

Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

SARAH BRADBURN, PEARL CHERRINGTON,
CHARLES HEINLEN, and THE SECOND
AMENDMENT FOUNDATION,

Plaintiffs,

vs.

NORTH CENTRAL REGIONAL LIBRARY
DISTRICT,

Defendant.

NO.
CV-06-327-EFS

DEPOSITION UPON ORAL EXAMINATION OF
CHARLES MERLE HEINLEN

TAKEN ON: Monday, August 13th, 2007

TAKEN AT: Omak Library
30 South Ash
Omak, Washington

START TIME: 7:30 A.M.

END TIME: 10:35 A.M.

REPORTED BY: BARBARA J. SCOVILLE, CCR, RPR
CCR NO. 2124

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I N D E X

In re: SARAH BRADBURN vs. NORTH CENTRAL REGIONAL LIBRARY
Case No.: CV-06-327-EFS
Date: August 13th, 2007

T E S T I M O N Y

EXAMINATION PAGE NUMBER

By Mr. Adams 4

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APPEARANCES:

FOR THE PLAINTIFFS:

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ALSO PRESENT: MR. DEAN HARNEY
MR. DAN HOWARD

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BE IT REMEMBERED that on Monday,

August 13th, 2007, at 7:30 a.m., at Omak Library,
30 South Ash, Omak, Washington, the testimony of

MR. CHARLES MERLE HEINLEN was taken before Barbara

J. Scoville, Certified Court Reporter and Notary

Public. The following proceedings took place:

CHARLES M. HEINLEN, being first duly sworn to

tell the truth, the whole

truth and nothing but the

truth, testified as

follows:

EXAMINATION

BY MR. ADAMS:

Q. State your name, please.

A. **Charles Merle Heinlen, H-e-i-n-l-e-n.**

Q. Thank you. Mr. Heinlen, my name is Tom Adams, and we've had a chance to meet briefly this morning already. How are you?

A. **Great. How are you?**

Q. Great, thank you. Thanks for showing up so early this morning so we can get a start on our day. I'm the lawyer representing the Defendant North Central Regional Library District which is the defendant in

Decl of Adams

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1 that it unblocked to my knowledge.
 2 Q. Tell me about that. Does a window pop up when you
 3 see a site? When you come to a site --
 4 A. That was under their older filter that said, "You
 can submit a site review request by clicking here."
 6 And that led to, I believe, a pop-up window that
 7 said that, you know, you could write whatever you
 8 wanted to write about that site like -- you know, if
 9 I didn't think it was fair that I couldn't look up,
 10 you know, one particular Web site, I could write a
 11 short paragraph as to why and hit "Send." I do not
 12 know whether that went to Mr. Marney or Mr. Howard
 13 or straight to N2H2 that was running Bess at the
 14 time or anything like that. I know that I did that
 15 on a couple of occasions, four or five at least.
 16 Q. Okay.
 17 A. You know, I provided my e-mail address, and not once
 18 did I ever get a response from either them or N2H2.
 19 Q. Okay. Has the system changed with the change in
 20 filtering software here at the library?
 21 A. They went from Bess to this new one that they've
 22 got, Fortinet.
 23 Q. Right. Has the system changed? Do you still get
 24 that pop-up window?
 25 A. I'm trying to recall. Like I said, it's early and

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I'm not a hundred percent on that.
 2 Q. Okay.
 3 A. I believe you can submit a site review request, but
 4 I couldn't swear to that right now.
 5 Q. Are you aware whether Fortinet itself provides a
 6 mechanism for you to challenge its classification of
 7 a particular URL without ever going to the library?
 8 A. Like I just explained, I think so but I'm not a
 9 hundred percent so I'm not comfortable answering
 10 that one.
 11 Q. Do you recall ever having used such a mechanism
 12 through Fortinet?
 13 A. On Fortinet? To the best of my recollection, no.
 14 Q. Are you familiar with NCRL's Internet Public Use
 15 Policy?
 16 A. I've read it a couple of times.
 17 MR. ADAMS: Mark that, please.
 18
 19 (EXHIBIT 3 WAS MARKED.)
 20
 21 Q. (By Mr. Adams) Mr. Heinlen, I've just handed you a
 one-page document that we've marked as Deposition
 23 Exhibit 3. But go ahead and take a look at that, if
 24 you would, please, and let me know when you've had a
 25 chance to review it.

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1 A. Okay.
 2 Q. Have you read this before?
 3 A. It is posted here to the left of or in between their
 4 terminals, I believe.
 5 Q. Okay.
 6 A. And I think this is also the one that comes up on
 7 the screen before you log in or something to this
 8 effect.
 9 Q. Okay.
 10 A. But I have seen this page before. It's also on
 11 their Web site, I believe.
 12 Q. Have you ever spoken to NCRL personnel about this
 13 policy?
 14 A. Shortly after US v. ALA, I had e-mailed Mr. Howard
 15 back and forth on this.
 16 Q. On the Internet policy?
 17 A. On the Internet policy, you know, pursuant to that
 18 ruling.
 19 Q. Okay. What, in particular, did you say --
 20 A. I took particular offense to the notion that they
 21 would not unblock filters.
 22 MR. MANVILLE: Let him finish asking the
 23 questions.
 24 THE WITNESS: Oh, I'm sorry.
 25 MR. MANVILLE: It makes for a cleaner

35

1 record.
 2 THE WITNESS: My apologies.
 3 Q. (By Mr. Adams) No apology necessary. So you say
 4 you took particular offense to the NCRL's policy
 5 pursuant to which it would not completely unblock
 6 their filter; is that correct?
 7 A. Yes, sir.
 8 Q. Okay. Is it not sufficient in your mind that NCRL
 9 will undertake a review on a site-by-site basis of a
 10 particular blocked URL?
 11 A. I feel that that is unnecessarily intrusive on my
 12 privacy that I should have to submit sites in
 13 advance. It's also disruptive that I could not just
 14 surf the Internet at my own pace and have to submit
 15 a site review request for everything that was
 16 blocked and come back a day or three later after
 17 they made their decision to get to a particular
 18 site. It's disruptive.
 19 Q. What did you say, that it takes a day or three?
 20 A. I said that it possibly could. By the time it gets
 21 from here to Wenatchee and back when you're only
 22 allotted a one half-hour block of time, you know, I
 23 do not see where they could feasibly review every
 24 site request that you would think would be coming at
 25 them and give you a decision before your time runs

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1 out on this terminal here.

2 Q. You've never tried it though; right?

3 A. At this point, no. And I also feel that it's, you

4 know, intrusive on my privacy.

Q. But, again, you've never tried it.

6 A. No, sir, I have never tried it.

7 Q. Okay. So you don't know how well the procedure

8 works or not, do you?

9 A. As I said, I was uncomfortable submitting in advance

10 the sites that I wanted to see.

11 Q. I understand. But you've never tried it, have you?

12 MR. MANVILLE: Objection, it's been asked

13 and answered.

14 THE WITNESS: No, sir.

15 Q. (By Mr. Adams) So you don't know how long it takes

16 to get an answer back, do you?

17 A. Well, I guess that would be a no.

18 Q. In instances where you've encountered a blocked

19 site, Mr. Heinlen, how do you know that the blockage

20 is not occurring because of some technological

21 issue --

22 A. Because of --

23 Q. -- as opposed to a functioning of the filtering

24 software?

25 A. If it's a filter violation, it comes up "Blocked."

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And under a specific category more often than not,

2 some sites come up and just say "Blocked." Most of

3 them will say "Blocked" and then give a category.

4 Q. Okay. So is it your position that as a patron of

5 the NCRL library that you're entitled to completely

6 unfiltered access to the Internet?

7 A. Yes, sir.

8 Q. Would that include categories of speech that are not

9 entitled to Constitutional protection?

10 A. Such as?

11 Q. Pornography.

12 A. As I said earlier, I was not surfing for porn.

13 Q. Okay. I realize you said that you weren't surfing

14 for it, but do you think that you're entitled to

15 access to it?

16 MR. MANVILLE: Objection to the extent it

17 calls for a legal conclusion.

18 THE WITNESS: Do I think that NCRL

19 patrons should be able to look up materials that

20 some people would consider pornographic?

21 Q. (By Mr. Adams) Sure. Answer that question.

22 A. It's a relative term. I mean, what one man would

23 consider pornographic, another man certainly

24 wouldn't, so ...

25 Q. That isn't the question. The question is access.

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1 A. I believe that NCRL patrons should have completely

2 unfiltered access. That's my answer.

3 Q. Okay. So do you believe NCRL is entitled to filter

4 Internet access to exclude pornographic content?

5 A. Could you repeat that?

6

7 (THE FOLLOW RECORD WAS READ:

8

9 "Q Okay. So do you believe NCRL is

10 entitled to filter Internet access to

11 exclude pornographic content?")

12

13 MR. MANVILLE: Object to the form of the

14 question.

15 Q. (By Mr. Adams) You can answer.

16 A. I do object to the form of the question. I mean, I

17 said I believe the patrons are -- adult patrons as

18 defined in US v. ALA are entitled to unfiltered

19 access. Okay, that includes all categories.

20 Q. Okay. Is it your position that your rights under

21 the United States Constitution and the Constitution

22 of the State of Washington pertaining to free

23 expression are impaired or breached or somehow

24 compromised by your inability to access pornography?

25 MR. MANVILLE: Object to the form of the

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question.

2 THE WITNESS: I believe that my rights

3 are infringed under the constitutions of the United

4 States and of the State of Washington when I'm

5 denied my ability to seek information on a public

6 library terminal. I believe that that is an

7 infringement of my civil liberties.

8 Q. (By Mr. Adams) Okay. Would you agree that

9 libraries make content-based decisions all the time?

10 A. I would agree that they make content-based decisions

11 based on limited space availability for, like, books

12 and magazines; however, the Internet presents the

13 opposite problem. I mean, it's totally different.

14 There's no shelf space limitation when it comes to

15 Internet access.

16 Q. Let's say the Internet is not installed at this Omak

17 branch and you came in and asked the library to

18 obtain a pornographic book. Would you feel that

19 they have a right to provide that book to you?

20 A. That goes to a shelf space limitation. Their board

21 of directors would make decisions on what they will

22 and will not stock based on the cubic footage

23 available inside their building. I would agree that

24 Okanogan could not, therefore, stock nearly as many

25 books as Omak which can stock less books, I would

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1 **assume, than their main branch in Wenatchee. And**
 2 **that's all a space limitation. And they will make**
 3 **their decisions based on that among other**
 4 **considerations. And, again, I would restate that**
 5 **the Internet presents an opposite dilemma.**
 6 Q. What other considerations besides shelf space?
 7 A. **I'm not a librarian nor am I a board member. I'm**
 8 **not qualified to answer that question.**
 9 Q. You're not qualified to answer that question. Okay.
 10 Are librarians qualified to answer that question?
 11 A. **I believe that's up to the board and not the**
 12 **individual librarians themselves.**
 13 Q. Okay. Well, who makes the content decisions about
 14 what materials are or are not kept at a particular
 15 library branch?
 16 A. **Again, not working for a library, I couldn't**
 17 **honestly answer that.**
 18 Q. Presumably the librarians; right?
 19 A. **No.**
 20 MR. MANVILLE: Object to the form.
 21 THE WITNESS: No, presumably the board of
 22 directors. I think they would have final say since
 23 they're the ones that are signing the librarians'
 24 paychecks.
 25 Q. (By Mr. Adams) What's the role of the public

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library in your opinion?
 2 A. **I believe it is their role to facilitate access of**
 3 **information to any member of the public that seeks**
 4 **it.**
 5 Q. Would you agree that the role of the library is to
 6 facilitate learning and cultural enrichment?
 7 A. **I said, "information." I believe that learning and**
 8 **cultural enrichment would fall under that.**
 9 Q. Have you read NCRL's mission statement?
 10 A. **Years ago.**
 11 Q. Do you have any idea what its mission is presently?
 12 A. **I do not know what they presently say their mission**
 13 **is.**
 14 MR. ADAMS: Let's make this Number 4.
 15
 16 (EXHIBIT 4 WAS MARKED.)
 17
 18 Q. (By Mr. Adams) Mr. Heinlen, I've handed you a
 19 multi-page document that we've marked as Deposition
 20 Exhibit 4. Take a look at it and generally
 21 familiarize yourself with it if you would, please.
 22 You don't have to read it word for word.
 23 A. **You're just wanting me to familiarize myself with**
 24 **the one sentence, section "I. Mission Statement"?**
 25 Q. Sure we'll start with that.

42

1 A. **Okay. "To promote reading and lifelong learning."**
 2 Q. Okay. Does that strike you as a mission that is an
 3 appropriate mission for the NCRL?
 4 A. **I think it goes to what I said, that a library is**
 5 **there to facilitate information to them that take**
 6 **it.**
 7 Q. Okay. Well, the mission statement of NCRL is "to
 8 promote reading and lifelong learning." Is that
 9 correct?
 10 A. **Uh-huh.**
 11 Q. Is that a "yes"?
 12 A. **Yes, sir.**
 13 Q. Now, in your view, does that mission require NCRL to
 14 provide its patrons with unlimited access to any
 15 kind of content of any form of any nature at any
 16 time if it can do so?
 17 MR. MANVILLE: Object to the form of the
 18 question.
 19 Q. (By Mr. Adams) You can answer.
 20 THE WITNESS: Could you feed me back that
 21 question again?
 22
 23 (CONTINUE ON THE FOLLOWING PAGE.)
 24
 25

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1 (THE FOLLOWING RECORD WAS READ:
 2
 3 "Q Now, in your view, does that mission
 4 require NCRL to provide its patrons
 5 with unlimited access to any kind of
 6 content of any form of any nature at
 7 any time if it can do so?")
 8
 9 THE WITNESS: That would be a yes. What
 10 if one of their patrons wants to learning something
 11 that the board might object to? That still goes to
 12 their mission statement of lifelong learning.
 13 Q. (By Mr. Adams) What if a patron -- what if you
 14 walked into the Omak branch and you said, "I'd like
 15 to do some online gambling and I don't care that it
 16 may be illegal; I want you to provide me access to
 17 Internet sites that allow me to engage in this
 18 pursuit of mine which I deem interesting and
 19 important to me"?
 20 A. **If I wanted to perform an illegal act on library**
 21 **property, they are well within their rights to get**
 22 **the police right across the street and deal with it**
 23 **accordingly.**
 24 Q. Would they be within their rights to block your
 25 access to those sites?

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1 MR. MANVILLE: Object to the form.
 2 THE WITNESS: Yeah, do I have to answer
 3 that one?
 4 MR. MANVILLE: Yes, subject to your
 objection.
 6 THE WITNESS: Subject to your objection.
 7 Subject to his objection, I said that I think
 8 the patrons should have unfiltered access, period.
 9 Q. (By Mr. Adams) Is that a "yes"?
 10 A. **That is a "yes."**
 11 Q. And if you came in and said, I have an interest in
 12 undertaking learning how to conduct hacking
 13 operations so that I can bring down the NCRL
 14 computer system," could you have access to such
 15 sites that would teach you to do that?
 16 MR. MANVILLE: Object to the form.
 17 THE WITNESS: Again, I believe all access
 18 for adults should be ongoing, so that would be a
 19 "yes" as well --
 20 Q. (By Mr. Adams) Okay.
 21 A. **-- but simply on the premise that I believe adults
 22 should have unfiltered access.**
 23 Q. Okay. If you came into the Omak branch and said, "I
 24 want access to a site so I can buy cigars from
 25 Cuba," should the Omak library branch provide you

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with access to such sites?
 2 MR. MANVILLE: Object to the form.
 3 THE WITNESS: You can get Cubans in
 4 Canada. But, yes.
 5 Q. (By Mr. Adams) My point, I think you understand, is
 6 that your position -- and I'm trying to just
 7 understand this as clearly as I can -- that you
 8 believe you are entitled to walk into a branch of
 9 the NCRL library and ask for access to sites that
 10 would permit you to undertake illegal activity; is
 11 that correct?
 12 MR. MANVILLE: Object to the form.
 13 THE WITNESS: Yeah, I object to that
 14 question. I said --
 15 Q. (By Mr. Adams) You still have to answer.
 16 A. **I understand I still have to answer it. I simply
 17 want unfiltered access to the information that I
 18 want to seek.**
 19 Q. I understand --
 20 A. **So that would have to, by association, be a "yes."
 21 But it is not my position that I want to do anything
 illegal here at all.**
 22 Q. I understand. That isn't the point, sir. I'm just
 23 trying to get a sense of whether you think it is the
 24 obligation of the library to provide access to a
 25

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1 patron who might.
 2 MR. MANVILLE: Object to the form.
 3 THE WITNESS: I think it is their
 4 obligation to provide unfiltered access to -- you
 5 know, unfiltered Internet access for adults -- for
 6 adult patrons.
 7 Q. (By Mr. Adams) Okay. Are you aware of NCRL's
 8 stated interest in making its library branches safe
 9 for children?
 10 A. **I've always told my daughter it's impolite to look
 11 over somebody's shoulder to read what they're
 12 reading, to seek what they're seeking.**
 13 Q. Okay. Are you aware of NCRL's stated objective that
 14 I just characterized for you?
 15 A. **I believe that Mr. Marney stated that in a Wenatchee
 16 World article when this case first went public.**
 17 Q. Okay. Is that a compelling objective in your view?
 18 MR. MANVILLE: Object to the form.
 19 Q. (By Mr. Adams) Is that a proper objective?
 20 A. **No. I believe that it is not their role to act as
 21 parents or baby-sitters in any way whatsoever.
 22 Okay? My parental responsibilities are my parental
 23 responsibilities not theirs.**
 24 Q. The Omak branch has four computer terminals with
 25 Internet access -- is that correct? -- to the best

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1 of your knowledge?
 2 A. **To the best of my knowledge. I've never walked back
 3 into the children's section or over here. I don't
 4 know if they have another terminal over there.**
 5 Q. But in the area that you use here at the Omak
 6 branch, there are four terminals together?
 7 A. **Yes, sir.**
 8 Q. And they're all in close proximity to one another?
 9 A. **Uh-huh.**
 10 Q. Is that a "yes"?
 11 A. **Yes.**
 12 Q. Okay. Side by side at a desk similar to what we're
 13 sitting at right now?
 14 A. **Desks almost identical to this, two terminals per
 15 desk, yes.**
 16 Q. Okay. Is it possible for the user of one terminal
 17 to look over and see what is being previewed on the
 18 Internet by another user at a different terminal?
 19 A. **If he was curious as to what his neighbor was doing,
 20 I suppose.**
 21 Q. That's a "yes"?
 22 A. **That is a "yes."**
 23 Q. Okay. Does the posing of -- Excuse me. Does the
 24 provision of unfiltered Internet access present any
 25 danger of any kind in your mind?

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1 **A. No.**
 2 **Q.** None whatsoever?
 3 **A. None whatsoever.**
 4 **Q.** Okay. Is all form of expression, is all speech, is
 everything published on the Internet in your opinion
 6 Constitutionally protected?
 7 **MR. MANVILLE:** Object to the form.
 8 **THE WITNESS:** I'm not a lawyer. I can't
 9 answer that one in good conscience.
 10 **Q.** (By Mr. Adams) Is pornography Constitutionally
 11 protected?
 12 **MR. MANVILLE:** Object to the form.
 13 **THE WITNESS:** In what context? I mean --
 14 Is pornography protected speech? I don't know the
 15 case history on that. I know that Larry Flint beat
 16 Jerry Falwell all the way to the Supreme Court but
 17 George Carlin didn't, so ...
 18 **Q.** (By Mr. Adams) Well, we don't have to define it as
 19 "pornography." We don't have to --
 20 **A. Well, we kind of do if you keep asking me what I**
 21 **think about it, don't we?**
 22 **Q.** Well, let's say this then: let's use "obscenity" and
 23 let's say that "obscenity" has the definition that
 24 is set forth in federal law. Now, whatever it is --
 25 And we don't have to say what it is; but whatever it

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is, it is out there.
 2 **A. Well, you mean printed versions of, you know, the**
 3 **seven words on George Carlin's list?**
 4 **Q.** Okay. Let's just --
 5 **A. I mean, you know, people publish that all the time.**
 6 **Q.** We don't have to define it. Let's just say that
 7 something out there constitutes "pornography."
 8 Would you agree with me on that?
 9 **A. It depends. Different people are offended by**
 10 **different things. It's all relative.**
 11 **Q.** Okay. Let's switch gears. Let's talk about the
 12 activities of a terrorist in a foreign country. All
 13 right?
 14 **A. Okay.**
 15 **Q.** Let's say that such activities were interesting to
 16 somebody here in the United States. And let's --
 17 Would you agree that the library has a right to
 18 block Internet access to the publications of such a
 19 person?
 20 **MR. MANVILLE:** Object to the form of the
 21 question.
 22 **THE WITNESS:** Well, let's say
 23 hypothetically I wanted a different perspective on
 24 what we were doing in Iraq and I wanted to get my
 25 news from Al Jazeera just to read what they had to

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1 say and see their side of it for a perspective.
 2 What's the difference? It doesn't make me a
 3 terrorist by any stretch.
 4 **Q.** (By Mr. Adams) Of course not. No one is suggesting
 5 that, sir. I'm just asking about access to things
 6 that might promote such activities. Is it
 7 appropriate to block or filter that kind of thing?
 8 **MR. MANVILLE:** Object to the form.
 9 **THE WITNESS:** I don't know that anybody
 10 ever has tried to access that information from one
 11 of these terminals.
 12 **Q.** (By Mr. Adams) That's not the question.
 13 **A. Unblocked is unblocked.**
 14 **MR. ADAMS:** Let's mark this Number 5,
 15 please.
 16
 17 (EXHIBIT 5 WAS MARKED.)
 18
 19 **Q.** (By Mr. Adams) Mr. Heinlen, I've just handed you a
 20 document that we've marked as Deposition Exhibit 5.
 21 And for the record, I'll indicate that this is the
 22 Complaint for Declaratory and Injunctive Relief by
 23 the plaintiffs in this lawsuit.
 24 **A. Uh-huh.**
 25 **Q.** Take a look at this, if you would, please, and just

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1 generally familiarize yourself with it.
 2 **A. I've seen this before. Okay.**
 3 **Q.** Have you had a chance to look it over?
 4 **A. I'm skimming through it now. Like I said, I believe**
 5 **this is a document that I have seen before. Yeah,**
 6 **this was filed some time ago.**
 7 **Q.** This was filed in late 2006.
 8 **A. Uh-huh.**
 9 **Q.** Is that right to the best of your knowledge?
 10 **A. I do not see a date on the front of it, so I'll take**
 11 **your word for it.**
 12 **Q.** Okay.
 13 **A. Oh, yeah, okay, "November 2006" right here on the**
 14 **bottom. (Indicating)**
 15 **MR. MANVILLE:** Somehow we've got two
 16 dates on it.
 17 **MR. ADAMS:** It's not a big deal about the
 18 date.
 19 **THE WITNESS:** Okay.
 20 **Q.** (By Mr. Adams) On page 1 in paragraph 1, the first
 21 sentence, the statement was made that
 22 "Plaintiffs" -- And you are a plaintiff; correct?
 23 **A. Yes, sir.**
 24 **Q.** -- "challenge the Constitutionality of a policy
 25 adopted by the NCRL whereby the NCRL will not, at

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1 the request of adults who wish to access
 2 Constitutionally-protected speech, disable Internet
 3 filters on its publicly-available computer
 4 terminals." Do you see where I'm reading?
 5 **A. Yes, sir.**
 6 **Q.** Okay. Does that accurately describe your claim?
 7 **A. Yes, sir.**
 8 **Q.** Does your claim go beyond that?
 9 **A. How would you define going "beyond that"?**
 10 **Q.** I'm focusing on the phrase
 11 "Constitutionally-protected speech."
 12 **A. Which as I've said is a relative term, and since I'm**
 13 **not a member of the legal profession, one that I'm**
 14 **really not qualified to define. But I would say the**
 15 **first sentence is accurate.**
 16 **Q.** You would?
 17 **A. Uh-huh.**
 18 **Q.** That's "yes"?
 19 **A. Yes, to the best of my knowledge.**
 20 **Q.** That's fine. Just so I'm clear, Mr. Heinlen -- and
 21 I don't mean to belabor the point -- will you agree
 22 with me or do you disagree with me that there
 23 are -- that there is Constitutionally-protected
 24 speech and there is speech that is not
 25 Constitutionally protected?

MR. MANVILLE: Object to the form.
 THE WITNESS: Let's split a very fine
 hair. As I said, having -- myself being an
 equipment operator, I don't feel qualified to
 interpret the Constitution. I was -- That's where
 I stand on that.
Q. (By Mr. Adams) Well, that's fine. And I wouldn't
 expect you to interpret the Constitution as we sit
 here in your deposition today. What I'm getting at,
 however, is the adjective
 "Constitutionally-protected" that precedes the word
 "speech." Does that define speech -- a subset of
 speech that you're suing about?
A. I believe that the courts have typically only
restricted speech in the most narrow of instances.
 (A BRIEF RECESS WAS TAKEN.)
Q. (By Mr. Adams) Mr. Heinlen, based on your previous
 testimony, I'm fairly clear in your position that
 you believe NCRL's library branches should provide
 adult patrons with completely unfiltered access to
 the Internet. Am I correct in that regard?
A. I said that I believe that they should disable the
filters for adults upon request, yes.

Q. Okay. And in your view, a site-by-site review
 process is inadequate; is that correct?
A. Not only is it inadequate, but it's been my
contention that it is invasive.
Q. Okay. But you've never invoked the procedure here
 at NCRL to test that; is that correct?
A. You know, I've never in all the times I've come here
once been presented with the first exhibit -- or
Exhibit 2 that you showed me, this sheet.
(Indicating)
Q. Okay. But have you attempted to gain access to a
 particular site by any other means?
A. No. I mean, I could have cheated and set up a proxy
server, I suppose, if I wanted to, but I haven't
done that.
Q. What's a proxy server?
A. Something a kid told me about to get around the
filtering.
Q. How does it work?
A. I'm not sure.
Q. A kid told you about it. How old is the kid?
A. A teenager.
Q. Okay. And what'd the kid tell you?
A. I don't recall. It was years ago. He said, "You
could set up a proxy server and get around it

perhaps." That's all I remember from that. I don't
remember who. I don't remember when. I don't
remember what was said. I just remember that that
was passed on to me once by somebody that appeared
to be a 17-year-old male.
Q. And the sum and substance of that conversation was,
 This is the way to get around the filter?
A. He said, "If you really want to get around it, set
up a proxy server." And that was it. I never
pursued that.
Q. What dangers or risks might be posed by unfiltered
 access, if any, in your opinion?
A. None in my opinion.
Q. How about to library staff?
A. How could that be a risk to them?
Q. Well, let's just assume it created a hostile
 environment. Let's say a patron wanted to view
 something inappropriate, illegal, offensive,
 pornographic on the Internet. Would that present a
 problem for library staff?
A. As I said earlier, what's, quote unquote,
"offensive" or, quote unquote, "pornographic" is
relative. So I suppose it would depend on how
sensitive a staff member might be, and that's
different for everybody.

1 Q. What if somebody wanted to use a proxy server to
 2 conduct illegal activity, would that be a risk to
 3 guard against?
 4 A. **Having no familiarity with that, I couldn't say. I**
 5 **would say that unfiltered access is unfiltered**
 6 **access. And, again I said that repeatedly in the**
 7 **context of adults, you know, as defined in US v. ALA**
 8 **Web site.**
 9 Q. Right. Then an adult could set up a proxy server;
 10 right?
 11 A. **I don't know how. I'm 41 years old; so if I don't,**
 12 **I assume most adults in this town wouldn't either.**
 13 Q. If a patron walks into the Omak branch and asks for
 14 a book, is it the obligation of the NCRL to get that
 15 book regardless of its content?
 16 MR. MANVILLE: Object to the form.
 17 THE WITNESS: I thought we'd been over
 18 that. You know, libraries are limited with respect
 19 to shelf space and that the Internet is a different
 20 medium. I mean, a library has to pay for books and
 21 it has to store the books; whereas with the
 22 Internet, the library has to pay and make an effort
 23 to keep information out. It's exactly the opposite.
 24 Q. (By Mr. Adams) Do you think a -- do you think that
 25 a library also has an obligation to determine if a

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particular resource has some sort of cultural merit,
 2 if it will contribute in some fashion to the
 3 learning of the patrons that use that library
 4 branch?
 5 A. **That is relative to the individual and not a board**
 6 **of directors.**
 7 Q. True. But let me ask you this: doesn't a decision
 8 have to be made whether a particular resource meets
 9 some standard?
 10 A. **Again, that's up to, say, me to decide what I want**
 11 **to fill my head with not them.**
 12 Q. Would you agree with me that not every resource can
 13 be obtained? And I'm talking about a book.
 14 A. **With respect to printed medium, I would agree with**
 15 **you there; but with respect to the Internet, no.**
 16
 17 (EXHIBIT 6 WAS MARKED.)
 18
 19 Q. (By Mr. Adams) Mr. Heinlen, I've handed you a
 20 two-page document that we have marked as Deposition
 21 Exhibit 6. Take a look at that, if you would,
 22 please, and just generally familiarize yourself with
 23 it.
 24 A. **Okay.**
 25 Q. Exhibit 6 appears to be a correspondence from the

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1 American Civil Liberties Union of Washington dated
 2 October 31 of 2000. Have you seen this letter
 3 before?
 4 A. **To the best of my knowledge, no. In fact, I'm**
 5 **reasonably certain I have not.**
 6 Q. Okay. Have you ever received correspondence from
 7 the ACLU of Washington or other affiliates of the
 8 ACLU concerning NCRL's Internet filtering practices?
 9 A. **It was not until after I contacted them that I ever**
 10 **received anything from them.**
 11 Q. Okay. Do you have a file of that correspondence?
 12 A. **As I said, I've moved probably a half a dozen times**
 13 **in the last three years, it seems like, so some of**
 14 **my correspondence has been lost.**
 15 Q. Okay. Do you have a file at this time?
 16 A. **Not that I can locate. And God knows I've tried.**
 17 Q. I'm not talking about privileged correspondence
 18 between you and your lawyers.
 19 A. **I understand that.**
 20 Q. Okay. You have a 10-year-old daughter; right?
 21 A. **Yes, sir.**
 22 Q. What would be your view if your daughter were in the
 23 Omak branch of the library using the Internet and an
 24 adult patron were seated next to her viewing things
 25 that you wished your daughter did not have to see or

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be exposed to in any form? What would be your
 2 reaction?
 3 A. **Well, I would not know that if she didn't come to me**
 4 **with the information first. Then if she did, that**
 5 **would give me a chance as her father to give her my**
 6 **view of what she saw and my interpretation of it.**
 7 Q. Do you think --
 8 A. **So it'd be good experience to, you know, kind of**
 9 **teach her something.**
 10 Q. Would you expect the library to have a policy in
 11 place to try to limit or minimize any such
 12 exposures?
 13 A. **I don't think it's their job to minimize what the**
 14 **adult next to her could see. I would much prefer**
 15 **that she not be looking over his shoulder in the**
 16 **first place.**
 17 MR. ADAMS: Let's mark this as Exhibit 7.
 18
 19 (EXHIBIT 7 WAS MARKED.)
 20
 21 Q. (By Mr. Adams) Mr. Heinlen, I've handed you a
 22 multi-page document that we've marked Deposition
 23 Exhibit 7. And for the record, I'll indicate that
 24 it's my understanding that these constitute your
 25 "Objections, Answers and Responses to Defendant's

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1 First Interrogatories and Requests for Production."
 2 Take a look at this and generally familiarize
 3 yourself with it if you would, please.
 4 **A. Have I ever seen this?**
 MR. MANVILLE: No.
 6 I'll state for the record that any
 7 information that was provided here is based on
 8 information that was provided to us by Mr. Heinlen
 9 but he has not had an opportunity to actually review
 10 this document as of yet, and I brought a copy with
 11 me today for him to review and sign so when he
 12 approves of it.
 13 THE WITNESS: Yeah, I have not seen this
 14 before. This is like, what, ten pages?
 15 **Q.** (By Mr. Adams) Right.
 16 **A. So do you want me to sit here and read the whole**
 17 **thing?**
 18 **Q.** I guess I do, yes, unless we're going to reconvene
 19 your deposition.
 20 **A. No, I don't want to reconvene it. Can I have a**
 21 **moment with Mr. Manville --**
 22 **Q.** Of course.
 23 **A. -- since there is no question pending?**
 24 **Q.** Yes.
 25

(A BRIEF RECESS WAS TAKEN.)

2
 3 **Q.** (By Mr. Adams) Mr. Heinlen, have you had a chance
 4 to review your Answers and Objections to
 5 Interrogatories and Requests for Production as set
 6 forth on Exhibit 7?
 7 **A. Yes, sir.**
 8 **Q.** Okay. Do you have any changes that you wish to
 9 make?
 10 **A. None that I can see, no.**
 11 **Q.** Okay. There's a signature page on the last page,
 12 page 16 of Exhibit 7. Do you see that?
 13 **A. Yes, sir.**
 14 **Q.** Okay. May I ask you to supply your signature to
 15 that if you're prepared to certify under penalty of
 16 perjury as the declaration sets forth?
 17 **A. Okay, here you go. (Witness complying)**
 MR. ADAMS: Is that all right with you,
 19 Duncan?
 MR. MANVILLE: That's fine.
 21 THE WITNESS: Where do you want me to put
 for "executed at"?
 MR. MANVILLE: "Omak" and the date.
 24 THE WITNESS: What is today's date, the
 25 13th?

1 MR. MANVILLE: The 13th, yes, that's
 2 right.
 3 THE WITNESS: (Witness complying)
 4 Do you need this back?
 5 **Q.** (By Mr. Adams) Now, you can go ahead and keep that
 6 in front of you if you would, please. Flip to
 7 pages 4 and 5, in particular your response to
 8 Interrogatory Number 5, Mr. Heinlen. It begins on
 9 page 5.
 MR. MANVILLE: At the bottom.
 11 THE WITNESS: Oh, okay.
 12 Yes, sir, page 5.
 13 **Q.** (By Mr. Adams) Okay. Interrogatory Number 5, in
 14 essence, asks you to identify the URL addresses for
 15 the Web sites for which you claim you were denied
 16 access --
 17 **A. Uh-huh.**
 18 **Q.** -- in whole or in part.
 19 **A. Uh-huh.**
 20 **Q.** And you indicate in your answer that you don't have
 21 a full list of access -- or, excuse me, a full list
 22 of the Web sites to which you've been denied access,
 23 but you do provide a number of sites to which you
 24 have been denied access.
 25 **A. Yes, sir.**

1 **Q.** And those sites are listed on pages 5, 6, 7 and part
 2 of 8; is that correct?
 3 **A. Well, 5, 6, 7 and part of 8, yeah, that's correct.**
 4 **Q.** Okay. Now am I correct in understanding then that
 5 all of these are URL addresses to Web sites that you
 6 tried to access and could not through the NCRL
 7 computers?
 8 **A. Yes, sir, some of these sites were blocked under**
 9 **Bess, some were blocked under Fortinet, and those**
 10 **were sites that I had tried to access.**
 11 **Q.** Okay. Now, sites that were blocked under Bess,
 12 which is the prior filtering service --
 13 **A. Uh-huh.**
 14 **Q.** -- the service that preceded Fortinet?
 15 **A. Uh-huh.**
 16 **Q.** Is that "yes"?
 17 **A. Yes.**
 18 **Q.** Okay. Now, do you know whether those sites would
 19 still be blocked under Fortinet?
 20 **A. I believe that some of them are and some of them**
 21 **aren't. I know that I could get into "buckknives"**
 22 **and I think "winchester" and "savage" now. But I**
 23 **know all the personal sites and "moderndrunkard" and**
 24 **"rotten.com" and all that are still blocked. I'm**
 25 **not sure about "trojancondoms" -- I don't think I've**

1 **subsequently rechecked on Fortinet, but I can't**
 2 **swear to that.**
 3 Q. Okay. Would you do me a favor and go through the
 4 list of Web sites that you know you now have access
 5 to because of the Fortinet -- the updated Fortinet
 6 service.
 7 A. **I know that they had subsequently unblocked, I**
 8 **think, most of the sites that were mentioned in the**
 9 **Wenatchee World article. So "savage" would be**
 10 **allowed. "Winchester" and "buckknives" would be**
 11 **allowed --**
 12 Q. Tell you what, just put an asterisk or check mark
 13 next to the sites that are no longer an issue
 14 because of the new filtering service.
 15 A. **The ones that I can swear to. I'll put a question**
 16 **mark next to the ones that I think probably could be**
 17 **but can't swear to. How's that?**
 18 Q. If you would, just verbally tell me which sites that
 19 you're marking with one mark or another so that I
 20 can follow along --
 21 A. **Okay, just putting a slash next to the two or three**
 22 **that I know to be unblocked now or, you know, very**
 23 **much believe to be unblocked now. And that would be**
 24 **"keepandbeararms.com" and "buckknives.com." I'm**
 25 **putting a question mark next to winchesterguns.com**

and "savagearms.com" since I think they're unblocked
 2 but can't swear to it. I'm putting a question mark
 3 next to "trojan" because I think that's unblocked,
 4 but I can't quite swear to it. Couldn't say "yes"
 5 in good conscience.
 6 **That's it that I can say in good conscience**
 7 **are unblocked and the two that I think are probably**
 8 **unblocked and that's it out of this whole list.**
 9 **Everything else I recognize I would honestly believe**
 10 **to be blocked under Fortinet as of now -- or as of**
 11 **the last time I was in here.**
 12 Q. Would you characterize any of the Web sites on this
 13 list as pornographic in nature?
 14 A. **No. I mean, a lot of them are study sites. You**
 15 **know, like "paperaircraft.org" was blocked under**
 16 **porn. That's a study site. "Texorcist" was**
 17 **religious in nature. "Moderndrunkardmagazine" is**
 18 **a -- actually has oddly enough some very great**
 19 **remixes and some pretty good literary work on some**
 20 **very famous people.**
 21 Q. What about "www.porno.com"?
 22 A. **Well, that would be fairly obvious. I mean, I was**
 23 **just kind of testing the waters with that one.**
 24 Q. "That would be fairly obvious" what?
 25 A. **I believe that to be, you know, an X-rated site.**

1 Q. Are there any other obviously X-rated sites in your
 2 estimation?
 3 A. **No. I mean, no. I think I saw "topashot" once in a**
 4 **great while on "ehowa.com" and "beerandshots.com" --**
 5 **on those two or "woopass" and "beerandshots," but**
 6 **those are just games.**
 7 Q. In your estimation, are any of these Web sites
 8 inappropriate for viewing by minors?
 9 A. **That's parental responsibility not mine.**
 10 Q. So is your answer "no" as far as the library is
 11 concerned?
 12 A. **As far as the library is concerned, my answer is**
 13 **"no."**
 14 Q. What is "www.swojo.com," s-w-o-j-o?
 15 A. **Let's see, I've only been in that a couple of times.**
 16 **It's really -- I know that that -- I do not believe**
 17 **that one to have any nudity on it at all.**
 18 Q. What is that Web site?
 19 A. **Like I said, off the top of my head, I cannot quite**
 20 **recall. There were a lot of sites that I visited,**
 21 **you know, once or twice and that was it. I visited**
 22 **probably thousands of Web sites in my life.**
 23 Q. Okay. But you recall these because you put them in
 24 your interrogatory answer.
 25 A. **I put them in my interrogatory answer. I do**

1 **remember I tried to access "swojo." It's just that**
 2 **there are a lot of sites in here, and I cannot**
 3 **remember the specific nature of each of them**
 4 **immediately upon mention of it.**
 5 Q. Were the Web sites listed in your answer to
 6 Interrogatory Number 5 Web sites that you wanted to
 7 view as a matter of personal interest or for some
 8 other purpose?
 9 A. **By and large, most of them were. I think there were**
 10 **only a couple that were sent to me from other people**
 11 **to check.**
 12 Q. As part of this litigation?
 13 A. **As part of this litigation and, you know, sometimes**
 14 **I would hear somebody on the street say, "I can't**
 15 **even get to this site.**
 16 **"Oh, what site?"**
 17 **And I just kind of -- if I happened to recall**
 18 **it when I came in on a terminal, I'd checked it. I**
 19 **mean, there were co-workers and, you know, people**
 20 **that knew I was involved in this that said, "You**
 21 **know, I couldn't even go there." So ...**
 22 Q. Give me an example of that.
 23 A. **I can't give you a specific. It was usually just if**
 24 **I was at an Internet cafe. You know, "Oh, why are**
 25 **you here paying five bucks an hour?**

1 "Oh, well, you know, this is the only
 2 unfiltered access I can get today.
 3 "Oh, the library, they wouldn't let me go
 4 here."
 5 Again, I can't give you any names or anything
 6 because I can't recall honestly. I would if I
 7 could.
 8 Q. Have you read the reports furnished by the expert
 9 witnesses on behalf of the plaintiffs?
 10 A. As of this time to the best of my recollection, not
 11 yet.
 12 Q. Okay. Do you know who the experts are?
 13 A. Again, if they were ever mentioned any by name, I
 14 cannot recall, so I would have to answer no.
 15 Q. Did you perform any work, undertake any activity in
 16 support of an opinion expressed by an expert witness
 17 designated by the plaintiffs in this case?
 18 A. Ummm, specifically what do you mean by that?
 19 Q. Did you perform any work to assist an expert in
 20 reaching an opinion that has been expressed in the
 21 expert's report?
 22 A. To reach a conclusion that somebody else has drawn,
 23 I would have to say I don't think so. If you're
 24 asking whether or not I checked a Web site at the
 25 behest of an expert, then I would have to say yes.

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Q. Okay. Which expert?
 2 A. Again, as I stated previously, if I ever knew these
 3 people by name, I could not recall. I do not think
 4 that I have.
 5 Q. Okay. Which Web sites were you asked to check at
 6 the behest of an expert?
 7 A. As I stated towards the beginning of these
 8 proceedings, there were several. I have them cashed
 9 on my Yahoo! account. But, you know, you're talking
 10 about a couple hundred Web sites potentially. I
 11 couldn't be expected to recall them off the top of
 12 my head.
 13 Q. Are any of these Web sites in your -- included in
 14 your answer to Number 5?
 15 A. It would be very few. Like I said, most of these I
 16 think were mine. But "imesh.com," I believe -- the
 17 "imesh.com," I believe -- You are asking for
 18 specifics; right? I'm not volunteering this?
 19 Q. Correct.
 20 A. Okay, just so we're clear on that. I think the
 21 "freepapers.net" was one,
 22 "americanmortgageandrealty.com, angelcrack.com" the
 23 "chavda.com, clinicaldentalmiranda.com,
 24 fuckthepolice.com, lonecarrot.com." The one right
 25 below "lonecarrot," I'm not going to even attempt to

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1 pronounce this early in the morning. It's spelled
 2 m-a-n-g-a-l-a-m-i-n-f-o-t-e-c-h ".com." And the two
 3 below that, "markrudd.com" and "miraclealley.com,
 4 paybycell.com, squartier.com, sydneybeach.com,
 5 webmaxtemplates.com, 10jigi.org,
 6 alfredvogelgrandprix.org, atomichamster.org -- that
 7 one looked so interesting that I went to my own
 8 computer and looked it up -- "castle-walls.org,
 9 columbus-amsterdam-bid.org, cscstl.org,
 10 dabarworship.org, eatseafood.org,
 11 faithchurchofdavis.org, familiesforfreedom.org,
 12 financingbeginnings.org, healthdirectedriding.org,
 13 jastar.org" -- oh, no, "iastar.org" -- my mistake --
 14 "iconmaker.org, idresearch.org, jeanne-garnier.org,
 15 kindnessusa.org, kindstot.org, lamberth.org,
 16 lagator.org, lphu.org, menesak.org,
 17 milgramreenactment.org, myscienceproject.org,
 18 newsongsd.org, offer.org, and ordomag.org." And if
 19 I remember right, every single one of those sites
 20 was blocked.
 21 Q. How about on page 8? The list continues.
 22 A. Oh, my apologies. "Orctu.org, paperaircraft.org" --
 23 Well, actually pretty much everything on page 8.
 24 Let's just say that. That would be easier than
 25 trying to pronounce some of this stuff this morning.

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1 Q. And, again, each of those sites were sites that you
 2 were asked to check?
 3 A. Yes, sir.
 4 MR. MANVILLE: Tom, can I clarify
 5 something in regards to the sites that Mr. Heinlen
 6 was asked to check? And if you don't want me to do
 7 that, I'm happy to just let him testify based on his
 8 recollection.
 9 MR. ADAMS: Go ahead.
 10 MR. MANVILLE: If you go to page 6,
 11 everything after "411broadband.com" from there on
 12 out, those are sites that he was asked to checked.
 13 And I believe those are all sites that are listed in
 14 Bennett Haselton's report.
 15 MR. ADAMS: After "411broadband"?
 16 MR. MANVILLE: Yeah, ".com." And
 17 Mr. Heinlen obviously is remembering some of the
 18 specific sites that he looked at. But everything
 19 from there on out to page 8 he was asked to check.
 20 Some of the sites on page 5 and on to page 6, he was
 21 also asked to look at, at various times. I don't
 22 remember exactly which ones they were, but they're
 23 more toward the bottom of page 5 and then on to
 24 page 6.
 25 THE WITNESS: I do believe that most of

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1 page 5, at least, was almost all mine.
 2 MR. MANVILLE: I think a substantial
 3 portion of it is yours. That's right.
 4 So I don't usually like to jump in, but I
 thought that might be helpful.
 6 MR. ADAMS: It is helpful.
 7 Q. (By Mr. Adams) Most of what is on page 5 are your
 8 own sites?
 9 A. Yes, sir.
 10 Q. Does that include "www.porno.com"?
 11 A. That one, I'm not sure -- I do not think that
 12 "porno.com" was one of my own.
 13 Q. How about "whitehouse.com"?
 14 A. "Whitehouse.com," I think, actually was --
 15 Q. How about "playboy"?
 16 A. -- when I was first exploring the filter.
 17 "Playboy," I was a subscriber for years. Naturally
 18 I would have clicked on that just when I was seeing
 19 that everything was blocked.
 20 Q. Sure. How about "eharmony.com"?
 21 A. That was one of mine.
 22 Q. Okay. I think I understood you mention a moment ago
 23 when you were responding to a prior question that
 24 "atomichamster.org" was interesting enough to you
 25 that you went home and --

A. I went and looked at it, yeah.
 2 Q. On your home computer?
 3 A. I don't recall the specifics on it, but I know that
 4 it -- I do not believe that would be pornographic in
 5 the least. I just thought that the name of it was
 6 interesting enough that when I did get to another
 7 computer I had to type that one in.
 8 Q. Okay. And I think you said that you looked at that
 9 at home.
 10 A. I did, but that was during a time when I had access
 11 outside the library. And as I've stated earlier,
 12 that is sporadic.
 13 Q. Got it. Any of the other sites included in your
 14 answer to Interrogatory Number 5 which you say you
 15 were blocked at the library, have you been able to
 16 get access to them on your computer?
 17 A. Well, since the library is blocked, I would assume
 18 that if I'm on my own system or on a private system
 19 that I could get access easily enough to any of
 20 these sites outside the library.
 21 Q. Got it. Flip to page 9 if you would, Mr. Heinlen.
 I'm looking in particular at your answer to
 23 Interrogatory Number 9 where you're describing what
 24 efforts you made to bring concerns about blocked
 25 sites to the attention of NCRL personnel.

1 A. Uh-huh.
 2 Q. And you indicate in your final sentence that you
 3 "spoke with and/or corresponded with NCRL
 4 administrators Dean Marney and Dan Howard." Do you
 5 see that?
 6 A. About one or two -- Yes.
 7 Q. Okay. Have you provided your counsel to provide to
 8 me all correspondence in your possession?
 9 A. Everything that I had. As I had stated earlier,
 10 however, in several subsequent moves, there is one
 11 blue plastic folder that I have that may yet have
 12 some things in it that I have not through every
 13 honest effort that I have made been able to locate.
 14 Q. All right. If you do find it, you'll turn it over
 15 to your lawyer?
 16 A. The second I do, Duncan will get it.
 17 Q. Okay. What is in there that you can recall?
 18 A. That I can recall, I think it would have been --
 19 there was a copy of the Wenatchee World article when
 20 shortly after the US v. ALA ruling came out and
 21 their board of directors decided that they weren't
 22 going to unblock for adults. There was that. There
 23 was one letter from Director Marney, and I believe
 24 one or two actual letters from Assistant Director
 25 Howard. I think that would be about all that was

1 contained in there. A couple of Freedom of
 2 Information Act requests, I recall, minutes from the
 3 meeting where they decided against unblocking the
 4 filter for adults. I believe that is what is in
 5 that file.
 6 Q. Have you ever attended a public meeting of the
 7 trustees of the NCRL?
 8 A. They have them, I think, one Thursday a month at
 9 one o'clock in the afternoon in Wenatchee. That is
 10 very prohibitive for a working man like myself to
 11 get to.
 12 Q. So you have not attended a meeting.
 13 A. It's not feasible for me to do so, no.
 14 Q. Putting aside the correspondence, what can you tell
 15 me about your recollection of conversations with
 16 either Mr. Marney --
 17 A. I've never actually talked to them on the phone. I
 18 wanted everything in writing, so it was all e-mail
 19 letters --
 20 Q. Okay. So when --
 21 A. -- to the best of my recollection.
 22 Q. I'm sorry, go ahead.
 23 A. Oh, no, to the best of my recollection, it was
 24 generally via e-mail, and you have the bulk of it
 25 right in front of you.

1 MR. MANVILLE: Let him finish his --
 2 THE WITNESS: Oh, sorry.
 3 Q. (By Mr. Adams) No problem.
 4 So in the last sentence of your interrogatory
 answer -- answer to Interrogatory Number 9 where you
 5 said, "Mr. Heinlen also spoke with and/or
 6 corresponded with NCRL administrators," in fact, you
 7 don't recall any conversations; is that right?
 8 A. **I think the "or" covers that.**
 9 Q. I'm just clarifying.
 10 A. **Yeah. I do not recall actually picking up the**
 11 **phone. I may or may not have at one point, but I do**
 12 **not recall.**
 13 Q. Okay. Do you recall conversations with anyone else
 14 affiliated with NCRL administration on the subject
 15 of Internet filtering?
 16 A. **I asked a couple of librarians, and they just said**
 17 **they couldn't do it, basically that they were just**
 18 **following orders and that the policy came out of**
 19 **Wenatchee.**
 20 Q. Okay. In your response to Interrogatory Number 10,
 21 you make reference to a conversation with a
 22 gentleman named "Ray Mendiola" in New Jersey. Do
 23 you see that?
 24 A. **I remember actually speaking with Mr. Mendiola over**
 25

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the phone on about two occasions, I think.
 2 Q. Okay. What'd you tell Mr. Mendiola and what did he
 3 say in response?
 4 A. **Well, he was the USAC investigator, and he told me**
 5 **that he had sent a questionnaire to Director Marney**
 6 **on everything regarding the filtering policy. I do**
 7 **not remember -- I believe -- yeah, I believe**
 8 **October 2004 sounds correct. He was a very fast**
 9 **talker, a little hard to understand. He seemed**
 10 **slightly incredulous of their policy himself that**
 11 **they were receiving "e-rate" funds and not**
 12 **unblocking the filters. And he had never heard of**
 13 **that from another library in the country.**
 14 Q. Was anyone else a part of that conversation?
 15 A. **Not on my end. He could have had me on speaker in**
 16 **New Jersey.**
 17 Q. Did you exchange correspondence with Mr. Mendiola?
 18 A. **As far as letters and e-mail, not that I recall.**
 19 **And I cashed every e-mail that I had ever gotten in**
 20 **this matter in a separate folder in my Yahoo!**
 21 **account, and I saw nothing from him there.**
 22 Q. Any e-mail pertaining to NCRL Internet filtering and
 23 your views about it, would that be contained in your
 24 Hotmail account?
 25 A. **I said, "Yahoo!"**

78

1 Q. I'm sorry.
 2 A. **Yeah. I did my best to save everything that I had**
 3 **in a separately labeled folder in my Yahoo! Account.**
 4 Q. Okay. And you've made all that available to your
 5 lawyer for production in this case?
 6 A. **Yes. And a lot of that was privileged**
 7 **correspondence with Mr. Manville.**
 8 Q. I understand.
 9 MR. ADAMS: Do we have a log of that?
 10 MR. MANVILLE: I don't believe you do.
 11 We'll get one to you. But I don't think there's
 12 going to be anything in it other than just
 13 communications with us.
 14 Q. (By Mr. Adams) You wrote an article for
 15 "upsidedownworld.org"; is that right?
 16 A. **That was some time ago, yes, sir. Mr. Daniels was**
 17 **gracious enough to publish it.**
 18
 19 (EXHIBIT 8 WAS MARKED.)
 20
 21 Q. (By Mr. Adams) Mr. Heinlen, I've handed you a
 22 four-page document that we've marked as Deposition
 23 Exhibit 8 entitled "Censorship at the Local
 24 Library." Take a look at that if you would, please.
 25 A. **Okay -- or, I mean, yes.**

79

1 Q. Do you want a little more time?
 2 A. **Yeah, I'll take a couple of minutes.**
 3 **My writing style has improved quite a bit.**
 4 Q. (By Mr. Adams) Have you had a chance to review this
 5 document?
 6 A. **Yes, I have. I read the whole thing.**
 7 MR. ADAMS: Off the record for a second.
 8
 9 (A DISCUSSION WAS HELD OFF THE RECORD.)
 10
 11 Q. (By Mr. Adams) Okay. Let's go back on the record.
 12 Referring to Exhibit 8, Mr. Heinlen, did you write
 13 this article?
 14 A. **I have to claim I did, yes, sir.**
 15 Q. Okay. And did you write it in approximately July of
 16 2004?
 17 A. **That sounds about right.**
 18 Q. Okay. Why did you write this? Was it solicited?
 19 Did somebody come to you or did you offer to write
 20 it?
 21 A. **No, I was just -- Like I said, I just wrote it**
 22 **because I felt it needed to be written.**
 23 Q. Okay. Have you published anything on this
 24 particular Web site before or after?
 25 A. **No, sir. That was the only time I've ever been**

80

Exhibit F



On Dallas library computers, porn is a regular sight

News analysis finds easy access in Dallas; city plans review

12:00 AM CST on Tuesday, January 15, 2008

By **DAVE LEVINTHAL** / The Dallas Morning News
dlevinthal@dallasnews.com

Viewing hard-core pornography is as easy as obtaining a Dallas library card.

And at Dallas' central library, the practice of patrons viewing explicit Internet material is commonplace, according to a *Dallas Morning News* analysis of Web pages accessed on J. Erik Jonsson Central Library public computers and stored on the city's computer server.

During a 45-minute period on Dec. 19, for example, central library computer users accessed more than 5,200 Web pages containing identifiably pornographic material, such as photographs depicting full nudity, intercourse and other sex acts. That figure represents about 7.5 percent of the more than 69,000 Web pages accessed on the central library's public computers during the time period studied.

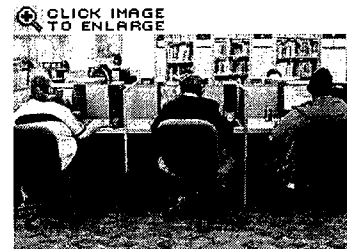
With 26 public library branches throughout Dallas, the data suggest that tens of thousands of pornographic Web pages each day flash across the screens of public computers in plain view of any passer-by, from unflappable adults to impressionable children – who may freely access pornography themselves.

This easy availability of pornography at Dallas' libraries also pits two strong interests against each other: Those who don't believe a taxpayer-funded facility designed for education and research should facilitate people titillating themselves and those who believe restricting information contains its own nefarious set of pitfalls.

Top city officials, unaware of the prevalence of pornographic material viewing on library computers, said they'll immediately review the matter.

"It's certainly concerning to me. It's surely not appropriate in a public library, and it's not a signal we want to send," Mayor Tom Leppert said. "We want people to come to our libraries and use them for traditional reasons. Viewing this material – it's clearly not what the computers in the library are there for."

Deputy Mayor Pro Tem Dwaine Caraway said: "We should look at this situation; we will look at it and we will try to do the necessary things we need to do to ban it as best we can. It makes all the sense in the world that we control access to it – and immediately."



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At the J. Erik Jonsson Central Library downtown, patrons access the Internet to review bus schedules, shop for shoes, read news articles, play online games and study history. But a *Dallas Morning News* analysis shows tens of thousands of pornographic Web pages flash across the screens each day as well.

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Both Mr. Leppert and Mr. Caraway say they'll discuss the matter with the city manager's office and library officials.

Installing pornography-filtering software on library computers, both officials added, is probably warranted.

Dallas City Manager Mary Suhm, first hired to city service as a librarian, says she's "very concerned" about the number of people viewing pornography on city computers, "and we're conscious we have folks in the library using it who don't want to be looking at that kind of stuff."

As for software-based pornography filters?

"We don't think filtering is the answer because of the reasons the American Library Association has outlined," she said.

'Other effective ways'

The American Library Association is outspoken in its belief that computer pornography filters, which Dallas public libraries don't employ, are easily obtainable but hardly infallible.

The filters have been known to inadvertently block medical and artistic information, such as Web pages about breast cancer and classic paintings depicting nudity. They also raise the specter of a government – or corporation – dictating what residents may view when using a library computer.

"There is no technology that can filter out all objectionable material, and every filter filters out constitutionally protected material. Filtering is of great concern to us, as a result," said Emily Sheketoff, executive director of the American Library Association's Washington, D.C., office.

Libraries looking to limit pornography should consider placing their Internet-connected computers in clear view of library staff, or install privacy screens so that the computer user, not bystanders, is the only person capable of viewing what's on the monitor, Ms. Sheketoff said.

"There are other effective ways libraries can go about protecting children from images parents may find objectionable than simply blocking material. Filters – they create a bigger free speech violation issue than is worth it," said Tracey Hayes, director of the American Civil Liberties Union of Texas' Access Project.

Many of the Web pages viewed by Dallas library patrons are popular and pedestrian – Google, Yahoo, YouTube, MySpace, Facebook and dating sites such as Match.com and True.com. Users accessed the Internet to review bus schedules, shop for shoes, read news articles, play online games and study history.

But plenty of pages are potentially offensive, even shocking.

Among the more extreme pornographic Web sites accessed on Dallas library computers is one billing itself as containing "merciless scenes of raw brutal domination" and "unleashed sexual terror." Some of the sites contain scenes of overt sexual violence.

Texas law, library policy

Dallas doesn't have a law specifically prohibiting viewing pornography on public library computers. But it does empower library officials to terminate access to anyone whose Internet usage isn't "compatible with the mission of the library."

State law also addresses the issue, albeit indirectly.

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The Texas Penal Code prohibits a person from intentionally displaying obscene photos or other material and

from being "reckless about whether a person is present who will be offended or alarmed by the display or distribution."

City officials, however, can't recall any recent case in which authorities prosecuted a Dallas library patron under the law.

Ms. Suhm notes that the library has barred 36 people from using the library because they violated library policies.

Additionally, computers are placed in public places so librarians may monitor whether a patron's Internet usage is violating library policies, Ms. Suhm said.

If someone is violating a library policy, libraries are able to send electronic messages directly to that patron's terminal requesting them to cease their behavior, she said, adding that some librarians have reported sending such messages as many as a few dozen times each week.

As far as District 13 council member Mitchell Rasansky is concerned, Dallas has but one route to pursue.

"I'm going to put a stop to this. This is just disgusting. I can't believe this is happening in our libraries," he said, noting that he plans to speak this week with Ms. Suhm and the city attorney's office to review options, including software filters.

Not only in Dallas

Dallas is hardly the only U.S. city to grapple with the issue of pornography accessed on public library computers.

Three years ago in Denton County, officials placed pornography filters on most public computers in part because of complaints that users were downloading explicit images.

Plano's library Internet policy states that all but one computer in each library uses a filtering device but also notes it "cannot guarantee that access to sites containing adult entertainment, pornography or illegal activities will be blocked."

Policies in large U.S. cities vary greatly, with some like Dallas forgoing pornography filtering on library computers, while others, such as Phoenix, use them. San Jose, Calif., is in the midst of a heated debate over whether to implement porn-filtering software.

"I suspect," Mr. Caraway said, "that we'll be having our own discussion."

Exhibit G

Welcome to the Brainerd Lakes Area No. 1 Online Information Source!



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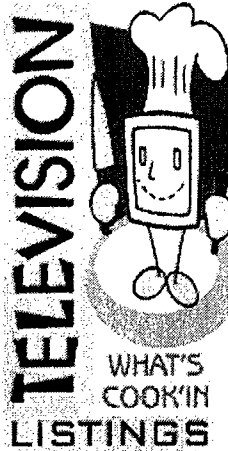
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Web posted Saturday, August 16, 2003



Librarians settle Internet porn case

MINNEAPOLIS (AP) -- Minneapolis library officials will consider restricting patrons' access to Internet porn and pay \$435,000 to a dozen librarians to settle a lawsuit that alleged the prevalence of the images constituted a hostile work environment, the librarians' lawyer said Friday.

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Library officials confirmed the settlement in a statement. They didn't confirm the amount, but said it involves a payment from their liability insurer.

Lawyer Bob Halagan, representing the librarians, said money wasn't the point of their claim of a hostile work environment. But he said that they sought a sufficient payment so that library officials elsewhere would take seriously such staff complaints.

As part of the operating changes, library officials will consider Internet filters to screen out certain materials, changes in the

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printing of Internet material to reduce exposure to explicit material, more sanctions for those who violate library Internet policy, and consultation with staff on the placement of terminals in the new downtown library.

The library didn't admit wrongdoing, but Laurie Savran, the trustee representing the Library Board in settlement negotiations, apologized during an all-day settlement conference on Aug. 7.

"I apologized to the 12 plaintiffs that this happened to them and that it was so difficult for them and that we didn't address their concerns more expeditiously," Savran said.

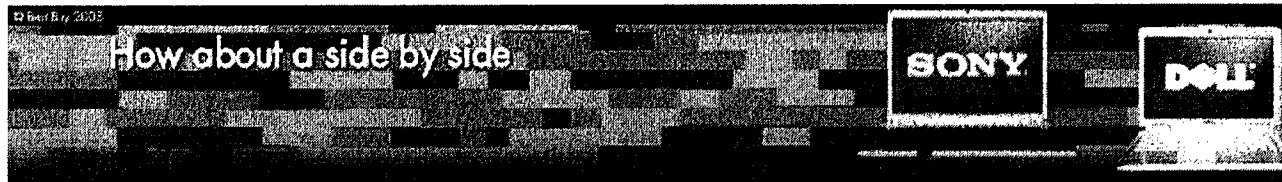
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Librarians sue over being subjected to Internet porn

MINNEAPOLIS (AP) — A barrage of Internet pornography has turned the downtown library into a hostile work environment for a dozen librarians, according to claims in a new federal lawsuit.

The 12 sued the city library system Monday in U.S. District Court in Minneapolis, alleging they endured an intimidating, hostile and offensive workplace that violated state and federal law. The lawsuit seeks damages of at least \$400,000 each, plus workplace changes.

But one of the librarians, Wendy Adamson, said they still are willing to participate in mediation of the dispute.

The women first filed discrimination charges with federal and state agencies in 2000.

"It's been three years. We would have sat down with the library at any time during those three years, and they wouldn't do it," Adamson said.

The case has aroused national attention as it seeks to define how far libraries should go to avoid censorship, at the risk of exposing librarians and patrons to unwanted images.

"We were living in hell, and they were unwilling to acknowledge the problem," said Adamson.

The librarians and their lawyer, Bob Halagan, will be going against a library system that has had considerable turnover since the complaints were made. Library Director Mary Lawson, whom the librarians claimed was unwilling to impose stricter controls on computer use, has been replaced.

Her successor, Kit Hadley, said that she will consult with the library board's attorney on legal options but that her goal was a better working environment for all library users.

The issue arose soon after Internet access was installed in 1997. Almost immediately, the librarians claimed, the screens began displaying "virtually every imaginable kind of human sexual conduct."

One librarian, Nancy Corcoran, told Lawson about the exposure, but the director said she favored a policy of unfettered use of the Internet, the lawsuit alleges. The matter escalated through 2000, prompting debate about the extent to which the library should try to control access, limit use and protect children and others within view of screens.

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Library officials said they had instituted guidelines aimed at curbing the abuses, but the librarians said the new policies didn't go far enough.

The lawsuit alleges that the 12 librarians became increasingly upset and angry at the library system and patrons.

Finally, in May 2000, they filed discrimination charges with the U.S. Equal Employment Opportunity Commission and the Minnesota Department of Human Rights.

A year later, the EEOC found probable cause that federal law had been violated because of a sexually hostile work environment. The case was referred to the Justice Department, which after a 19-month review decided last month not to file suit.

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