

The Honorable Edward F. Shea

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

SARAH BRADBURN, PEARL)
CHERRINGTON, CHARLES)
HEINLEN, and THE SECOND) NO. CV-06-327-EFS
AMENDMENT FOUNDATION,)
) NORTH CENTRAL REGIONAL
Plaintiffs,) LIBRARY'S MOTIONS IN LIMINE
)
v.)
)
NORTH CENTRAL REGIONAL)
LIBRARY DISTRICT,)
)
Defendant.)

//
//

NCRL'S MOTIONS IN LIMINE
JUDGMENT - 1
CV-06-327-EFS
#664313 v1 / 42703-001

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1 **A. Sally Beesley and Kenton Oliver should be excluded from trial as**
2 **their testimony is irrelevant.**

3 Plaintiffs have identified Sally Beesley as a fact witness. Ms. Beesley is
4 the Director of the Jefferson County Library District (“JCLD”) in Madras,
5 Oregon. Plaintiffs propose to call Ms. Beesley to testify “about her library’s
6 policies, procedures and experiences with regard to Internet filters.” In addition,
7 Plaintiffs propose to have Ms. Beesley testify regarding “alternatives to refusing
8 to disable Internet filters at the request of adult library patrons; the JCLD’s
9 Internet policies and procedures; how the JCLD’s Internet policies and
10 procedures have been implemented; her experience working with Internet
11 policies, procedures and filters; and the consequences of providing unfiltered
12 access at JCLD’s computers.”

13 Plaintiffs have also identified Kenton Oliver as a fact witness. Mr. Oliver
14 is the Executive Director of the Stark County District Library (“SCDL”) in
15 Canton, Ohio. Plaintiffs intend to call Mr. Oliver to testify “about his library
16 system’s policies, procedures and experiences with regard to Internet filters.” In
17 addition, Mr. Oliver is expected to testify regarding “alternatives to refusing to
18 disable Internet filters at the request of adult library patrons; the SCDL’s
19 Internet policies and procedures; how the SCDL’s Internet policies and
20 procedures have been implemented; her experience working with Internet
21 policies, procedures and filters; and the consequences of providing unfiltered
22 access at SCDL’s computers.”

1 procedures have been implemented; his experience working with Internet
2 policies, procedures and filters; and the consequences of allowing patrons of the
3 SCDL to bypass the library's Internet filter."

5 Plaintiffs offer Ms. Beesley's and Mr. Oliver's testimony to show
6
7 (1) some libraries do not use filters or will remove the filter at the request of an
8 adult patron and (2) some of the same libraries do not report any problems with
9 their Internet policies. With respect to the first point, the fact that some libraries
10 do not use filters, or will remove the filter on the request of an adult patron, is
11 not disputed. No testimony on this point is necessary. Regarding the second
12 point, the fact that other libraries may not have problems with unfiltered access
13 is not germane. The essential issue posed by this case is whether NCRL's
14 policy of refusing to completely disable the Internet filter on an adult patron's
15 request is constitutional under the Washington and Federal Constitutions. How
16 another library may choose to address issues associated with Internet use has no
17 bearing on NCRL's approach. This is particularly true, where as here, neither
18 Ms. Beesley nor Mr. Oliver has any personal knowledge of NCRL's policies, its
19 territories, its patrons, or its administration, and therefore, have no basis upon
20 which to draw any parallels. See Deposition of Sally Beesley, pp. 14-15; 49-50;
21 Deposition of Kenton Oliver, pp. 36-38; 47-49.

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JUDGMENT - 3

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1 At best, Mr. Oliver and Ms. Beelsey's testimony is unproductive and
2 pointless. At worst, their testimony serves to confuse the issue. In either case,
3 their testimony is precluded by ER 403.
4

5 Mr. Oliver has a longstanding affiliation with the American Library
6 Association ("ALA"). In his deposition, Mr. Oliver testified that he is the Chair
7 of the Intellectual Freedom Committee. The Intellectual Freedom Committee
8 "deals with censorship...including access to information through the
9 Internet...and to make sure (libraries) will not discriminate in their access." See
10 Dep. of Kenton Oliver at p. 20. The Intellectual Freedom Committee is
11 "opposed to Internet filters in any way that would impeded access for
12 information to any library users" and this is, in fact, the ALA official position on
13 the issue. Id. at pg. 21.
14
15
16
17

18 Mr. Oliver's only understanding of the facts of this case, is based on
19 verbal updates from the Americans for Civil Liberties Union ("ACLU"), which
20 has taken an active role in the prosecution of Plaintiffs' claims against NCRL.
21 Id. at 51. Mr. Oliver's testimony may be nothing more than an effort to interject
22 the official positions of the ALA and the ACLU into this litigation.
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JUDGMENT - 4

CV-06-327-EFS

#664313 v1 / 42703-001

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1 **B. June Pinnell-Stevens should be excluded from Plaintiff's witness list**
2 **as her testimony is irrelevant and her opinion is biased.**

3 Plaintiffs identified June Pinnell-Stevens as an expert witness.
4
5 Ms. Pinnell-Stevens served as the Collection Services Manager for the
6 Fairbanks North Star Borough Public Library in Fairbanks, Alaska from 1988-
7 2006. Plaintiff's retained Ms. Pinnell-Stevens to testify as an expert "about
8
9 issues such as the role of public libraries in our society, the distinction between
10 collection development and censorship and alternatives to filtering."

11
12 Any discussion of alternatives to filtering is irrelevant to the
13 constitutionality of the choices made by NCRL. Accordingly, Ms. Pinnell-
14
15 Stevens should not be allowed to testify regarding alternatives, particularly those
16 utilized by a distant library with which she has no particularly recent affiliation.
17
18 Furthermore, it is clear that Ms. Pinnell-Stevens is incapable of offering a fair
19 and balanced opinion of value to this Court. Ms. Pinnell-Stevens is actively
20 involved in the ALA. She is currently on its executive board and has served in
21 that role for two years. She also has served on various ALA committees,
22 including: The Presidential Advisory Committee, The Intellectual Freedom
23 Committee, and the Freedom to Read Committee. Ms. Pinnell-Stevens
24
25 embraces ALA's opposition to Internet filtering and the organization's belief
26
27

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JUDGMENT - 5

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1 that the blocking of any constitutionally protected speech by an Internet filter
2 constitutes censorship and is, therefore, unacceptable for a public library. See
3 Pinnell-Stevens Deposition, pg. 43. Ms. Pinnell-Stevens' opinion on the
4 traditional role of a library and her opinions on censorship are inexorably tied to
5 the mission of the American Library Association, and only serve to inflame and
6 confuse the issues before the court.
7

8
9 Ms. Pinnell-Stevens is also an active member of the ACLU. She was
10 awarded the Citizen Activist of the Year in 1998. Although she could not
11 specifically recall the reason for the recognition, Ms. Pinnell-Stevens testified
12 that it may have been for her work on Internet filtering. See Deposition of June
13 Pinnell-Stevens, pg. 49. Yet Ms. Pinnell-Stevens has no personal knowledge of
14 NCRL's policies, its territories, its patrons, or its administration. Consequently,
15 she is unable to draw any comparisons between her experience and NCRL's
16 approach to filtering. *Id.* at pp 16-25. For the reasons set forth above,
17 Ms. Pinnell-Stevens should be excluded from trial.
18
19
20
21

22 **C. All non-party witnesses should be excluded from the courtroom**
23 **during the course of trial so that they cannot hear the testimony of**
24 **other witnesses.**

25 In the event that Kenton Oliver, Sally Beesley and June Pinnell-Stevens
26 are permitted to testify, NCRL requests that all non-party witnesses be excluded
27

28 NCRL'S MOTIONS IN LIMINE

1 from the courtroom during the testimony of other witnesses due to the effect that
2 other non-party (and party) testimony may have on their own.¹
3

4 **D. The parties should be required to give at least eight hours notice of**
5 **witnesses to be called, and/or for depositions and exhibits to be used**
6 **at trial.**

7 The parties should give the Court and opposing counsel eight (8) hours
8 prior notice of each witness, deposition or exhibit to be called or used at trial to
9 facilitate the prompt and orderly presentation of evidence and witnesses so as to
10 expedite the trial of this matter. Such a ruling will permit the parties to prepare
11 for anticipated testimony in an orderly fashion.
12

13
14 **E. Witnesses should be precluded from making conclusions of law.**

15 Although testimony in the form of an opinion or inference otherwise
16 admissible is not objectionable because it also embraces an ultimate issue to be
17 decided by the trier of fact, under ER 702 and ER 704, no witness is permitted to
18 express an opinion that is purely a conclusion of law, or merely tells the trier of
19 fact what results should be reached. Such opinions on the ultimate legal issues
20 before the court are not properly considered under the guise of expert testimony.
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¹ See ER 615.

1 F. Any personal opinions of plaintiff's counsel regarding the "justness"
2 of his client's claims.

3 RPC 3.4(e) specifically prohibits an attorney from stating "a personal
4 opinion as to the justness of a cause, the credibility of a witness, the culpability
5 of a civil litigant... ." Any comments by counsel regarding their personal
6 opinion about the validity of their client's claims or defenses do not tend to
7 prove anything and are inadmissible.² ER 402.
8

9
10 Comments regarding an attorney's own opinion regarding the legal or
11 moral validity of his or her case also creates the danger of confusing and
12 misleading the trier of fact from its real purpose — to decide the case on the
13 merits. Thus, even if such commentary were somehow relevant, it must be
14 excluded.³
15

16 //

17 //

18 //

19 //

20 //

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26 ² ER 402.

27 ³ ER 403.

1 In short, it is inappropriate for counsel to inject their attorney's own
2 opinion regarding the legal, factual or moral validity of the claims, which, as
3 stated above, is inappropriate.
4

5 DATED this 31st day of March, 2008
6

7 KARR TUTTLE CAMPBELL

8 *By: /s/ Celeste Mountain Monroe*

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28 NCRL'S MOTIONS IN LIMINE

JUDGMENT - 9

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1 **CERTIFICATE OF SERVICE**

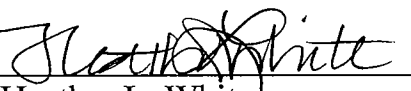
2 I hereby certify that on March 31, 2008, I electronically filed the
3
4 foregoing with the Clerk of the Court using the CM/ECF system which will send
5 notification of such filing to the persons listed below:
6

7 Duncan Manville
8 1629 2nd Ave. W
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Aaron Caplan
ACLU of Washington
705 Second Ave., Ste. 300
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10 Catherine Crump
11 American Civil Liberties Union
12 Foundation
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17 By: 
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON
3 AT SPOKANE

4 SARAH BRADBURN, PEARL
5 CHERRINGTON, CHARLES
6 HEINLEN and the SECOND
7 AMENDMENT FOUNDATION,
8 Plaintiffs,

9 vs.

No. CV-06-327-EFS

10 NORTH CENTRAL REGIONAL
11 LIBRARY DISTRICT,
12 Defendant.

13 /

14

15

16

17

DEPOSITION OF SALLY W. BEESLEY

18

Taken on behalf of Defendant

19

20

21

22

Taken before LISA I. KROON

23

CSR No. 95-0311

24

January 18, 2008

25

1 examples right now of things that they endorsed or
2 supported.

3 Q. Have you ever considered not being a member of
4 the ALA?

5 A. Yeah.

6 Q. Okay. And why is that?

7 A. I think partially because, you know, kind of
8 what I said before, but on the other hand, that's more
9 of a reason to stay there because if all of the more
10 conservative librarians leave, then it just -- you
11 know, it would just become more and more liberal.

12 The only other reason is, you know, do I really
13 want to spend 120 bucks every year to belong to
14 something that I really don't use that much, but...

15 Q. All right. Are you a member of the ACLU?

16 A. I don't think so. What's that?

17 Q. The American Civil Liberties Union.

18 A. No, uh-uh.

19 Q. All right. So I'd like to learn as much as I
20 can while I'm here about the Jefferson County Library
21 District of which you're the director.

22 Can you tell me how the district itself is set
23 up? How does it work?

24 A. You mean geographically?

25 Q. Regionally.

1 A. Okay. It has the same boundaries as the school
2 district. It includes most of Jefferson County with
3 the exception of Crooked River Ranch, and it does
4 include most of Warm Springs Reservation and also
5 includes a small section of Wasco County, and we
6 service, you know, a little town just right over the
7 border into Wasco County, so that kind of -- and it's
8 also part of our school district.

9 Q. Okay. So when you say just over the border,
10 the Washington/Oregon border?

11 A. No, the county border.

12 Q. The county border. Okay.

13 A. Between Wasco County and Jefferson County.

14 Q. How many branches in the district?

15 A. There's just this one.

16 Q. Do you know what the mile radius is of your
17 territory?

18 A. Not off the top of my head, no, uh-uh.

19 There's one other part that you probably
20 wouldn't think to ask that would be important is that
21 we're in a regional library with Deschutes County as
22 well.

23 Q. Okay.

24 A. So everybody in Deschutes County or in
25 Jefferson County, we all use our libraries as if it's

1 that a library does need to address is that, you know,
2 would filtering or not filtering be appropriate for the
3 library.

4 Q. Okay. Do you have a copy of your speech?

5 A. No.

6 Q. With respect to the current litigation for
7 which we're taking your deposition today, what is your
8 understanding of the issues in the current litigation?

9 A. That there was a library in the state of
10 Washington that does have filtered access and there was
11 an adult who objected to that because it blocked them
12 from some site that they were wanting to get on that
13 they apparently felt that they had a right to access in
14 the library.

15 Q. Okay. So as I said in the beginning, I
16 represent North Central Regional Library District, and
17 that is presumably the library district that you're
18 talking about.

19 Have you read the North Central Regional
20 Library's Internet policy?

21 A. I don't think so.

22 Q. Are you able to, as you sit here today,
23 articulate their mission or vision?

24 A. No.

25 Q. Do you know specifically where the district --

1 the subject library district is located?

2 A. No. I may have been told at one time, but I
3 don't remember.

4 Q. Okay. So you don't know what -- the size of
5 the territory or the cities that may be within its
6 region?

7 A. Not that I remember.

8 Q. Do you know if you've ever been to a North
9 Central Regional Library branch?

10 A. No, I haven't.

11 Q. So I take it you haven't sat down at a computer
12 and tried to access the Internet --

13 A. That's correct.

14 Q. -- in their territory?

15 A. I have not.

16 Q. To your knowledge, have you ever spoken with a
17 North Central Regional Library patron about the
18 Internet filter?

19 A. No.

20 Q. Do you know Dean Marney?

21 A. No.

22 Q. I'll represent to you he's the director of the
23 North Central Regional Library District.

24 What about Dan Howard?

25 A. No.

1 STATE OF OREGON)
2)
3 COUNTY OF DESCHUTES)
4

5 I, LISA I. KROON, do hereby certify:

6 That SALLY W. BEESLEY, in the foregoing deposition
7 named, was present and by me sworn as a witness in the
8 above-entitled action at the time and place therein
9 specified;

10 That said deposition was taken before me at said
11 time and place, and was taken down in shorthand by me,
12 a Certified Shorthand Reporter of the State of Oregon
13 and a Registered Professional Reporter, and was
14 thereafter transcribed into typewriting, and that the
15 foregoing transcript constitutes a full, true and
16 correct report of said deposition and of the
17 proceedings that took place;

18 IN WITNESS WHEREOF, I have hereunder subscribed my
19 hand this 23rd day of January 2008.

20
21
22
23
24
25



/s/ LISA I. KROON

LISA I. KROON, CSR No. 95-0311
Registered Professional Reporter



Digital Court Reporting & Video

Transcript of the Testimony of
Kenton Oliver

Date: November 14, 2007

Caption: Sarah Bradburn, et al v. North Central Regional Library District

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AT SPOKANE

CASE NO. CV 06 327 EFS

JUDGE EDWARD SHEA

SARAH BRADBURN, ET AL.,

Plaintiffs,

versus

DEPOSITION OF

KENTON OLIVER

NORTH CENTRAL REGIONAL
LIBRARY DISTRICT,

Defendant.

- - - - -

Deposition of KENTON OLIVER, a witness
herein, called by the Defendant as upon
cross-examination pursuant to the Federal Rules of
Civil Procedure, taken before me, the undersigned,
Laurie Maryl Hart, a Registered Merit Reporter and
Notary Public in and for the State of Ohio, at the
Stark County District Library, 715 Market Avenue
North, Canton, Ohio, on Wednesday, November 14, 2007,
at 12:36 p.m.

- - - - -

1 Q Have you spoken to Miss Pennell Stephens about this
2 case?

3 A Briefly.

4 Q Was that recently?

5 A No.

6 Q Do you recall the substance of your conversation?

7 A It was following when our initial contact by
8 Mr. Manville. And just general, you know, what are
9 you talking about.

10 (Off the Record.)

11 BY MS. MONROE:

12 Q Can you talk to me about the Intellectual Freedom
13 Committee. What is the mission of the committee?

14 A Our primary role is to make sure that we defend the
15 access to information and materials in libraries. As
16 a committee goes, we help create guidelines and
17 standards for the association in that area.

18 Censorship is a broad term, but that's what most
19 people who think of it as being the main committee
20 that deals with censorship, but it has to do with
21 many other things, including access to information
22 through the Internet; it has to do with privacy
23 rights for library patrons; it has to do with how
24 librarians present information in libraries to make
25 sure they will not discriminate in their access,

1 discriminate in access by their patrons. That's kind
2 of the broad.

3 Q Okay. And what is your role in furthering that
4 mission as the chair?

5 A Actually I'm more of a facilitator than anything.
6 I'm the person that facilitates our meetings. I
7 consult with the Office of Intellectual Freedom in
8 setting the agendas and our strategic direction of
9 the committee.

10 Q When you say consult with the Office of Intellectual
11 Freedom, is this a national office located --

12 A In Chicago.

13 Q In Chicago. Okay. The Intellectual Freedom
14 Committee, though, is a national committee; correct?
15 It's not an Ohio --

16 A Correct.

17 Q -- version. Okay. Has the Intellectual Freedom
18 Committee taken an official position on the use of
19 Internet filters in public libraries?

20 A Yes.

21 Q Okay. And what is that position?

22 A They are opposed to Internet filters in any way that
23 they would impede access for information to any
24 library users.

25 Q And you said "in any way"?

1 A I'd have to double-check. Bess is, if I'm correct,
2 Bess is also been known as N2-H2. It's actually a
3 company that's in the Pacific Northwest, I believe,
4 and it's gone through several alliterations.

5 Q Has that filter product changed since you've been
6 here for six years? Besides upgrades.

7 A No.

8 Q Which may happen. So it's always been Bess?

9 A To my knowledge.

10 Q Who was involved in selecting that product?

11 A Our computer services staff. And their manager. And
12 myself. But what they did, they did a -- they did an
13 analysis of the marketplace, and as I recall, it was
14 based on quality of the product and pricing as well.

15 Q Are you aware of whether there's been any concerns
16 from patrons who are minors who feel that they're
17 being denied access to appropriate content because of
18 Bess?

19 A I'm not directly aware of that.

20 Q When I asked you about your responsibilities as
21 executive director and about the library, you
22 provided some background about the district itself,
23 including the number of branches, the number of
24 people in the staff and the operating budget. You
25 said there are eleven branches plus a main branch, so

1 twelve?

2 A Yes.

3 Q Total branches. Okay. What is the physical area
4 that this serves, that your district serves? What is
5 the size of the district?

6 A Oh, gosh. It's hard to give you that in size and
7 square miles because we serve about, our population
8 that we serve is about 250,000.

9 Q Okay.

10 A And the reason it's hard to explain it to you is that
11 we are a composite of quite a few different school
12 districts, which is how public library districts in
13 the state of Ohio are defined. And in our particular
14 case in this county it's actually kind of an odd
15 geographical configuration.

16 Q Because, as you pointed out, you are one of seven --

17 A Correct.

18 Q -- library districts in the county?

19 A Correct.

20 Q Okay. You serve 250,000 patrons?

21 A Uh-huh.

22 Q How many people are in the county, do you know?

23 A I believe there are about 450,000.

24 Q Okay. So you serve a good --

25 A Yeah.

1 Q -- number of those people?

2 A Right.

3 Q All right. What is the general demographic of this
4 county?

5 A Actually I would say that our demographic is a little
6 bit of everything. We have some very urban
7 characteristics in the city of Canton. And some very
8 impoverished areas. We have some very affluent areas
9 in the surrounding townships. We have manufacturing,
10 we have a large manufacturer here, Timken, which is a
11 steel manufacturer. We have a strong labor influence
12 in the area. We have quite a few small universities
13 and colleges in the area.

14 Q And you said you have two bookmobiles?

15 A Two bookmobiles and two kidmobiles.

16 Q With respect to how the branches are physically
17 organized, is there a children's room in every
18 branch?

19 A There's a children's area. Our branches range in
20 size from just literally like 1,500 feet to 20,000
21 square feet.

22 Q Okay. Do all of your library branches have Internet
23 usage computers?

24 A Yes.

25 Q Okay. And is the policy the same at every branch?

1 A I don't believe so. Not to my knowledge anyway.

2 Q Okay. Have you ever been to Washington state?

3 A Yes.

4 Q Okay. When was the last time you were in Washington?

5 A American Library Association mid winter meeting.

6 January of this year.

7 Q Okay. Have -- do you know where the NC -- I'm going
8 to use the word NCLR throughout to stand for the
9 North Central Regional Library system, but do you
10 understand where their territory is?

11 A Yes.

12 Q Okay. And what is your understanding of their
13 territory?

14 A Rural area in north central Washington state.

15 Q Do you know the names of the counties that they
16 serve?

17 A I could not give them to you.

18 Q Do you have an idea of the size in square miles of
19 the district that they serve?

20 A No.

21 Q Do you have any concept of the number of employees
22 that they have?

23 A No.

24 Q Have you ever been to an NCRL branch library?

25 A No.

1 Q Are you familiar with the scope of NCRL's services
2 that they provide to their community?

3 A No.

4 Q Are you familiar at all with the demographics of the
5 community that the NCRL serves?

6 A Not specifically.

7 Q What about an idea of the number of patrons?

8 A No.

9 Q Have you ever met NCRL's director, Dean Marney?

10 A Not to my knowledge.

11 Q Okay. Have you met the director of branch services,
12 Dan Howard?

13 A I do not believe so.

14 Q Have you ever spoken with anyone at NCRL?

15 A No.

16 Q In your own words, can you describe NCRL's Internet
17 usage policy?

18 A Based upon what I've read, secondhand knowledge, is
19 that they provide filtered Internet access and they
20 have a process set up whereas if an adult wishes to
21 bypass the filter they have to go through a long,
22 drawn-out process without any guarantee that they'll
23 be able to bypass the filter.

24 Q Okay. Let's take that in a couple parts. You said
25 based on what you read. What do you recall you read?

1 A Specifically that they provide filtered access and
2 that there is a request process by which an adult
3 wishing to access a site that is filtered may apply
4 for. But there is no guarantee that the library will
5 agree to do that, nor is there necessarily what I
6 would consider a timely process or a reasonable
7 process for that request to take place.

8 Q Okay. And I apologize, my question was poorly
9 worded. What was the source?

10 A It would be a combination of verbal updates at
11 Intellectual Freedom Committee meetings and general
12 written summaries from Intellectual Freedom Committee
13 documents.

14 Q Who is providing the verbal updates at the
15 Intellectual Freedom Committee meetings?

16 A Well, Duncan Manville provided one at mid winter, and
17 then we have had, I've had informal conversations
18 with various staff at the OIF office.

19 Q Have you ever read NCRL's policy?

20 A I've glanced at it but it's been some time.

21 Q Are you aware of the type of filtering product that
22 NCRL uses?

23 A No.

24 Q You said that, in your words, that if an adult wanted
25 to bypass it, it was a long, drawn-out process of

- 1 A No.
- 2 Q Okay. And you have never accessed the Internet at an
3 NCRL computer; correct?
- 4 A No.
- 5 Q Okay. And you don't have a specific understanding of
6 what is in fact filtered; correct?
- 7 A No.
- 8 Q Okay. And you don't have a specific understanding of
9 how the review process works or what triggers the
10 review process; correct?
- 11 A I believe I have a good general knowledge based upon
12 the background material that I've seen.
- 13 Q Okay. And this was what's been provided to you at
14 IFC meeting?
- 15 A As well as --
- 16 Q And staff?
- 17 A And a verbal update from the ACLU.
- 18 Q Do you have any problem with NCRL filtering
19 unprotected speech?
- 20 A No.
- 21 Q What about content that is potentially harmful to its
22 network?
- 23 A No.
- 24 Q Let me clarify that. Network security.
- 25 A Yes.

Oliver, Kenton

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Sarah Bradburn, et al v. North Central Regional Library
 District
 Dep. Date: November 14, 2007
 Deponent: Kenton Oliver

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read
36	25	eleven branches	ten branches
13	3	eleven branches	ten branches
18	19-25	omission	Include "Freedom to Read Foundation"



 Signature of Deponent

Kenton Oliver

Sarah Bradburn, et al v. North Central Regional Library District

C E R T I F I C A T E

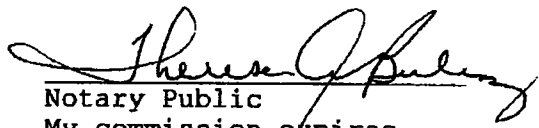
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I, KENTON OLIVER, do hereby certify that I have read the foregoing deposition in the case of SARAH BRADBURN, ET AL., Plaintiffs, versus NORTH CENTRLA REGIONAL LIBRARY DISTRICT, Defendant, and said deposition constitutes a true and correct transcript of my testimony given at the specified time.


KENTON OLIVER

Dated this 27th day of December, 2007

Subscribed and sworn to before me this 27th day of December, 2007.


Notary Public
My commission expires _____

THERESA A. BULICZ
Notary Public, State Of Ohio
My Commission Expires 4/3/10

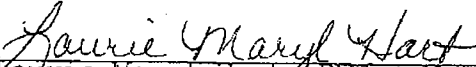
CERTIFICATE

STATE OF OHIO }
 }SS
 STARK COUNTY

I, Laurie Maryl Hart, a Registered Merit Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, KENTON OLIVER, was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony given was by me reduced to Stenotype and afterwards transcribed by computer-aided transcription, and that the foregoing is a true and correct transcription of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action, nor is the court reporting firm with which I am affiliated under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Canton, Ohio, on this 19th day of November, 2007.


Laurie Maryl Hart, RMR & Notary Public.
 My commission expires January 6, 2012.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON
3 AT SPOKANE

4 SARAH BRADBURN, PEARL) No. CV-06-327-EFS
5 CHERRINGTON, CHARLES)
6 HEINLEN, and THE SECOND)
7 AMENDMENT FOUNDATION,)
8)
9 Plaintiffs,)
10)
11 vs.)
12)
13 NORTH CENTRAL REGIONAL)
14 LIBRARY DISTRICT,)
15)
16 Defendant.)

17 DEPOSITION UPON ORAL EXAMINATION OF
18 JUNE PINNELL-STEPHENS
19 October 3, 2007
20 Seattle, Washington

21 Taken Before:
22 Cheryl L Hendricks, CCR #2274
23 Certified Court Reporter
24 of
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1 the concern happens to be. And I would estimate that
2 only 10 percent of concerns expressed actually end up in
3 formal written complaints.

4 Q And these percentages are based on your personal
5 experience?

6 A Yes. I have no research to back it up. It's just my
7 feeling.

8 Q And when you say 10 percent of concerns expressed end up
9 in formal complaints, in your experience are most of
10 these 10 percents regarding written texts or books,
11 materials, or any portion of that being electronic?

12 A Any time there was a new format introduced there seemed
13 to be a flurry of complaints because it was a new
14 format, people weren't used to it and there was always
15 something they were concerned about. But after they'd
16 been around for a while, the new formats, the complaints
17 would calm down because people were used to them. And
18 I'm sure the thing -- we expected the same thing about
19 the Internet.

20 Q Okay. With respect to the Fairbanks Public Library, the
21 area that you were working, there's a main library --

22 A Mm-hmm.

23 Q -- which is Fairbanks and then there's another branch
24 that services which is the North Pole --

25 A Mm-hmm.

1 Q -- or North Pole, probably not "The" North Pole. Is
2 that the extent of the actual physical branches?

3 A Those are the physical buildings. But as I said, we
4 took this van --

5 Q Right.

6 A -- which is, oh, maybe the length of this room, not a
7 big one, like sort of a large RV or about that size.
8 And there is -- there are some items that are actually
9 shelved on that van. And then they do take orders for
10 books from the collection because everybody can see our
11 catalogue online, of course, so they can order books
12 they want to be brought to either the drop site or in
13 the case of services to the senior centers, that's
14 another scheduled stop.

15 Q Okay. What can you tell me about the demographic of the
16 Fairbanks branch, the patrons that you serve?

17 A Oh, boy. Well, the community is about 25 percent
18 military and dependants. It is also the location of the
19 largest university in the state and it's the flagship
20 for the university. We have a large mining community.
21 And it's a transportation hub for all the communities
22 out in the interior. It's also the last city before the
23 Haul Road starts up to Prudhoe Bay. Its minorities, the
24 largest minority is -- consisted of Alaskan natives,
25 primarily Athabascan, some Inuit or Yup'ik Eskimos

1 coming in.

2 (Interruption by the reporter.)

3 A Yup'ik, Y-u-p apostrophe i-k, I believe, and Inuit is
4 I-n-u-i-t. The Inuit Eskimos are from the top coastal
5 area and the Yup'ik are from the sort of southwestern
6 area.

7 It's a -- it's mostly a very conservative area.

8 Q (By Ms. Monroe) Meaning politically conservative?

9 A Yes.

10 And very, very independent. They are lots of
11 people who live off the grid, that is, they have no
12 electricity, they have to haul water, and either they
13 try to grow or hunt or live on subsistence, subsistence
14 life-style. So -- pardon me?

15 Q No. Go ahead.

16 A Okay. So it's a very, very different mix. You could
17 never tell just sort of watching somebody walking down
18 the street what -- what group that person might belong
19 to and what their philosophies might be. But there's a
20 lot of libertarian philosophy, I think.

21 Q What is the physical size, to the best of your
22 recollection, of the Fairbanks branch?

23 A The size of the branch?

24 Q Mm-hmm.

25 A In terms of volumes?

1 Q In terms of square footage.

2 A Oh, boy. I'm really bad at that. I don't know how big
3 it is. I know we have about 300,000 volumes.

4 Q Is it two stories? One story?

5 A One.

6 Q Bigger than. . . I'm trying to come up with a good
7 example. Can I ask, how big is your home? Do you know
8 the square footage size?

9 A No. Let's see. I don't. How embarrassing. Let's see.
10 I can try and estimate it for you.

11 Q Well, with comparison coming into this office today, is
12 it about -- from what you have seen from this office, is
13 it a large -- is it about the same size of what you have
14 seen --

15 A I would say it's smaller than the floor. I can't --
16 with all the cubbies --

17 Q Yeah.

18 A -- and breakups, it's hard to estimate space. I would
19 guess -- let's see. The Bothell library is no longer
20 the way it was when I was there. I'm sorry. I'm trying
21 to remember. . . Hmm. You know, it's just really
22 difficult to judge.

23 Q How many rooms were there?

24 A Well, there was the main library stacks area. There
25 were four very small group study areas that would fit no

1 more than -- the largest one would hold no more than
2 eight people. There was a quiet use room that held no
3 more than three. And this is all sort of tacked onto
4 this main -- main room. There was an area around a
5 fireplace that was a quiet reading area and then more
6 stacks and then the children's room.

7 And then that was the end of the library section
8 and then there was -- there were the security gates.
9 Oh, the reference desk was about the first thing you saw
10 straight ahead, the circ desk on the left. After the
11 security gates there were public bathrooms and there was
12 an auditorium that would hold about 250.

13 Q Okay. So it sounds fairly sizable.

14 A Mm-hmm.

15 Q Was the children's room separated from -- by a wall?

16 A Yeah, there was a wall and most of it was glass.

17 Q Any estimate of the number of patrons that the Fairbanks
18 branch served, for example, at the time that you
19 retired?

20 A I would have to say this in terms of the entire -- of
21 the branch and here because so many people came in to
22 use the main library because the branch was so small.

23 Q Okay. So you're estimating both North Pole and
24 Fairbanks with this number?

25 A The whole -- the whole borough --

1 Q Okay.

2 A -- which used -- we were primarily tasked with serving
3 the North Star Borough. And the latest population was
4 about 86,000 and the size of the bureau -- of the
5 borough was about that of New Jersey.

6 Q In physical size?

7 A Yes.

8 Q Specifically then with respect to the North -- with the
9 North Pole branch, what did that look like, much
10 smaller?

11 A Yes, it was much smaller and more cramped. They had --
12 oh, and -- well, in the -- let me go back. The -- the
13 areas I described were public areas. There were, of
14 course, pretty much a warren of staff areas.

15 Q In Fairbanks?

16 A Yeah.

17 Q Okay.

18 A In North Pole, the staff area is shrunk to a room
19 smaller than this, I would think. And they had a
20 children's area and then stacks and reference all sort
21 of mashed together. They were very crowded.

22 Q So no walls separating? It was an open room just
23 separated by aisles of books?

24 A Well, and then the children room which was also then the
25 story room -- story time area was open but partially cut

1 off by a wall.

2 Q Okay. We will likely get into this in more detail
3 later. But from reading your report, it sounds like at
4 one point the Internet terminals at the Fairbanks branch
5 and possibly the North Pole branch were not filtered.

6 A That's right.

7 Q Can you tell me from what period of time -- at what
8 point were Internet computers installed?

9 A Oh, maybe '95. I can't remember exactly. Seems to me
10 it was almost eight years, between six and eight years,
11 that we did not have filters on our Internet stations.

12 Q So assuming approximately 1995, then seven or eight
13 years later --

14 A Mm-hmm.

15 Q -- a filter was employed at both branches --

16 A Mm-hmm.

17 Q -- on their Internet computers?

18 A Mm-hmm.

19 Q What was the reason for the decision to install a
20 filter?

21 A The Mayor --

22 Q Of Fairbanks.

23 A -- of Fairbanks at the North Star Borough decided that
24 it would be good public policy as well as a good
25 campaign issue to install filters and the assembly voted

1 to do so.

2 We had decided previously -- the library staff,
3 we had looked at the cost benefit for putting them on.
4 We'd had no complaints from anybody about Internet use
5 at that point. And we received approximately \$2,500 a
6 year from E-Rate money, if that makes sense to you.

7 Q Mm-hmm.

8 A Okay. I thought it might. And ended up costing --
9 well, we figured it would cost us \$26,000 to install an
10 adequate filtering system.

11 Q What do you mean by adequate?

12 A Well, one that had among the best ratings of those that
13 were available at the time. I mean, some we -- that
14 were tested were clearly inappropriate. And I can't
15 tell you the names of those. The automated services
16 folks did most of the testing. But there were reviews
17 written by a number of different organizations about the
18 various systems.

19 Q And by best ratings, you mean performance ratings?

20 A Mm-hmm.

21 Q With respect to error rates? Is that what you're
22 referring to?

23 A Yes.

24 Q Okay. So before filters were installed what, if
25 anything, were you doing with respect to your Internet

1 stations to prevent children or other people from seeing
2 what was on someone's screen?

3 A Well, as time went by we started putting -- installing
4 privacy. . .

5 Q Screens?

6 A Screens and stations. We went through an expansion of
7 the library not long after the Internets went into
8 place. And when we reopened after -- when that
9 expansion was done, we planned for stations with
10 recessed screens, so they are down underneath a table
11 and it's a glass tabletop and you look down through it.
12 And for those stations that had to be on the desktop,
13 some people with trifocals or other reading problems
14 needed a screen on the desktop, we provided privacy
15 screens that actually fit over the screen.

16 We directed the locations of these stations so
17 they would not be right in the largest line of traffic
18 and tried our best to minimize incidental viewing of
19 anything. And one of the reasons we did that is that
20 our nonfiction collection was fully integrated, that is,
21 children's material, adult material, nonprint material
22 were all interfiled on the same shelves and to -- you
23 had to walk past the main groupings of Internet stations
24 to get to the nonfiction collection of the library.

25 Q Okay. Was the mayor's decision to ask you to install

1 filters or the assembly's decision based in any part on
2 the Children's Internet Protection Act?

3 A No.

4 Q No?

5 A Hmm-mm.

6 Q What was the timing of the mayor's decision?

7 A Oh, what was the -- the date of CIPA was '93; is that
8 right?

9 Q I can't answer.

10 A Oh, I'm sorry. I can't remember the actual date of
11 CIPA. Let me see if I can find it here.

12 Q And just to make a record, you're looking at the report
13 that you prepared and disclosed to us?

14 A Yes.

15 Q Okay. Well, maybe this will help. To my question of
16 when the mayor --

17 A Oh.

18 Q -- asked you to install filters, that would have been
19 roughly maybe 2002?

20 A It was after CIPA was adopted, I'm quite sure, because
21 we tried -- in our cost benefit analysis that I just
22 mentioned we would have received \$2,500 or something
23 from E-Rate, which is the CIPA money.

24 Q So you were having conversations at that time, roughly
25 1995, when the computers were installed about how to

1 Q -- report which we will later introduce as an exhibit.

2 MR. MANVILLE: And I don't believe we provided a
3 copy, I think, on this one. We just provided a link.

4 MS. MONROE: Okay. Thanks.

5 Q (By Ms. Monroe) Do you share the ALA's position, you
6 personally share the ALA's position, on Internet
7 filtering?

8 A That the use of filters that blocks protected speech is
9 a violation of the Library Bill of Rights? Yes, I do.

10 A lot of people misunderstand what that
11 resolution says. It doesn't say don't filter. Just
12 that if you block protected speech, you're violating the
13 Library Bill of Rights. If you can find a way to use a
14 filter that does not block protected speech, it's not a
15 violation of the Library Bill of Rights.

16 Q So you recognize that there are categories of protected
17 and unprotected speech, correct?

18 A Yes.

19 Q Okay. And can you explain what you believe falls under
20 the category of unprotected speech?

21 A So far as I understand, it's speech that has been found
22 obscene in a court of law, child pornography, libelous
23 speech, treason or speech that endangers national
24 security, and in some states in the case of minors,
25 material that is -- people under 17 -- or under 18,

1 filters could be removed.

2 Q This is at --

3 A At the Loussac Library in Anchorage.

4 Q So Loussac Library was filtering any content containing
5 ACLU information?

6 A No, no. They were filtering -- using the filter period
7 and --

8 Q Okay.

9 A -- they wouldn't remove it.

10 Q I saw in your CV that you were awarded the Citizen
11 Activist of the Year by the ACLU in 1998?

12 A Mm-hmm.

13 Q Can you tell me if there was something specific that you
14 had done to earn their recognition?

15 A '98 was -- was that -- I'm trying to think what -- what
16 incident that was. '95 was the display. I think it was
17 just helping them with a display. Was it a display
18 issue? May have been the filters. I don't -- I don't
19 remember what -- what it was. And that must have been
20 one of the years I was off the board. I can't remember.

21 Q Okay.

22 A It just -- it just sort of flies by. I'm sorry.

23 Q That's fine. Of the publications that you have authored
24 either in whole or in part as a collaboration, how many,
25 to your recollection, addressed the issue of Internet



Aberdeen 360-532-7445 olympia 360-352-2054 Chehalis 360-330-0262

CASE: Bradburn vs. NCRL

DATE TAKEN: October 3, 2007

VENUE: Eastern District of Washington

REPORTER: Cheryl Hendricks

DEPONENT: June Pinnell-Stephens

CORRECTION & SIGNATURE CERTIFICATE

I, June Pinnell-Stephens, hereby certify under penalty of perjury of the laws of the State of Washington that I have read my foregoing deposition taken the 3 day of October and that to the best of my knowledge the transcript is true and accurate with the exception of the following corrections:

CORRECTION

PAGE

- 13, line 25: It's a reconsideration form.
- 24, line 7: "... not long after the Internet workstations ..."
- 34, line 6: I did. All but one of them occurred before I started working at the library, and it involved Conspectus and collection management directly related to my job.
- 37, line 12: We currently happen to have on the board ...
- 46, line 2: "... but freedom of speech generally. The full statement is available at their web site."
- 46, line 19-22: I wrote the article, "Asheim in Cyberspace," in American Libraries, Oct., 2002. At that time, I was FTRF's treasurer.
- 56, line 9: Yes. Experience in Alaska and Washington
- 101, line 19: "and - very few people in my experience have ..."
- 112, line 24: Yes. As I testified earlier, I understand that the NCRL will not disable filters at the request of adults.
- 113, line 6: Yes, as I testified earlier.
- 115, line 10-11: Yes. As I testified earlier, I understand that the NCRL will not disable filters at the request of adults.

Executed at Fairbanks, Alaska, on the 8 day of November, 2007.


(Deponent's signature)

C E R T I F I C A T E

1
2
3 I, CHERYL L. HENDRICKS, a duly authorized Court
4 Reporter and Notary Public in and for the State of
5 Washington, residing at Olympia, do hereby certify;

6
7 That the foregoing deposition of June
8 Pinnell-Stephens was taken before me on October 3, 2007,
9 and thereafter transcribed to the best of my ability by
10 means of computer-aided transcription; that the
11 deposition is a full, true, and complete transcript of
12 the testimony of said witness;

13 That the witness, before examination, was by me
14 duly sworn to testify the truth, the whole truth, and
15 nothing but the truth, and the witness reserved
16 signature;

17 That I am not a relative, employee, attorney, or
18 counsel of any party to this action, or relative or
19 employee of any such attorney or counsel, and I am not
20 financially interested in said action or outcome
21 thereof;

22 That upon completion of signature, if required,
23 I shall herewith securely seal the original transcript
24 and serve same upon Tom Adams, counsel for the
25 Defendant.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this 15th day of October,
2007.

Cheryl L. Hendricks,
CCR NO. 2274