journal* was quick to point out its dangers, voicing the following editorial opinion on 14 February 1913:

> We believe the passage of the proposed city ordinance prohibiting street speaking within a prescribed area of the business district will be a serious mistake. Other cities have tried the same thing and have paid for it dearly. There is an element of "free speech fanatics" who will consider it a challenge to tear loose as they did in Spokane, San Diego, and other cities; an element that thinks nothing of going to jail in defense of "free speech" and whose motto will be "on to Everett" as it was "on to Spokane" and "on to San Diego." We fail to see any harm in letting any man or body of men orate to their hearts content. The utterance of seditious or vulgar sentiments makes anybody amenable to the law and we have police and courts to take care of people who abuse their privilege. If any particular harm can arise from the socialists or Salvation Army or any other body of men or women using the streets for their propaganda, we fail to see it. The main reason why Everett has in the past been singularly free from disgraceful incidents such as characterized the Spokane and San Diego free speech fights, has been because there was no attempt to bar anybody from talking as much as he pleased as long as his language was decent. Put up the bars and then watch the fight start. We sincerely hope the council will see fit to kill the ordinance.

Fresh in the minds of many was the triumphan Wobbly free speech campaign waged against the City of Spokane in the fall of 1909 and the less successful but equally notorious battle that took place in San Diego in the spring of 1912. Still, the commissioners did not see fit to kill the ordinance.

The credibility of the legislation as a public safety measure was damaged from the very beginning by the timing, the city's selective enforcement policies, and the transparent motives of the lawmakers themselves. A month after the law was passed, it was being used to arrest IWW speakers while local Protestant ministers were rallying to restore speaking rights to evangelists. A petition arrived at city hall demanding that the Salvation Army band be allowed to set up at Hewitt and Wetmore as usual. Mayor Christensen refused, but in mid-September, Safety Commissioner Brodeck granted them special permission for street meetings. Though no one in Everett seems to have addressed it at the time, preferential treatment of the Salvation Army had been a major sore point for the Wobblies in previous IWW free speech campaigns.

CITY OF EVERETT, WASHINGTON

ORDINANCE NO. 1501

Passed February 18, 1913

An Ordinance regulating the use of certain parts of certain public streets, avenues and other public places in the City of Everett, providing a penalty for the violation thereof, and declaring an emergency.

The City of Everett does ordain:

Section 1. No person shall, in or upon Hewitt Avenue in the City of Everett, between the east line of Rockefeller Avenue and the west line of Rucker Avenue, or upon any public street or alley, or other public place within one block either north or south of Hewitt Avenue between the points above mentioned, make any public address, beat drums, blow horns, or hold any public meeting, or expose for sale any goods, wares or merchandise, or erect or maintain any booth, stand, or tent for such purposes.

Section 2. Any person violating any of the provisions of this ordinance shall, upon conviction, be fined in any sum not exceeding One Hundred ($100) Dollars, or be imprisoned for not more than thirty (30) days.

Section 3. Whereas, the above ordinance is necessary for the proper regulation of the use of the above named public places, an emergency is declared to exist, and this ordinance shall take effect upon its passage and publication.



The Everett Massacre trials inspired some of the most vivid and memorable propaganda art ever produced by the IWW. ***Left:*** *This 1917 cartoon depicts Everett as a blood-stained dowager attended by tyrants and thugs.* ***Below:*** *The IWW issued a memorial poster honoring their Everett Massacre martyrs. This lithograph features a poppy border with the faces of the victims enclosed within flowers. Bearing placards and banners, grieving fellow workers trudge onward against a troubled sky.* ***Bottom:*** *This Wobblies graphic from 1917 depicts a mob in ominous silhouette, gun barrels still smoking. The Verona steams away in the distance as lightning strikes. Above is the bold vow and implied threat, "We Never Forget."*





In 1916, the *Labor Journal*'s dire predictions came true. It was not the foundering shingle weavers strike per se that attracted IWW agitators to Everett—it was the perfect opportunity to challenge an anti-street-speaking ordinance the Wobblies had been acutely aware of since 1913. It was also a chance to "fan the flames of discontent" in the hometown of Roland H. Hartley, an Everett mill owner and state legislator vying for the Republican gubernatorial nomination.

For six months, IWW orators expounded upon the evils of "the Master Class" and the futility of local trade unionism from a Hewitt and Wetmore soapbox. Each time, they encountered a new level of violent response at the hands of County Sheriff Donald B. McRae. Ironically, it was McRae's well-earned reputation as a pro-labor Progressive that saddled him with the task of suppressing the IWW. A former shingle weavers union official, Sheriff McRae had improved jail facilities and championed more humane treatment of prisoners. He was described by the *Labor Journal* in 1914 as the best sheriff the county ever had. But faced with outside agitators who verbally attacked the trade union movement he once served, he quickly abandoned any pretense of due process and resorted to shockingly brutal tactics. Unable to manage the demonstrators or his own temper, McRae escalated the violence and scale of the confrontations until shots rang out at the Everett city dock.

When the gunfire ended, the legends began, fueled by martyrdom on both sides and driven by the need to find meaning in senseless violence. Surviving mug shots in the Everett Public Library's Northwest Collection allow us to look into the faces of seventy-four IWW free speech fighters arrested after the Everett shootout. Ranging in age from 18 to 56, they represent nine different countries and twenty-four states. In their expressions and demeanor we may glimpse something Sheriff McRae apparently overlooked or underestimated: the tempered toughness of itinerant workers for whom physical punishment was a daily reality and for whom the right to speak out was an absolute necessity, something for which they would bleed or even die.

But if the IWW were brutalized for defending First Amendment rights, over the years it has been the reputations of the sheriff, his posse, the mill owners and the "City of Smokestacks" that have taken a pounding. With their songs and slogans and willingness to suffer injury or death in defense of their beliefs, the Wobblies have become counterculture heroes, self-styled "soldiers of discontent" who refused to be silenced by Everett's Ordinance 1501.



Timberland Director to Retire

Thelma Kruse, Director of Timberland Regional Library, will retire in May after ten years of service.

During her tenure, Timberland has opened new libraries in Yelm, Salkum, North Mason (Belfair), Tumwater and Elma. In a most unique reuse of an old library building, the old North Mason library was cut into thirds, barged to Hoodsport, and remodeled into a larger library. Timberland has received national awards for architectural achievement for two of these projects. The Timberland libraries in Aberdeen, Lacey, and Olympia were also extensively remodeled.

In 1997, Timberland established a charitable foundation, the Timberland Regional Library Foundation, to raise dollars to provide additional enrichment and support for the programs and activities of the library.

Art Blauvelt, president of the board of trustees, said, "We will all miss Thelma Kruse. She has been the driving force behind many improvements to our library system. Her efforts have benefited patrons, staff, and the board. She has guided the library through the addition of Internet access, creation of central reference services, many building projects, and the impact of citizen initiatives on our budget. She will be sorely missed. However, her good work will benefit us all for many years to come."

A WALT Event: Cultivating Supervisory Success

How can library staff prepare for a future role as supervisor? How can they survive, and even thrive, in a new supervisory job?

These questions will be addressed in a workshop presented by Washington Library Trainers (WALT), a WLA interest group, targeted specifically for library staff—both professionals and paraprofessionals—who are new supervisors or who want to become supervisors.

"Cultivating Supervisory Success: Identifying and Building Skills for New and Future Supervisors" will be presented in two locations: at the King County Library Service Center in Issaquah, on 13 May 2003, and at the Spokane Public Library on 20 May 2003.

The presenter is **Vicki Legman**, who currently teaches communication skills for supervisors in the City of Seattle's Leading Edge program. She is an accomplished instructor, course designer, consultant and speaker with over twenty years of management and training experience.

During the workshop participants will 1) broaden their understanding of the roles and responsibilities of supervision, 2) identify personal strengths and possible gaps in these areas, 3) examine options for acquiring skills or obtaining relevant experience, and 4) create personal action plans.

Registration costs for this workshop are $75 for WLA members and $90 for nonmembers. For more information contact the WLA office at (206) 545-1529 or washla@wla.org.

***—Mary Ross** manages staff training and development at Seattle Public Library.*



Thelma Kruse

2003 WLA Conference: Be More Than Just a High IQ, Have a High EQ, Too

The librarian stereotype usually includes the mandatory bun, eyeglasses and shushing pose, which doesn't fit many of us anymore, except probably for the glasses thing. On the positive side, we are generally thought of as being studious, intellectual types with plenty of book learning and a fairly high IQ. Not a bad image and probably true in most cases. (I'd say in all cases, but we all know someone that we wonder about.) Librarians have master's degrees, clerks often have college degrees, and we are all certainly well read. We encourage and participate in lifelong learning endeavors.

So, I'd venture to say that as a profession we are a pretty smart group, but how high is our EQ, or emotional intelligence? Do we know and do we care? We should, according to many psychologists and organizational experts. The success of an organization may rely more heavily on the EQ of its leaders and members, than on their IQ.

What is EQ anyway? Is it a) E.T.'s cousin, b) Economic Quotas, or c) the ability to sense, understand, and utilize the power of emotions? If you answered a) you are wrong, but probably a lot of fun. Of course the answer is

c). EQ has been described as the "intelligence of the heart." In her book *Raising Your Emotional Intelligence: A Practical Guide* (New York, Henry Holt and Co.: 1997), Jeanne Segal says, "EQ's domain is personal and interpersonal relationships; it is responsible for your self-esteem, self-awareness, social sensitivity and social adaptability" (p. 10). This all sounds pretty personal, so what's it got to do with the workplace?

We all bring our emotions to work. None of us is Mr. Spock, thank goodness. (Think about what it would be like to work with an entire staff of Mr. Spocks.) Our very identities are often tied up with our jobs and our success in the workplace. Office politics, staff morale, and employee cooperation are all affected more by our EQs than our IQs. Managing employees effectively involves dealing not just with their intellect but with their whole being.

Effective leaders and managers especially need to deal effectively with their own emotional being as well as their staff's. They need to build trusting relationships, deal with problems under pressure, and direct action to achieve the organization's goals. EQ proponents contend that developing leaders with high EQs is essential to providing superior services, finding and keeping the best staff, and creating opportunities for growth—in short, to building a successful organization.

So we're back to *what is your EQ,* and if it's low, *what can you do about it?* The good news is that you can learn skills to raise your EQ and your effectiveness at work. The better news is that raising your EQ will be the subject of a pre-conference workshop as well as the keynote address at this



year's Washington Library Association conference in Yakima. Respected and incredibly fun speaker **Janaki Severy** will present both of these programs for conference participants.

"Help Your Organization Develop Strong Leaders Through EQ" is the title of Severy's pre-conference workshop. Prior to the workshop, partici-



Janaki Severy

pants will receive a workbook to prepare a map of their own EQ. Armed with their new insights, they will examine situations that demonstrate high EQ behavior and will explore ways to raise their own EQ. Participants will also gain skills to improve their leadership abilities and will hear practical suggestions for transporting this new knowledge back to their organizations.

Severy is a particularly engaging speaker who combines the knowledge she has gained while receiving her M.Ed. in Counseling and Guidance from the University of Arizona with the excitement and theatrics derived from being a drama major at the University of Washington. With her expertise and sense of humor, she will jump start the conference and enlighten everyone about the importance of EQ. Severy is known for engaging her audiences and getting them involved.

Severy's keynote address is "The Leadership Journey." In addition to entertaining you and talking about EQ, she will help you find the leadership qualities that you never knew you had, or haven't ever been asked to use. It could be a real treasure hunt. You might even return to your library, challenge the status quo, and live to talk about it. Someone might even agree with your new vision. Imagine that.

So, if beauty and brains have not been enough, if you need to get a grip, try raising your EQ. Learn to use your emotions and not let them rule you. Impress your colleagues and patrons with your smarts and your cool.

***—Lynn Zeiher** is Conference Coordinator Co-chair.*

2003 WLA Conference: Conference Enticements

While making your plans for the conference, don't forget the special events arranged for conference goers. They spotlight places and events unique to the Yakima Valley, so don't miss out on them! You'll want to see what goes on behind the scenes at the Yakima Valley Museum, attend the museum and library tour, and also have dinner at the Yakama Nation Cultural Center. You'll want to stay until Saturday, so you can go on the Cowiche Canyon Walk and the Yakima Winery and Vineyard Tour. With all these enticements in mind, don't forget about the President's Banquet (featuring **Wally Amos**) and the President's Stage Party. There's so much going on, both at the conference and nearby, that this is one conference you won't want to miss!

***—Mary Wise** is Conference Communications Chair.*

CARLA MCLEAN AND EMILY HULL

When the Cops Appear: Two Libraries, Two Outcomes

Accusations of illegal activity on library computers can involve sudden and disorienting encounters with outraged, jittery patrons and with law enforcement officers demanding unconditional cooperation. Circumstances of incidents can vary, as the incidents below demonstrate, but forethought and clear policies can guide staff in making principled choices that assist law enforcement while respecting the rights of library patrons.

Case 1: King County Library System

An incident involving child pornography in King County Library System's (KCLS) Kent Regional Library was widely reported in the press and sparked a lawsuit by the library system against the City of Kent. We hope the circumstances alert librarians across the nation to the need for desirable policies and behavior. With the advent of the USA PATRIOT Act, such incidents may be of even more relevance and concern to libraries.

In May 2002, police responded to a domestic violence call from a woman who said papers her husband had printed from the Kent library had contained images of child pornography. The man claimed the papers came out of a shared printer and that another patron was the offender. In June, he saw the man who had allegedly viewed the child pornography again viewing similar sites in the library, and he notified a librarian. By the time she got to the computer, the images were gone.

In July 2002, a detective asked library administration for the names of all patrons who had accessed the Internet from the library on the day in question. In consideration of important privacy issues, the library denied the detective's request. Six days later, the detective turned up without a search warrant, claimed that the library computers were public property, and removed two computers from the library despite being advised that the library's software is configured to automatically purge the online cache daily ("City Caves…"). A warrant was finally presented to library staff a week later. The library responded to the illegal seizure of its computers with requests for their return, and after several weeks the library filed suit against the Kent Police Department. A restraining order was issued to forbid extraction of information from the confiscated computers by police computer forensic experts. After filing suit, the library system repeatedly offered to settle the case, but still was accused in newspaper editorials of being "uncooperative" and of "hampering a criminal investigation." The library also received many calls from followers of right-wing radio talk show host John Carlson, who would have us believe that the police are the law, rather than upholders of the law.

The library responded to the illegal seizure of its computers with requests for their return, and after several weeks the library filed suit against the Kent Police Department.

In August, a U.S. District Court judge ruled that "in taking the computers, police did irreparable harm to both privacy and property rights" (Doyle). The ACLU advised on the case, and attorney Aaron Caplan said the victory was especially important "considering how technology issues relate to freedom of speech and the First Amendment." Judge Pechman determined that if the government wants to know what library patrons are viewing on the Internet, the police must go before a court and ask the judge to review the facts for a determination. The issue, according to the library system, is "preservation of civil rights under the U.S. and Washington State Constitutions" (Eadie).

According to Judge Richard Eadie, who is a member of the King County Superior Court and a trustee of the KCLS, the law requires that before seizing records, police must demonstrate to an objective court that their need for protected public records outweighs any other protections under the law. Therefore, in its actions the KCLS upheld not only the state and federal constitutions (specifically, the First Amendment which guarantees a privacy right in a person's reading materials, and the Fourth Amendment which guarantees the right of people to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures) but also Washington RCW 42.17.310, which concerns public records. Even had

Carla McLean is a librarian at the Kent Regional Library, King County Library System. Emily Hull is Head of Information Systems for the Health Sciences Libraries at the University of Washington.

the library not contested the seizure, evidence collected by computer forensic experts would have been inadmissible.

Of course, the library system has made it clear that child pornography is illegal, that the library system "does not seek to protect it," and that viewing it is against library policy. Internet filtering is installed on the children's computers and can be requested to run on any of the computers.

On 9 September 2002, a settlement was reached and the lawsuit dismissed. The settlement called for City of Kent to pay $30,000 to the attorneys who represented the library system and to pay $670 to the library system for costs incurred in the incident. In future, the Kent police will operate "much more on the safe side," said spokesman Paul Peterson. "We will get our search warrant as quickly as we take anything physically from the library" (Radford).

Bill Ptacek, KCLS director, observed that pornography is rarely a problem, considering that patrons spend from 20,000 and 25,000 hours a week on the library system's computers (Radford). Ptacek clarified this in a letter to the editor, adding that, "While it may appear at first glance that the library's policies get in the way of legal investigation, those steps in fact protect the pursuit of potential criminals, as well as the rights and safety of the public" (Ptacek).

Case 2: University of Washington Libraries

In another case and in a different library setting, library staff in several branches of the University of Washington Libraries observed a patron repeatedly viewing pornographic material on public computer terminals. Library policies do not specifically forbid such activity, but two policies help guide staff reactions. According to the UW Libraries' policy on disruptive behavior, "Some behaviors … are not directly prohibited by this policy, but may violate the disruptions policy if the behavior reasonably can be expected to disturb other users." The UW Libraries' policy on the use of public computer equipment states:

> Due to the public nature of the libraries, individuals should demonstrate respect for individuals' rights to privacy and freedom from intimidation or harassment. Users are asked to be sensitive to the fact that some on-screen images, sounds, or messages might create an atmosphere of intimidation or harassment for others. The Libraries may take steps to maintain an environment conducive to study and research.

In February 2002, a university library patron complained about being disturbed by the images displayed on a computer in a public area. After the patron viewing the images was asked to stop and leave the library, systems administration staff were able to verify that the patron had been viewing what appeared to be child pornography, a violation of state and federal law.

In March, the patron in question visited another branch of the UW Libraries. Following a complaint about his behavior from a patron, a library student assistant working alone confirmed that sexual images that appeared to involve children were being displayed. Before the patron noticed that he was being observed, the student assistant contacted campus police, who arrested the patron for trespassing, based on his record of disruptive behavior in the Libraries. The following day, a letter was written to the patron, following established library procedures, banning him from entering any University of Washington library because of his use of university computers to view child pornography.

While on the scene, campus police unplugged the computer from the library network. This timely action prevented the deletion of temporary files typically erased when computers are automatically restored to their standard configuration. Cached web pages on the computer provided evidence to support a charge of illegal activity, so the library systems administrator removed the hard drive and turned it over to campus police.

The patron was eventually charged with both criminal trespassing and a felony sex offense and the case is presently working its way through the courts.

The Cases Compared

There are differences between these two cases. In a university library, children are less likely to be present to see pornographic sites. Public libraries are more likely to be sensitive to the views of individual citizens, whereas the university is more tolerant of activity that could be justified as a part of research. Campus police similarly may be more accepting of unusual behavior than city police.

The episodes also followed a different path because of the source of the initial complaint. In the university incident, library staff had a long history

Below: *A library student assistant called police after seeing a patron viewing child pornography in the Social Work Library at the University of Washington. Police seized the workstation, carefully preserving evidence contained in the workstation's cache. The patron—known to staff from previous incidents—was arrested and charged with criminal trespass and a felony sex offense. Photo by Emily Hull.*



with a known patron and many documented examples of inappropriate behavior. In the public library case, library staff did not witness any illegal activity and were only made aware of the problem when police demanded confidential patron information.

However, the underlying similarities outweigh the differences. Both libraries follow similar steps when child pornography is viewed on a library computer. The site must be immediately removed from the screen, and if the patron refuses, he or she will be asked to leave. The police are called for repeat offenders but are not called immediately because pornography can be accessed inadvertently.

Both libraries operate without security guards and so must call police to deal with serious security incidents. Once police have been called, incidents may escalate beyond the control of library staff. All library staff in libraries open to the public, from temporary help to the highest levels of management, must be prepared to use judgment and react appropriately with no prior warning when incidents occur involving suspicious use of library equipment. Established procedures and staff training are essential elements of preparation.



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JONATHAN BETZ-ZALL

When Intellectual Freedom and Social Responsibility Collide

Imagine someone coming to WLA's Conference Committee demanding to present the view that the Jewish Holocaust never happened. Imagine further that enough librarians back this program that the committee agrees. Of course, many of us would be outraged; but, wait a minute, we're librarians, sworn to uphold intellectual freedom! Aren't we obligated to stand up for this speaker's rights, even if we disagree vehemently with the program's message?

This situation actually occurred in late 1980s California. The resulting debate swiftly involved some of the leading lights in the American Library Association, among them John Swan of the Intellectual Freedom Round Table and Noel Peattie of the Social Responsibilities Round Table. Their book *The Freedom to Lie: A Debate About Democracy* (Jefferson, NC: McFarland, 1989) describes a debate between them presented at an ALA conference, and lays out further considerations that still affect us today.

Swan held out for "the tolerance of pernicious ideas," in which even demonstrably false ideas cannot be excluded from libraries. "The worst falsehoods, the damnedest lies, have their origins not in ideas but in pathologies, and suppressing symptoms does not cure the disease." He did, however, recognize that free speech has limits "when speech is translated into action." He also stated that "no serious argument for freedom of access can be based on a simple belief that, in any given context, the 'right' answer will prevail, even in situations where there is such a thing, even when it ought to be unmistakable" (p. 109). But, in bringing up the example of thought control in certain "people's republics," he raised his basic issue: Who should decide what is truth? Should individuals be "protected" from "lies" that might damage their psyches?

Peattie distinguished between harmless falsehoods and "damned lies" which, when they control people's minds and actions, lead to social evils like the Holocaust. He urged librarians—most of whom are privileged, he said—to listen to the world's oppressed and to consider appropriate action to support them. His thesis was that "a society which respects the dignity of the individual or the dignity of whole peoples is more free than one which further insults and injures the already insulted and injured, by contesting or denying the real history of their oppression." "I hold that truth is primary to freedom on (at least) some occasions: those in which convention has established a truth—however defined—that the rest of us contemn [sic] at our peril." The obvious example is road traffic rules: Exercising complete freedom to drive on either side of the road means you will either experience a head-on crash or give up your idea of freedom and move out of danger.

The two librarians said they would probably nearly always agree on particular actions in particular cases, but their differences on "hard cases" may help guide us when confronted with such problems. Peattie discussed several "hard cases for socially conscious librarians": a Ku Klux Klan meeting at a public library, feminist controversies over censorship of pornography, and debates over intellectual boycotts of apartheid South Africa. In all cases, Peattie urged librarians to listen to the oppressed people involved before determining the truth that can lead to appropriate action. Swan, meanwhile, brought up two conundrums for intellectual freedom advocates: "Just what space would I give to the ideologies of hatred," and "Just how do we carry on trade in those ideas?" He resolved such dilemmas by relying on "the marketplace of ideas": granting evil its due, hoping that exposure and competition will reduce its influence, while holding on to certain absolutes that must sometimes be compromised.

These conflicts continue today. The January 2003 *American Libraries* (p. 33) includes a story on lawsuits filed in Pennsylvania over library meeting room use by a white supremacist group. On its website (**www.adl.org/Civil_Rights/library_extremists.asp**), the Jewish Anti-Defamation League has posted some answers to critical questions on the issues involved. The website recommends careful preparation and balanced consideration of everyone's rights.

In contrast to many conflicts between these points of view nationally, among librarians here in Washington state there is relative sweetness and light. Our universe is smaller and less fractious, and many of us are committed to both perspectives. As our association grows, we may come to divide on such ideological issues, but I hope that we can learn from Peattie and Swan how to agree to differ in great civility.

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KENNETH EINAR HIMMA

What If Libraries Really Had the "Ideal Filter"?



There are no issues more painful than those involving conflicts between fundamental values, because these issues can't be resolved without giving up something of profound importance. When one value can be promoted only at the expense of another, there is no way to avoid making a choice and no option that preserves both values. One important commitment must be sacrificed for the sake of the other.

Political and ethical theorists find these issues useful, however, precisely because of the gut-wrenching quality of the choices they present. Resolving an issue that requires a felt sacrifice discloses quite a bit about us: the choice we make tells us *how* we rank those values and the underlying rationale tells us *why* we rank them that way. In fact, it is fair to say that who we are as an ethical culture is largely defined by how we resolve these difficult issues of principle.

The issue of whether it *could ever* be legitimate to require the use of filters in public libraries presents this kind of conflict. On the one hand, these devices protect children by blocking harmful pornographic images that can otherwise be obtained simply by entering "sex" into a search engine or browser address line. On the other, they effectively implement content-based restrictions on speech. The theoretical legitimacy of filter requirements thus presents an issue of principle that requires a choice between two fundamental values: intellectual freedom and protection of children.

Flaws in filtering technology, however, currently insulate us from having to make this painful choice. Right now, the technology is both too restrictive and too expansive: existing filters frequently block access to legitimate sites while simultaneously allowing access to pornographic sites. Accordingly, the use of filters in public libraries would create restrictions on intellectual freedom (e.g., the blockage of legitimate text-based information about sex) that can't be justified by the interest in protecting children.

For this reason, the legitimacy of the Children's Internet Protection Act (CIPA) can be assessed without any thought about the propriety *in principle* of legally requiring filters on library computers. Since existing filters block legitimate content that poses no threat to children while missing a lot of graphically sexual content that does, they are constitutionally unsuitable for use in public libraries. As surprising as it may seem, CIPA can sensibly be rejected, then, without reaching any interesting issues of principle.

But filtering technology won't always be so crude. Software engineers continue to surprise with technology that wouldn't have been thought possible a few years ago. If the industry's track record is any indication, some ingenious programmer will eventually produce an "ideal filter" that blocks *only* the sort of graphic sexual images that can be marketed as hard-core pornography—which are exactly the images most likely to cause serious psychological harm to children.

Unlike CIPA, the legitimacy of requiring ideal filters on library computers can't be assessed without reaching questions that go to the heart of our collective commitments to intellectual freedom and protecting children. Such a requirement would be narrowly crafted to further the interest in protecting children because ideal filters block *only* graphic pictures of sexual behavior—again, the content most likely to significantly harm a child. But it would also restrict intellectual freedom because online pornography can be used for a variety of legitimate intellectual purposes. To resolve the value conflict posed by ideal filters, then, we must decide how much we value intellectual freedom relative to the protection of children.

One might think these uncomfortable issues can be avoided simply by limiting use of ideal filters to computers accessible to minors, but many library professionals would reject even that much. Indeed, the American Library Association (ALA) explicitly takes the position that *any* restriction on a child's access to content is illegitimate. As ALA's *Library Bill of Rights* states the position, "A person's right to use a library should not be denied or abridged because of origin, *age* [author's italics], background, or views."

Though the ALA position is consistent with our culture's high regard for intellectual freedom, it is very difficult to reconcile with mainstream views about the law's protection of children. Very few people would take the position that a child's rights are violated by the laws that prohibit distribution of hard-core pornographic materials to minors, or by the laws that

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limit a minor's capacity to form binding contracts, or by the laws that require a child to attend school until the age of sixteen. Most people believe, quite plausibly, that the scope of a child's rights is constrained by the special vulnerability to which her psychological and intellectual immaturity gives rise.

The fact that the ALA position conflicts with mainstream views does not, of course, show that it is false, but it does highlight the need for deeper engagement with the issue of how these important values ought to be ranked. While it may be true that mainstream views are no more likely to be correct for being popular, it is also true that they are popular because they are deeply rooted in what is regarded as the common sense of the time. For this reason, there is a higher standard of proof, so to speak, for views that challenge the conventional wisdom.

Although the development of ideal filters may be decades away, the underlying issues of principle demand attention now, while we are still formulating public policy about speech in a library and developing a public conception of the proper role of the library. A well-reasoned answer to the problems posed by the possibility of ideal filters will enable us to do a better job of dealing with the filtering controversies that will arise as the technology continues to evolve and improve.

Filtering Software Blocks Access to Health Information

While 70% of teenagers look for health information online, filtering software may block up to 60% of legitimate health web sites, depending on the topic searched.

An article in the 11 December 2002 issue of *JAMA* reports the findings of a study by the Kaiser Family Foundation. After testing searches on twenty-four health topics and six pornography topics and examining almost 4,000 web sites, the researchers found that with the least restrictive settings, software blocks 2% of health sites and 87% of pornography sites. The most restrictive settings are only slightly more effective at screening offensive content, blocking 91% of pornography while also eliminating 24% of health sites from the results.

With search terms that could be perceived as socially controversial, such as "gay," "lesbian," and "condom," software blocked as many as 60% of health sites that discuss these topics. Sites that were blocked included some from reputable organizations that are designed to educate teens about health issues including **teenpregnancy.org**, as well as general health sites on non-controversial topics such as **www.cdc.gov/diabetes/**.

The study looked at seven blocking products that are commonly used in schools and libraries: AOL Parental Controls, CyberPatrol, N2H2, SmartFilter, Symantec Web Security, Websense and 8e6. Across the country, 73% of public libraries and 43% of schools are using Internet filters. In 2000, the Child Internet Protection Act (CIPA) required schools and libraries to use blocking software or lose some forms of federal funding. The CIPA mandate for libraries was struck down this year on the grounds that it violates the First Amendment. This ruling is currently being appealed to the U.S. Supreme Court, with a decision expected by mid-2003.

—Emily Hull, University of Washington

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NANCY PEARL

Writers Too Good to Miss

There are writers I count on to provide good reading in book after book. While I know I'm not likely to love equally every single work, the chances are very good that I'll enjoy a large percentage of them. These authors are part of my (not-growing-fast-enough) too-good-to-miss list—and here they are, for your reading enjoyment, too.

Although Connie Willis' books usually get shelved in the science fiction/fantasy section, non-science-fiction fans shouldn't be put off by the label—Connie Willis writes speculative fiction with heart. Her novels are anything but repetitive, so you can't be sure when you pick one up if it'll be serious, on the order of *Lincoln's Dreams* and *Passage*, or more light-hearted, in the style of *To Say Nothing of the Dog* and *Bellwether*, which is my favorite novel. It improbably blends chaos theory, sheep, and fads (the hula hoop, bobbed hair and others) into what can only be described as a very sweet love story with much food for thought. Willis also writes wonderful short stories—two especially not to miss are "At the Rialto" and "Ado," a sly appraisal of where political correctness is taking us.

Frederick Busch is a prolific writer whose books are wildly diverse: from a novel about Charles Dickens (*Our Mutual Friend*), to a legal thriller with sexual over- (and under-) tones (*Closing Arguments*), to a story about a marriage gone horribly awry after the death of the couple's daughter (*Girls*), to a masterful collection of short stories (*Don't Tell Anyone*), to a story of a maimed veteran of the Union army wandering the dark streets of New York (*The Night Inspector*), to story of the on-again, off-again relationship between two people who are no longer young (*Harry and Catherine)*. All Busch's work is marked by meticulous attention to detail—both of place and of character. His ability to present characters in crisis—a lawyer and Vietnam veteran obsessed with the woman he's defending; a husband who suspects his wife of a terrible deed; a woman forced to acknowledge that perhaps the man she loves is not the man she thinks he is; a Civil War sniper who has never recovered from his experiences in combat—is simply stunning.

The best of Van Reid's delightfully breezy novels about the Moosepath League (named for an incident involving a moose and long underwear) is *Cordelia Underwood: Or, The Marvelous Beginnings of the Moosepath League*. They're perfect novels for the dog days of summer, but they're equally good as light and humorous winter reading. They're also fine family fare, and entertaining to read aloud. Set in and around Portland, Maine, in 1896, the league's charter members were three eccentrics, Matthew Ephram, Christopher Eagleton, and Joseph Thump. Together, these do-gooders stumble upon all manner of adventure, frequently involving beautiful young girls in need of assistance. Although the tone and intent of Reid's novels couldn't be less like that of Charles Dickens, the two writers share many similarities. Reid's books, like Dickens', were originally written to be serialized in the newspaper. Also, Reid's novels, like Dickens', are thick with subplots, and he clearly adores inventing the names of his characters (Sundry Moss and Maude the Bear are two of my favorites), and he never met a plot twist that he didn't immediately work into his fiction.

Jonathan Lethem's novels are all exquisitely written and wildly original re-takes on traditional themes. Since he can't be categorized precisely, his novels don't fit comfortably in any 'ist' or 'ism.' You can't even assign his books to particular genres, since each tweaks and contorts a genre piece into something entirely original: a mystery for those who don't care for mysteries, science fiction for non-sci-fi fans, and so on. Close reading reveals signs of his being influenced by writers as diverse as David Lodge, Don deLillo, and Isaac Asimov—great combination, isn't it? You might as well add Katherine Dunn and Lewis Carroll to the list, too. Loving one Lethem novel is no guarantee that you'll even moderately like the next one. My two favorites are *As She Climbed Across the Table* (a physicist falls in love with Lack, a Black Hole, to the consternation of her boyfriend) and *Motherless Brooklyn* (a young man with Tourette's Syndrome tries to track down his foster father's murderer).

Richard Powers brings to all his books fierce intelligence and passionate (and well-informed) interest in both the sciences and the humanities. His books tend to be dense, challenging, and ultimately rewarding to the reader willing to work rather than coast through a novel. In an article in *Tikkun*, Melvin Bukiet described Powers (along with novelists Thomas Pynchon and Jonathan Franzen), using a phrase from Powers's novel *Prisoners' Dilemma*, as a "crackpot realist": a contemporary writer who defines existence as having physical, emotional, and political dimensions. (I would add Mark Costello's *Big If* to this list, as well as Don deLillo's *White Noise* and *Libra*.) Whether their theme is genetics, virtual reality, industrial pollution, race relations, or artificial intelligence, Powers' ambitious novels, big in scope and (amply fulfilled) ambition, are filled with intensely human characters—not always likeable, deeply flawed, conflicted in their relationships to those closest to them—and who remain in your mind long after you turn over the book's last page. (My favorites are *Galatea 2.2* and *The Time of Our Singing*. I'd love to hear who is on your list of authors too good to miss.

Nancy Pearl directs the Washington Center for the Book at the Seattle Public Library.

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