

HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON CRIMES AND CORRECTIONS  
PUBLIC HEARING - HOUSE BILL 2324

ORIGINAL

LOCATION: DELAWARE COUNTY COURTHOUSE  
COUNCIL MEETING ROOM  
FRONT AND ORANGE STREETS  
MEDIA, PENNSYLVANIA

DATE: MARCH 8, 2000, 1:00 P.M.

BEFORE: HON. JERRY BIRMELIN, CHAIRMAN

ALSO PRESENT:

HON. ALLAN EGOLF  
HON. STEPHEN BARRAR  
HON. THOMAS GANNON  
MICHAEL RISH, EXECUTIVE STAFF  
JAMES MANN, RESEARCH ANALYST  
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1                   CHAIRMAN BIRMELIN: Good  
2                   afternoon. I'd like to welcome you to our  
3                   hearing today. This is a hearing of the  
4                   Pennsylvania House of Representative Judiciary  
5                   Committee, the Subcommittee on Crime and  
6                   Corrections.

7                   We are going to be having a  
8                   hearing on the topic of Internet use at public  
9                   schools and public libraries. And the focus  
10                  of our public hearing this afternoon is going  
11                  to be on House Bill 2324. Most of you  
12                  probably came expecting it to be on House Bill  
13                  No. 4, which is substantively very similar to  
14                  the other bill that I just mentioned. House  
15                  Bill 2324 is the latest version of that.

16                 And because they are very similar  
17                 and not much change was made between the two,  
18                 if you need to, we'll see that you get a copy  
19                 of the bill, but primarily we'll be addressing  
20                 our comments to House Bill 2324.

21                 I'm Representative Birmelin. I'm  
22                 from Wayne County. I chair this subcommittee,  
23                 and I'll be calling the witnesses up here in a  
24                 few minutes and sort of being a traffic cop  
25                 for this public hearing.

1           And I wanted to introduce the  
2 gentlemen who are gathered with me here up at  
3 the desk, and ask them to introduce themselves  
4 actually. And then we'll give the prime  
5 sponsor of the bill the opportunity to make an  
6 opening statement.

7           So I'll start to my far right, if  
8 you would introduce yourself.

9           REPRESENTATIVE BARRAR: Steve  
10 Barrar, representative from the Ashton, Upper  
11 Chester area.

12           REPRESENTATIVE EGOLF: I'm Allan  
13 Egolf, representing the 86th District, which  
14 is part of Perry, Franklin, and Cumberland  
15 County.

16           MR. MANN: Name is Jim Mann. I'm  
17 a research analyst with the Judiciary  
18 Committee.

19           MR. RISH: My name is Mike Rish.  
20 I'm executive director of Judiciary Committee  
21 for the Democratic Caucus.

22           CHAIRMAN BIRMELIN: During the  
23 course of our hearing we may have people who  
24 will be coming and going. And I will do the  
25 best I can to try to introduce members and



1 staff people to you as that happens.

2 Representative Barrar is not on  
3 the Judiciary Committee; however, he has an  
4 interest in this subject and so he's welcome  
5 to come and sit. And we're going to make him  
6 an honorary member of the Judiciary Committee  
7 today.

8 REPRESENTATIVE BARRAR: Thanks.

9 CHAIRMAN BIRMELIN: And at no  
10 extra charge, by the way.

11 So at this point in time what I'm  
12 going to do is introduce, again,  
13 Representative Allan Egolf. He is the author  
14 of this legislation. It is something that he  
15 has worked on for quite some time and is --  
16 basically we are having the public hearing to  
17 help him understand what the public's reaction  
18 to be to this legislation so. I'm going to  
19 ask Representative Egolf to give some opening  
20 remarks, and then we'll move on through the  
21 testimony of those who are scheduled today.

22 If there's any information that  
23 you need or haven't gotten, on the back table  
24 gives you copies of the schedule and some of  
25 the written testimony of some of those that

1 are testifying. And one other PS; that is,  
2 for the members of the committee who are not  
3 here today, we make sure that they all get  
4 copies of the testimony that's being  
5 presented.

6 Without any further ado, then I  
7 would like to introduce Representative Allan  
8 Egolf of the 86th Legislative District.  
9 Representative Egolf.

10 REPRESENTATIVE EGOLF: Thank you,  
11 Mr. Chairman, for conducting this hearing and  
12 also for giving me the opportunity to speak  
13 about the bill and participate in the hearing.

14 I'd like to give you a little  
15 background of events leading up to my  
16 introduction of this bill, 2324.

17 In 1998, Congress passed and the  
18 president signed legislation containing the  
19 Child On-line Protection Act, which attempted  
20 to prohibit the accessibility to children of  
21 material harmful to minors on the Internet.

22 The bill passed unanimously. A  
23 judge, however, granted the ACLU a preliminary  
24 injunction to block enforcement of the law,  
25 and the Department of Justice has appealed the

1 ruling.

2 While Congress has tried to make  
3 the Internet a safer and more family friendly  
4 place, it has been thwarted by extreme,  
5 liberal activists who broadly interpret the  
6 First Amendment as securing complete and  
7 unfettered access by anyone, regardless of  
8 age, to any type of speech, any type of  
9 graphic presentation, regardless of how  
10 obscene.

11 Many public libraries and public  
12 schools have computers with free, unrestricted  
13 Internet access to patrons.

14 Many do not provide filtering from  
15 pornographic or obscene sites. The American  
16 Library Association has taken an official  
17 position against any type of filtering or  
18 restricted access in their member libraries on  
19 the basis of the so-called free speech or  
20 freedom of expression.

21 Yes, there is a constitutional  
22 right to freedom of speech, but there's no  
23 such legal right to make obscenity and  
24 pornography available through taxpayer  
25 funding. Therefore, I believe legislation is

1 critically needed at the state level to  
2 accomplish three objectives:

3 First, to protect our children  
4 against exposure in our public libraries and  
5 schools to obscene material, child pornography  
6 and material harmful to minors.

7 Secondly, to prevent our public  
8 libraries from becoming magnets for  
9 pedophiles, molesters, and others with an  
10 unhealthy interest in pornography by removing  
11 an attraction that is drawing these people to  
12 a learning environment; i.e., the library,  
13 that places them in close proximity to  
14 children.

15 And, third, to protect patrons and  
16 employees against the hostile environment  
17 created by those who would display sexually  
18 graphic images on library computer screens.

19 House Bill 2324 will accomplish  
20 these common sense objectives by requiring  
21 public schools and public libraries to have  
22 and enforce acceptable use policies for  
23 Internet access.

24 Their policies would have to be  
25 designed to block any user from accessing

1 obscene material, child pornography, and  
2 material harmful to minors. If they fail to  
3 adopt a policy that meets these requirements,  
4 the Pennsylvania Department of Education will  
5 withhold state funding until they comply.

6 Again, there's a constitutional  
7 right to freedom of speech, but there's no  
8 such legal right to make obscenity and  
9 pornography available at taxpayer expense.

10 So thank you, Mr. Chairman and  
11 members of the Judiciary Committee. I would  
12 also like this time to acknowledge and thank  
13 some of the key people who have helped with  
14 the drafting of House Bill 2324.

15 Ed Hussie, chief counsel for the  
16 majority leader who drafted this bill for me  
17 and researched related court cases, and  
18 advised me on the legal aspects of the bill.

19 I'd like to thank Michael Geer and  
20 Tom Shaheen of the Pennsylvania Family  
21 Institute, for putting me in touch with some  
22 of the experts experienced on this issue.

23 I'd like to thank Jan LarRue, who  
24 is the legal counsel for Family Research  
25 Counsel in Washington, D.C., for the many

1 hours of phone conversation and legal advice.

2 And also Michael DePrimo and Brian  
3 Fahling, who is here today, I think, to speak,  
4 and other attorneys with the American Family  
5 Association for their advice and for reading  
6 the draft and making recommendations and,  
7 again, many hours with phone conference calls.

8 And also David Burt, who is going  
9 to be speaking here today, also, for compiling  
10 a report on the extent of the problem in our  
11 public libraries.

12 So with that, Mr. Chairman, thank  
13 you again.

14 CHAIRMAN BIRMELIN: Thank you,  
15 Representative Egolf. We have with us today  
16 David Burt, who is president of Filtering  
17 Facts Incorporated. Mr. Burt, I see you on  
18 TV. Hopefully you can see this panel that's  
19 gathered here. Is that true?

20 MR. BURT: Yes, I can. I can see  
21 you and I can also hear you loud and clear.  
22 Can you hear me all right?

23 CHAIRMAN BIRMELIN: Yes, we can.  
24 We want to thank you for coming. We  
25 understand that you had originally intended to

1 be with us, physically present, but because  
2 you weren't able to do that we've been able to  
3 arrange for this video teleconferencing.

4 And I want to give you the  
5 opportunity to share your testimony with the  
6 committee members that are gathered here  
7 today. We have allowed a slot of time,  
8 approximately 45 minutes, for you to speak and  
9 to answer any questions that members of the  
10 Committee may have for you.

11 So without any further ado, and we  
12 don't want to waste any of your video  
13 conferencing time, you may begin to give your  
14 testimony.

15 MR. BURT: Thank you very much.  
16 Thank you for inviting me to speak. I really  
17 appreciate the opportunity to be here.

18 My name is David Burt and I am a  
19 librarian and a technology manager at a  
20 Portland, Oregon, area public library. I also  
21 run a web site and an advocacy organization  
22 called Filtering Facts that promotes the use  
23 of filtering software in public libraries.

24 I have given testimony in the past  
25 before the National Commission on Library and

1 Information Science in Washington, D.C., and  
2 in the Loudoun County filtering case in  
3 Virginia, and to the Santa Clara County,  
4 California, Joint Powers Authority Board.

5 I'm here to testify in support of  
6 this bill, the bill that would require public  
7 libraries to install filtering software to  
8 protect minors from obscene material and  
9 material harmful to minors.

10 After having studied filtering  
11 software extensively and having read hundreds  
12 of incident reports on children accessing  
13 pornography in public libraries, it is my firm  
14 belief that filters offer the best solution  
15 available to protecting children from  
16 pornography.

17 In developing solutions to the  
18 problem of children accessing pornography in  
19 public libraries, I believe there are three  
20 main questions that need to be answered.

21 First, is there a serious enough  
22 problem that it warrants us finding a  
23 solution? Second, if the problem is serious  
24 enough -- and obviously I believe it is --  
25 what is the best solution that we can find?



1 Third, within what legal framework must that  
2 solution exist? And since I'm not a lawyer  
3 and that's not my area of specialty, you  
4 obviously have several attorneys here already  
5 testifying, I'm going to stick with the first  
6 two points, which is what I know about.

7 How serious is the problem of  
8 children being exposed to pornography?  
9 According to a 1999 study in the prestigious  
10 journal *Nature*, there are approximately 12  
11 million pages of pornographic content on the  
12 Internet.

13 Peter Nickerson, president and  
14 chief executive of N2H2, a company that makes  
15 filtering software, testified before the  
16 Senate that he finds 2500 to 2700 new adult  
17 sites each week appearing on the Internet.  
18 Mr. Nickerson said, quote, The problem with  
19 the Internet is that kids either stumble on it  
20 or they find it instantly and it's in their  
21 face, end quote, he told the *New York Times*.

22 Many sites feature some of the  
23 most vial and graphic pornography imaginable.  
24 There is a site called *Beastiality.com* that  
25 features a collection of free photographs of

1 women having sex with animals, including dogs,  
2 and boasts that they offer, quote, a huge  
3 collection of dog sex, unquote.

4 Another site called  
5 Crackwhores.com is exactly what it says it is.  
6 It features drug-addicted prostitutes posing  
7 in degrading photographs in exchange for drug  
8 money. The site gleefully boasts that we have  
9 designed this site for the sick, disturbed  
10 user in mind.

11 Another site is Goregallery.com  
12 that features hundreds of free pictures of  
13 mutilated corpses, and even women who have  
14 been sexually raped. A number of overseas  
15 child pornography sites are also freely  
16 accessible.

17 Children can easily find this  
18 material either intentionally or  
19 unintentionally. Pornographers have a number  
20 of sneaky tactics for doing this. Some web  
21 sites contain names that respond with common  
22 mistakes or mistypes. Children searching the  
23 Internet for the official site of the White  
24 House entering Whitehouse.com rather than  
25 Whitehouse.gov will find a pornography site.

1 Children looking for sports  
2 information at the popular web site ESPN,  
3 which is one of the most popular web sites for  
4 children, if they type in ESPM, with an M,  
5 they will instantly be confronted with  
6 hard-core pornography. Other web sites use  
7 names that children might enter such as  
8 SleepingBeauty.com. There are older ones that  
9 have since disappeared, such as Bambi.com.

10 A survey by a company called  
11 Cyberveillance, that keeps track of Internet  
12 trends, found the ten brands most commonly  
13 associated with pornography web sites were  
14 Disney, Barbie, CNN, Honda, Mercedes, Levis  
15 ESPN, NBA, Chevy, and Nintendo, respectively.

16 An innocent search by a child for  
17 any of these names could easily lead to a  
18 graphic pornography site.

19 The American Library Association  
20 has consistently denied that there is a  
21 problem with children accessing pornography.  
22 Judith Krug, the well-known director of the  
23 American Library Association's Office of  
24 Intellectual Freedom, has even gone so far as  
25 to say that, quote, Their number is so small

1 that it is almost laughable, unquote, and  
2 that, quote, Only one child out of a trillion  
3 billion might use library computers to seek  
4 out pornography.

5 But the evidence I have seen  
6 suggests otherwise. A poll of teens in May  
7 10th, 1999 issue of *Time Magazine* found that  
8 an astounding 44 percent have used sexually  
9 explicit material on the Internet.

10 A study by the Chicago Public  
11 Library of its own Internet use found that one  
12 in 20 Internet sessions on an adult terminal  
13 and one in 50 on children's terminals were for  
14 pornography.

15 One out of every 50 children is  
16 quite a bit more than one in a trillion  
17 billion in the public libraries of Chicago, a  
18 city where ALA is headquartered and where Miss  
19 Krug works.

20 Along with this empirical  
21 evidence, there are many disturbing anecdotes  
22 gathered from the public libraries themselves.  
23 On my web site I have gathered over 250 such  
24 incidents involving children being exposed to  
25 pornography in public libraries.

1           In one Phoenix, Arizona, police  
2 report, a 13-year-old boy was arrested after  
3 he sexually propositioned a four year old in a  
4 public rest room. Under questioning by  
5 police, it was revealed that the boy came to  
6 the library and viewed pornography on a daily  
7 basis and went into the rest room and  
8 masturbated. On this particular day, he had  
9 been dared to proposition another child by a  
10 pedophile he had met in an Internet chat room  
11 at the library.

12           In Ft. Collins, Colorado;  
13 Vancouver, Washington; and Broward County,  
14 Florida, library staff also reported minors  
15 who were or appeared to be masturbating to  
16 pornography they were viewing in public  
17 libraries.

18           Despite this mountain of evidence  
19 to the contrary, the American Library  
20 Association continues to tell the public with  
21 a straight face that the world's largest adult  
22 book store has been made freely available to  
23 tens of millions of boys in public libraries  
24 and that none of them are peeking inside. I  
25 have trouble believing that.

1           I think it's well established that  
2 there is a problem. So when you need to move  
3 on from there to what is the best solution  
4 that we can take up.

5           The American Library Association  
6 will tell you that education is the best  
7 solution. I'm all for education. I like to  
8 engage in education of users about the dangers  
9 of the Internet and how to avoid them.

10          I agree that educating children  
11 about the bad neighborhoods of cyberspace is  
12 important, but it does not go anywhere near  
13 far enough.

14          We don't rely on education, such  
15 as "Just Say No" programs to keep children  
16 away from alcohol or tobacco. We have laws to  
17 enforce them.

18          And we don't rely on education  
19 alone to keep children away from pornography.

20          Think of the absurdity of a  
21 library placing a copy of *Hustler* next to  
22 *Highlights* in the children's magazine rack,  
23 and then telling people that we are going to  
24 help them solve this problem by teaching them,  
25 children, how not to look at *Hustler*. Why not

1 simply not bring *Hustler* into the children's  
2 room in the favorite place? That is, in fact,  
3 what filtering software does. It stops the  
4 pornography from entering the library in the  
5 first place.

6                   The American Library Association  
7 would argue that a policy is sufficient to  
8 protect children from pornography, adults from  
9 being sexually harassed, and pedophiles from  
10 downloading child pornography. The libraries  
11 with policies have reported serious problems.

12                   Last month, a group of 47  
13 librarians and library employees of the  
14 Minneapolis, Minnesota, Public Library  
15 published a letter of protest in the  
16 *Minneapolis Star Tribune*. An excerpt of that  
17 letter is as follows: "Every day we, too, are  
18 subjected to pornography left (sometimes  
19 intentionally) on the screens and in the  
20 printers. We do not like it either. We feel  
21 harassed and intimidated by having to work in  
22 a public environment where we might, at any  
23 moment, be exposed to degrading or  
24 pornographic pictures.

25                   "While the American Library

1 Association and our Minneapolis Public Library  
2 administration have taken the firm stand that  
3 restricting Internet access in any way is  
4 unacceptable censorship, most of us working  
5 directly with the public disagree. The issue  
6 is not one of intellectual freedom, but rather  
7 whether obscene material should be publicly  
8 displayed. If the *Penthouse Magazine* cover  
9 must be kept out of the public view in a  
10 grocery store, should not the same principle  
11 apply in a public library?

12 "Compromise solutions do exist,  
13 and are being used successfully at other  
14 libraries. Sophisticated filters could  
15 provide intelligent monitoring on those  
16 terminals in high access areas of the library.  
17 Contrary to the "official" line of the ALA,  
18 filters can be designed to allow searching of  
19 topics such as "breast cancer" while at the  
20 same time block most pornographic sites,"  
21 unquote.

22 Finally, the pedophile monitoring  
23 group, [PedoWatch.org](http://PedoWatch.org), has confirmed that  
24 on-line pedophiles are actually telling each  
25 other to use public libraries to download



1 child pornography. PedoWatch is one of the  
2 oldest organizations on the Internet that is  
3 working with law enforcement worldwide to  
4 remove child pornography from the Internet and  
5 currently works with over 125 law enforcement  
6 officers to do this.

7 PedoWatch director Julie Posey  
8 sent this e-mail message to me: Quote, "What  
9 happens out there is that pedophiles on the  
10 Internet 'network' together. It is much like  
11 just about any other interest that a person  
12 might have. There are mailing lists, message  
13 boards, chat rooms, and multitudes of other  
14 resources they use.

15 "When a particular pedophile finds  
16 that the library is a safe place to view and  
17 download pornography, he shares this  
18 information with others with his same  
19 interests that he comes into contact with.

20 "Some libraries won't allow  
21 downloading, so that information is passed on  
22 too. Remember that before there can be child  
23 pornography in the first place, there has to  
24 be a perpetrator and a victim.

25 "I have seen cases where

1 pedophiles on the Internet use the library to  
2 talk with children, eventually lure them to  
3 have face-to-face meetings.

4 "These children are then molested,  
5 photos taken, and further exploited when he  
6 sends the child's pictures to masses on the  
7 Internet," unquote.

8 And I even remember reading about  
9 a case in California when pedophile did a live  
10 video link-up where he was molesting the child  
11 and actually had other pedophiles sent him  
12 e-mail messages asking what to do next to this  
13 child and then distributed that information  
14 across the Internet.

15 Many public libraries employ  
16 policies that would actually seem to encourage  
17 this illegal transmission of child pornography  
18 by offering privacy screens, destroying patron  
19 sign-up sheets after use, and employing  
20 computer programs that delete any trace of  
21 user activity.

22 These policies make it very  
23 difficult for law enforcement to catch  
24 pedophiles using public library Internet  
25 stations to download child pornography. Some

1 pedophiles have even used library computers to  
2 run child pornography businesses.

3           As the *Los Angeles Times* reported,  
4 quote, A convicted child molester who  
5 routinely used computers at the Los Angeles  
6 Public Central Library to collect and  
7 distribute child pornography was arrested  
8 after planning what he thought would be a  
9 sexual liaison with six youngsters, one as  
10 young as three, police said. . . . 'He would go  
11 to the library as soon as it opened and signed  
12 up to use each computer on each floor. From  
13 there he maintained his web site while  
14 e-mailing and communicating with members of  
15 his club. He sent me as many as 300 images of  
16 child pornography,' the police officer said.

17           Again, the Chicago Public Library,  
18 the Los Angeles Public Library and the  
19 Minneapolis Public Library, all of them  
20 already have policies, yet these serious  
21 problems continue to be well documented.

22           Is filtering software effective?  
23 The American Library Association has sent  
24 mixed signals on this. On the one hand, the  
25 ALA will tell you filters simply don't work.

1 The ALA recently touted a study that made the  
2 rather astonishing claim that filters block on  
3 average of 21 percent, or one out of every  
4 five, sites containing legal, useful  
5 information.

6 When gross flaws in the  
7 methodology and sampling of this study were  
8 discovered, ALA withdrew the study last week.

9 Yet two weeks ago while ALA was  
10 still using the now discredited study, ALA  
11 Office of Intellectual Freedom director Judith  
12 Krug told the New York Times that, quote,  
13 Filters are a good tool for home computers,  
14 end quote.

15 In my role as a technology  
16 manager, I have examined many software  
17 packages. I have yet to see a software  
18 package that when you pull out the shrink wrap  
19 at home it works as a good tool, yet when you  
20 pull off the shrink wrap in a library it  
21 simply doesn't work. That simply doesn't make  
22 any sense.

23 Nearly 1,000 public libraries in  
24 the country are using filtering software, not  
25 just on children's terminals but on all

1 terminals.

2 Library after library that I  
3 talked to reports that even filtering all  
4 terminals causes few problems for patrons.

5 The Jacksonville, Florida, Public  
6 Library reports about one complaint every two  
7 months. The Orange County, Florida, Public  
8 Library, that includes Orlando, has never had  
9 a complaint. Both of these libraries filter  
10 all terminals.

11 In September of 1999 the Memphis,  
12 Tennessee, Public Library began filtering all  
13 terminals. Four months later the *Memphis*  
14 *Commercial-Appeal* reported, quote, The library  
15 system switched to pornography-blocking  
16 software has gone so smoothly that it could be  
17 described as a nonevent. The Memphis area's  
18 chief librarian, Judith Drescher, told the  
19 Shelby County Commission Wednesday that more  
20 than half of the 26 public queries about  
21 blocking software had nothing to do with the  
22 new software. In a report given to the  
23 commission's education and library committee  
24 Drescher said, quote, Since installation, the  
25 library has received no requests from the

1 public to review a blocked site. Library  
2 staff has submitted five for review, all of  
3 which were blocked, end quote.

4           Again, that's another large urban  
5 public library system. That's three that I've  
6 described that have filtering software on all  
7 terminals. And these places you're talking  
8 about where they have 75 or a hundred or a 125  
9 Internet terminals, all of them filtered and  
10 getting virtually no complaints from the  
11 public about that.

12           Again, public libraries who  
13 actually use filters simply do not report  
14 serious problems. The American Library  
15 Association imagines that they will. In the  
16 unusual event that a patron encounters a  
17 wrongly blocked site, there is a simple  
18 solution. A patron can ask the librarian to  
19 override the filter. Some would argue that  
20 this creates a chilling effect on patron  
21 access if patrons are required to ask the  
22 librarian to unlock a site for gay teens or  
23 breast cancer or something of that nature.  
24 But requiring patrons to ask for materials is  
25 an everyday occurrence in public libraries.

1           When a patron wants to check out a  
2 book such as "Surviving Breast Cancer" or  
3 "What If I'm Gay," the patron must present the  
4 book to a library staff and present  
5 identification. Asking for a similar resource  
6 to be unblocked cannot be viewed as more  
7 chilling than actually being forced to present  
8 yourself and show ID.

9           Opponents of filtering software  
10 sometimes argue that children using filtering  
11 Internet access will be at a competitive  
12 disadvantage because they will be being denied  
13 crucial information. Children are said to  
14 become pregnant and catch venereal diseases  
15 because they were denied sexual education  
16 information.

17           Gay teenagers will commit suicide  
18 because they will be unable to reach out to  
19 fellow gay teens on the Internet, yet despite  
20 the fact that millions of children are  
21 required to use filters in public school  
22 settings -- and I believe the latest school  
23 figures are 63 percent of public schools are  
24 using filters and there are about a half dozen  
25 states where every Internet access in the

1 public school is filtered -- there is not one  
2 confirmed instance of any of these things ever  
3 having happened. Out of all the millions of  
4 children who rely on filtered Internet access  
5 in the home and school, not one child has  
6 committed suicide, become pregnant, contracted  
7 a disease, flunked a class, or even gotten a  
8 bad grade on a paper because they were  
9 required to use a filter.

10 There is not one shred of evidence  
11 to suggest any child or any adult has ever  
12 been meaningfully harmed in any way by being  
13 required to use a filter.

14 The official position of the  
15 American Library Association regarding minor's  
16 access to the Internet is made clear in the  
17 American Library Association statement,  
18 "Access to Electronic Services and Networks  
19 and Information: An Interpretation of the  
20 Library Bill of Rights," which states: Quote,  
21 Libraries acting within their mission and  
22 objective must support access to information  
23 on all subjects that serve the needs or  
24 interests of each user regardless of the  
25 user's age or the content of the material,



1 unquote.

2           While representatives of the ALA  
3 may deny that this means libraries must  
4 provide children with pornography, I think the  
5 words "libraries must" and "regardless of the  
6 user's age or the content of the material"  
7 make the ALA position perfectly clear.

8           There was a movement within ALA to  
9 have this language changed or amended before  
10 the ALA mid-winter conference in January, and  
11 that motion was sent to committee. The ALA  
12 counsel is not interested in looking at it.  
13 So the ALA is aware that this language is  
14 problematic and but they have shown an  
15 interest in changing it.

16           I am one of the many librarians  
17 who disagree with the above statement and do  
18 not feel that with regard to the First  
19 Amendment, or the Second Amendment for that  
20 matter, that children are merely vertically  
21 challenged adults.

22           As both a librarian and a parent,  
23 I take strong issue with the suggestion that I  
24 must assume sole responsibility for the safety  
25 and well-being of my child when they enter a

1 library.

2           As a certain senatorial candidate  
3 once said, it does take a village. But I  
4 believe the Supreme Court said it best of all  
5 when they originally decided the  
6 constitutionality of harmful to minors laws  
7 protecting children from pornography in  
8 *Ginsberg v. New York*, the court quoted from  
9 lower court decision, quote, While the  
10 supervision of children's reading may be best  
11 left to their parents, the knowledge that  
12 parental control or guidance cannot always be  
13 provided and society's transcendent interest  
14 in protecting the welfare of children justify  
15 reasonable regulation of the sale of material  
16 to them. It is, therefore, altogether fitting  
17 and proper for a state to include in a statute  
18 designed to regulate the sale of pornography  
19 to children special standards, broader than  
20 those embodied in the legislation aimed at  
21 controlling dissemination of such material to  
22 adults, end quote.

23           Thank you very much.

24           CHAIRMAN BIRMELIN: Thank you,  
25 Mr. Burt. We're going to give the members of

1 the panel here an opportunity to ask you  
2 questions, if they have any. In the next few  
3 minutes I want to introduce chairman of the  
4 Judiciary Committee. And was here but I think  
5 he's just stepped out. Is he coming back,  
6 Brian?

7 MR. PRESKI: Yes.

8 CHAIRMAN BIRMELIN: Chairman Tom  
9 Gannon from Delaware County is here and will  
10 be joining us shortly. And the gentleman of  
11 whom I asked that question is Brian Preski.  
12 Brian is the executive director of the  
13 Judiciary Committee.

14 I'll ask Allan Egolf if he has any  
15 questions of Mr. Burt.

16 REPRESENTATIVE EGOLF: Thank you,  
17 Mr. Chairman. Thank you, Mr. Burt, for that  
18 testimony.

19 I think it certainly shows that we  
20 do have a problem and you've looked -- even  
21 looked at some of the possible solutions.

22 I would just like to ask you just  
23 a couple questions. One; I know the -- one of  
24 the questions would be -- or one of the  
25 concerns, I guess, would be that this law

1 would require an unfunded mandate on  
2 libraries.

3           What is -- do you know what the  
4 extra cost of filtering would be to the normal  
5 cost of a service provider for the Internet?  
6 Do you have any idea? Is there a significant  
7 difference?

8           MR. BURT: No. As far as I'm  
9 aware of, the difference is not significant,  
10 and in many cases it's even free. It's the  
11 same amount you get a filtered Internet  
12 service provider or an unfiltered one. The  
13 cost for filtering software is also -- it's  
14 not terribly expensive. The average cost is  
15 somewhere between \$15 and \$50 per each work  
16 station.

17           And in some cases there are  
18 filtering companies that are even offering  
19 filtering software for free to public  
20 libraries. So cost is not a significant  
21 issue, in my opinion.

22           REPRESENTATIVE EGOLF: And I guess  
23 then that leads onto another one. Of course  
24 we're always finding the technology people  
25 will try to find ways around it.

1           So if we get filtering software  
2 either at -- by the server or within the  
3 computer at the library, are they going to  
4 constantly become outdated or are there ways  
5 to go around them or how is that -- do you  
6 know anything about the technology there?  
7 That's maybe out of your field. I don't know,  
8 but if can you answer that.

9           Is this a -- would that be a  
10 problem with technology constantly changing?  
11 Is it going to cost them to keep updating all  
12 the time, or how does that work?

13           MR. BURT: Well, if you're going  
14 through a filtered Internet service provider  
15 you don't have to worry about that because  
16 they do the updates for you.

17           Most libraries have a server that  
18 has a filter in it, and those servers will  
19 download the latest block list, the latest  
20 pornography sites from the filtering company,  
21 typically every night. So most of these  
22 libraries are updating the filtering lists on  
23 a daily basis, for the most, part if they're  
24 not getting it directly from the filtering  
25 company.

1           So their getting out of date isn't  
2 really a problem, as long as the filtering  
3 companies are keeping up. And some of the  
4 better ones that I've looked at, some of the  
5 bigger ones, they do a very good job of keep  
6 up with the latest ones.

7           In terms of getting around the  
8 filtering software, we haven't observed that  
9 as a problem in public libraries. We don't  
10 read a lot of reports about that. Again, we  
11 have public schools -- we have, I think, 63  
12 percent of public schools have filtering  
13 software, and we don't read about widespread  
14 cases of children defeating the software and  
15 getting around it.

16           And I think that's mostly because  
17 it's in a public environment and it's a little  
18 bit difficult to do that publicly, unless you  
19 have like a privacy screen or really kind of a  
20 hidden terminal to be able to pack around the  
21 software. So we don't really get a lot of  
22 reports of that being a problem, no.

23           REPRESENTATIVE EGOLF: Thank you  
24 very much on that. Does it cost -- you say  
25 the server has to keep up with the technology.

1 Does that -- if they did have to do that, does  
2 that change the cost of the library or is that  
3 just part of the -- and you said the cost to  
4 get onto a server that has the blocking  
5 filtering, it's not much more than a server  
6 that doesn't block it, but if they had to  
7 constantly update, would that not -- would  
8 that not increase the costs?

9 MR. BURT: If they're going  
10 through a filtered service provider it's not  
11 going to be any different, no. And if you're  
12 doing your own filtering and you have to  
13 update it, you can typically pay for a  
14 subscription every year. And that may cost a  
15 little bit of money, depending on how much  
16 you're doing. But if you're going through a  
17 filtered service provider it probably isn't  
18 going to cost you any more money to do that,  
19 and the update isn't going to cost you any  
20 more money either.

21 REPRESENTATIVE EGOLF: And then  
22 one more --

23 MR. BURT: There are a number of  
24 different ways --

25 REPRESENTATIVE EGOLF: One more

1 question. Go ahead.

2 MR. BURT: They warned me not to  
3 try and talk at the same time. There are a  
4 number of different ways that libraries can do  
5 that. They can, you know, as we've talked  
6 about, either go through a service provider,  
7 have their own server, or filter on their own  
8 PC's. And there are some costs involved in  
9 each one. But, like I said, there are  
10 companies that offer this service, filters,  
11 for free to public libraries.

12 REPRESENTATIVE EGOLF: Can you  
13 tell us how you -- how a library would handle  
14 a patron who does want to do research and  
15 wants to -- has a legitimate reason to  
16 unblock, which this bill does provide for if  
17 they have legitimate research, the legislation  
18 does allow the library to unblock it, how is  
19 that done?

20 Is that -- is that a simple thing  
21 to do? Is that, again, would that create  
22 extra costs? Is it easier to do if you have  
23 the server and can you do it if the server is  
24 blocking versus if you're just blocking it  
25 with your own software in the library? Can



1 you touch on that, please?

2 MR. BURT: Yeah, it's a very  
3 simple process. If you have your own software  
4 in the library or if the library has its own  
5 server, it's a simple process.

6 If the library's running its own  
7 software, the librarian can just turn it off  
8 themselves. If they're having somebody  
9 provide the filtering for them, they would  
10 have to notify the administrator of that  
11 filtering service and have them unblock it.  
12 But there are actually some service providers,  
13 I believe there's one called guardian.net,  
14 where the lie -- where a person can have an  
15 unblocked themselves without having -- can  
16 turn it off themselves without having to go  
17 through the administrator. So there are  
18 service providers that will let you do that.

19 But it's really a very simple  
20 process. In the worst case scenario they  
21 might have to wait 24 hours, but typically it  
22 would just be a few minutes.

23 REPRESENTATIVE EGOLF: Thank you.  
24 And, Mr. Chairman, I said that was the last  
25 one, but I do have one more question, if I

1 may.

2           How do the filters actually work?  
3 In other words, do they cut out on basis of  
4 words or by site? In other words, I  
5 understand and I have some letters from people  
6 whose children have gotten into sites simply  
7 by a word and then a picture comes up.

8           So is it by site or how does it --  
9 can you tell us, technology, how it actually  
10 works, the filter?

11           MR. BURT: The filters work, what  
12 they do, they identify pornography sites by  
13 address, like [www.porno.com](http://www.porno.com), and then they  
14 have a big long list of all these addresses.  
15 And when you try to go to one of those  
16 addresses on the Internet they are blocked  
17 from doing that. That's how filters work now.

18           The filters from three, four years  
19 ago, when they first came out, they would  
20 block words like breast and they would block  
21 all the sites with pictures of breasts, but  
22 breast cancer sites, too, as well. But  
23 libraries aren't using that technology any  
24 more. There are still a few filters out there  
25 that use that, but I don't know of any public

1 libraries that are using that type of  
2 technology. They are using technology where a  
3 filtering company has identified pornography  
4 sites and has made a list of them.

5 One objection that is offered of  
6 that is that they can't possibly keep up;  
7 there's too many of them; the Internet is too  
8 big. That has not been my experience.

9 Pornography sites make it easy for  
10 filters to filter them because pornography  
11 sites, as you probably gathered from my  
12 testimony, work very hard at identifying  
13 themselves because they're not going to make  
14 any money if people can't find them.

15 So they register with the search  
16 engines, they use all these terms that are  
17 going to get people into their sites, because  
18 that's their whole idea is to get people into  
19 their sites.

20 So the benefit of that to the  
21 filtering company is that it's very easy for  
22 them to identify them because they're trying  
23 really hard to be noticed.

24 So we don't see that as a problem  
25 with them keeping up with the number of

1 pornography sites and keeping their lists up  
2 to date.

3 REPRESENTATIVE EGOLF: That's good  
4 to hear about the filtering companies. How  
5 about the filter themselves, if you buy the  
6 software? Wouldn't that soon be outdated  
7 though?

8 MR. BURT: If you are just buying  
9 the software and running it on a computer, you  
10 know, a stand-alone computer, you would have  
11 to get updates to it.

12 Some of them have -- some of the  
13 products that libraries buy for themselves  
14 have an automatic update where it's updated  
15 every night. It just connects to the  
16 Internet, downloads a new list and you don't  
17 have to worry about it. And those are  
18 typically the kind of filters that are being  
19 used in public libraries are the ones that are  
20 automatically updated.

21 REPRESENTATIVE EGOLF: Thank you  
22 very much. That's all I have, Mr. Chairman.

23 CHAIRMAN BIRMELIN: Mr. Rish?

24 MR. RISH: I have one more  
25 question for the technologically challenged

1 here.

2 You mentioned about registering  
3 with the search engine, some of these  
4 individuals will do that.

5 Do the companies who run these  
6 engines do anything to limit their ability to  
7 put these sites up?

8 MR. BURT: They do. Many of the  
9 companies, and there are quite a few search  
10 engines, do try to police that sort of thing  
11 when porno companies try and register their  
12 site under a misleading name. If they catch  
13 them doing it they will kick them off the  
14 search engine. But, again, they have trouble  
15 keeping up with that because these guys tend  
16 to be so sneaky and they're constantly  
17 reregistering with the search engine over and  
18 over again trying to get noticed in other  
19 ways.

20 MR. RISH: So then the follow-up  
21 is filtering companies then review all of  
22 these sites somehow to find out what's on them  
23 and then develop --

24 MR. BURT: Yes, they do. They use  
25 the search engines and other techniques to

1 identify sites that are potentially porno  
2 sites. They will find -- they use the search  
3 engines and use automated program techniques  
4 to find sites that say, you know, triple X,  
5 adults only, that sort of thing. And then  
6 they will have some staff member actually  
7 review them because, you know, it might be a  
8 news article talking about the pornography  
9 industry might use that code word. So they  
10 will actually look at it first. But they use  
11 that to narrow down the amount of sites that  
12 they want to look at and then manually review  
13 them. That is correct.

14 MR. RISH: Thank you.

15 CHAIRMAN BIRMELIN: I want to  
16 thank you, Mr. Burt, for coming here and via  
17 electronic means, and thank you for the  
18 testimony that you've given us today. We  
19 appreciate it very much.

20 MR. BURT: You're welcome. Glad  
21 to be here.

22 CHAIRMAN BIRMELIN: Thank you.  
23 We're going to take a short time-out just so  
24 that we can give the people who are working on  
25 the video teleconference the opportunity to

1 shut down and maybe even remove their  
2 equipment. So I'm going to offer a brief  
3 recess until quarter of, so we'll give that  
4 about four minutes. So we'll recess for four  
5 minutes.

6 (A recess was taken.)

7 CHAIRMAN BIRMELIN: We're going to  
8 now here from the second person who is  
9 scheduled to testify today. It is Patrick L.  
10 Meehan, District Attorney from Delaware  
11 County.

12 Mr. Meehan, we want to welcome you  
13 to our House Judiciary Committee meeting. And  
14 if you're prepared to give your testimony, you  
15 may.

16 I just want to, for the sake of  
17 the audience, let him know that his remarks  
18 are not prepared today. They're not in print.  
19 But if for some reason you would like to have  
20 a copy of them after we've transcribed them  
21 and put them in print form, you can get them  
22 by requesting them of this Committee.

23 I also want to introduce the  
24 chairman of this committee, who I introduced  
25 earlier but he wasn't here, but he is here

1 now. And Chairman Tom Gannon from your own  
2 Delaware County is here with us today. And  
3 he'll be participating in this hearing today.

4 Mr. Meehan, thank you for coming,  
5 and you may begin.

6 MR. MEEHAN: Thank you,  
7 Mr. Chairman. I appreciate the opportunity of  
8 Chairman Gannon with the extension of the  
9 invitation to speak to you today about some  
10 observations that I would have as a prosecutor  
11 and district attorney here in Delaware County  
12 in reaction to the proposed legislation before  
13 the consideration of the Committee today.

14 And let me just suggest from the  
15 outset that as a prosecutor I appreciate, but  
16 certainly just as a parent of three young boys  
17 I applaud the Committee for taking on this  
18 particular issue and looking very seriously at  
19 the question of the limits of what can be done  
20 with the proliferation of some of the  
21 obscenity and some of the materials over the  
22 Internet and certain kinds of situations.

23 Certainly it's unquestionable that  
24 we have a compelling interest in protecting  
25 the physical and psychological well-being of



1 children. And as we go through the delicate  
2 balance of the test of individual freedoms  
3 versus community concerns, I think this is the  
4 kind of a question that really needs to be  
5 explored in depth. And because of all its  
6 constitutional implications, it really will  
7 get down to start to discussing things where  
8 there's a lot of hair splitting going on.

9 But it's worth the effort, because  
10 both of these objectives are the overriding  
11 concern of protecting our children. And I  
12 focus specifically on the fact that this bill,  
13 in my interpretation, really does go to  
14 protection of children.

15 And because of that, it is  
16 consistent with a lot of the things that we  
17 already do in the criminal law and as a  
18 society.

19 I noticed that you commented in  
20 the preamble that among the specific goals was  
21 to protect children from contact with sexual  
22 predators. And I think it was on that basis  
23 that Chairman Gannon first contacted me,  
24 because here in Delaware County we're  
25 privileged to be what is actually a national

1 task force. We have a local task force  
2 comprised of federal, state, and local  
3 investigatory authorities that are now dealing  
4 with the issue of the Internet and the sexual  
5 exploitation of children.

6 The focus of that particular  
7 committee -- I mean that particular group,  
8 certainly is to protect our children in the  
9 community from being victimized by sexual  
10 predators. And the Internet now is a  
11 fantastic new medium. It's changing the way  
12 we do so many things, certainly from an  
13 economic standpoint. It's a fantastic new  
14 medium and it's creating new issues, new  
15 challenges in a variety of different venues.

16 And in the particular area of  
17 child exploitation, what the Internet is  
18 doing, from the perspective of law  
19 enforcement, it's opening up a new avenue.  
20 It's replacing the shopping mall and the  
21 ballpark as places where predators,  
22 preferential child molesters, begin to go to  
23 look for access to vulnerable children.

24 And what it really does is it  
25 creates the opportunity for somebody to break

1 down some of the normal barriers a child would  
2 have by creating a situation of anonymity that  
3 allows the opening of these conversations to  
4 take place.

5 And I don't want to go into a lot  
6 of analysis of the -- some of the various  
7 arguments that were presented, rather  
8 succinctly and well, by my predecessor,  
9 Mr. Burt:

10 Certainly some of the  
11 counter-arguments that may be made by the  
12 folks that will follow me, because I think  
13 there's a lot of issues you can look at with  
14 regard to this; but my unique role may be here  
15 today talking about some of the things that we  
16 see in law enforcement, the reaction to some  
17 of your issues here, as well as this problem  
18 with access of the Internet and children being  
19 exploited.

20 It is used. The problem is that  
21 much of the initial interaction is done in  
22 chat rooms; and the reality may be that so  
23 much of the initial conversation has nothing  
24 to do with specifically that which would be  
25 constitutionally prohibited.

1                   The methodology for these guys is  
2 generally to pose as younger kids or to pose  
3 as adults interested in younger kids and to  
4 spend a lot of time talking to children about  
5 the interests the children have outside of  
6 issues of sexual themes. But while no -- no  
7 single case is the same as the one before  
8 that, we in law enforcement do see a lot of  
9 general patterns. And what you do begin to  
10 see is as soon as there's a development of a  
11 cyber relationship by one who is a  
12 preferential child molester looking to exploit  
13 this, they begin to look for ways that they  
14 can interact with that child and begin to know  
15 more about that kid and ways that they can  
16 appeal to the interests of that kid. And then  
17 it's only subtly and slowly in some  
18 occasions -- sometimes more direct, but in  
19 those which we've personally prosecuted we've  
20 seen is subtly and slowly -- the introduction  
21 of sexual themes.

22                   And it's really at that point in  
23 time that we try to educate the children about  
24 the principles what they should do to remove  
25 themselves, but also there's other children

1 that may not pay heed to that kind of  
2 education and we need to follow-up when, in  
3 fact, there actually is exploitation of the  
4 child.

5           We have had cases where there is  
6 actual solicitation. I will say an extension  
7 of that, one of the issues, a library is every  
8 bit as viable a forum as a home computer for  
9 this. It's really your judgment to determine  
10 whether or not you want to shut off all access  
11 in a library to adults who may engage in chat  
12 rooms with children.

13           I'm not sure constitutionally that  
14 would be possible. But notwithstanding, I'm  
15 not going to suggest that this kind of  
16 activity can't take place in a library.

17           Certainly chat solicitation could  
18 take place in a library. It certainly could  
19 take place in a lot of other places. And I  
20 will tell you from experience, one of the  
21 things we do see as well is that generally  
22 guys with this kind of predisposition have  
23 already -- or at least those that are using  
24 the Internet are very attractive to this whole  
25 concept to begin with, and they're relatively

1 sophisticated with their use of the Internet,  
2 and relatively sophisticated with the kinds of  
3 material that they use on home computers and  
4 materials to be able to download and chart a  
5 lot of these images.

6 So that sophistication is a part  
7 of some of what you're doing today with this  
8 legislation.

9 Let me look at some of the  
10 specific things that I -- when I reviewed the  
11 legislation I had a couple of observations  
12 just from, again, from perspective of a  
13 prosecutor.

14 One is that the laws which allow  
15 us to -- to police this kind of thing really  
16 set -- really operate apart from your  
17 legislation today except to the extent that  
18 you point back to those specific areas.

19 Certainly the obscenity statute,  
20 the abusive children statutes which allow us  
21 to specifically both protect children from  
22 access -- when we talk about obscenity, to  
23 protect children from access to materials  
24 which by community standards is deemed  
25 obscene, and certainly the abuse of children

1 over any medium --

2 REPRESENTATIVE EGOLF: Excuse me  
3 one minute. I think maybe the microphone may  
4 not be on. I see some people back there  
5 trying to hear.

6 MR. MEEHAN: Is that any better  
7 from anybody's perspective?

8 What I wanted to bring to the  
9 Committee's attention is the issue that we  
10 face is more one of the preservation of  
11 evidence. And this may be something that will  
12 arise in a future situation should it happen  
13 in a library.

14 As the Internet develops, there's  
15 all kinds of new issues being brought forward.  
16 And one of those is the reality that we've  
17 seen in trying to prosecute some of these  
18 cases before.

19 We're dealing with cyberspace.  
20 And the evidence of somebody who, per se, is  
21 downloading child pornography, if that happens  
22 in a library, there's no question that the  
23 downloading by somebody of child pornography,  
24 images of naked six-year-old boy in certain  
25 kinds of poses, et cetera, is, per se,

1 illegal?

2                   What does a librarian do once she  
3 sees a patron doing that? And how do we  
4 preserve that evidence in a certain kind of a  
5 context? Because one of the things that we  
6 always talk about when we discuss these issues  
7 is there's no there there. In some ways  
8 you're dealing in cyberspace.

9                   So we actually have burdens to go  
10 back and be able to download some of that  
11 information, get inside the computer hardware  
12 itself to get that information back, which may  
13 lead to issues of us having to go in and  
14 actually seize library commuter equipment for  
15 an extended period of time while you're  
16 looking at maintaining and retaining the  
17 physical evidence that allows you to prosecute  
18 this crime.

19                   And that's going to have a very  
20 large impact on -- on community libraries. We  
21 already have that problem with certain  
22 businesses where we have -- where we have  
23 taken their computers.

24                   But at the same time you don't  
25 want to allow that kind of an issue to go



1 unpoliced simply because of that problem.

2 I also looked at one of the bits  
3 of language that you've got there when you  
4 talk about materials. This is a very minor  
5 point, but it is something to be considered  
6 when you go back into the obscenities statute.

7 You discuss materials in other  
8 parts of the law. Now we are updating the  
9 language of the statutes to include  
10 transmissions over the Internet. And it was  
11 just my observation, when material was a  
12 defined term it talked about literature  
13 including any book, magazine, pamphlet,  
14 newspaper, story, paper, bumper sticker, comic  
15 book or writing; figure; visual representation  
16 of image, including any drawing, photograph,  
17 picture, videotape, or motion picture.

18 You've referred us back to this  
19 specific language when we want to go and  
20 prosecute this kind of a crime. I think this  
21 language should be amended to include the  
22 kinds much specific references to images that  
23 are brought up over the Internet and  
24 Internet-type electronic transmissions, so  
25 that there wouldn't be some future opportunity

1 for somebody to argue that this provision does  
2 not apply to them because of a specific and  
3 narrow construction in the interpretation of  
4 that statute.

5 I discussed with you already the  
6 preservation of the evidence.

7 Another point that I had was  
8 language in here which, again, is a minor  
9 point, but it's how does one police the --  
10 what you are trying to accomplish. And I  
11 notice that in the language you create an  
12 option for an aggrieved party to include both  
13 the parent of an aggrieved child as well as a  
14 county prosecutor.

15 And I know that there's some  
16 precedent as well when you've done the  
17 obscenity statutes to give prosecutors an  
18 option to look in one particular place with a  
19 criminal charge or to look in equity, so to  
20 speak, when we look maybe at a book store or  
21 any store that's putting obscene material out  
22 in the middle of a show window. We may  
23 proceed in equity to prevent them from doing  
24 that, as opposed to trying to do a criminal  
25 prosecution.

1           My instinct in this particular  
2 bill is you're probably not going to get to a  
3 point where you want to open up the door to  
4 having prosecutors prosecute librarians for  
5 the failure to uphold this policy.

6           I know I don't want to be  
7 perceived as the draconian prosecutor dragging  
8 a librarian out the door on their way to jail  
9 because of this particular policy.

10           Notwithstanding, my fellow  
11 prosecutors across the state will certainly  
12 probably want to be considered as one of the  
13 groups, but I might suggest as well that you  
14 look at municipal solicitors or county  
15 solicitors as another group who may have  
16 standing to bring this kind of a challenge, if  
17 we should get to that point.

18           Certainly the issue of  
19 constitutionality are some that are going to  
20 be argued all the way down, but I think my own  
21 reading of this -- again, there are lots of  
22 different elements of it -- but the fact that  
23 we're focused in the context of libraries had  
24 focused on the context of schools and that  
25 we're dealing with children creates, I think,

1 the limited kind of a classification that will  
2 certainly allow this thing to withstand  
3 constitutional scrutiny.

4 Certainly there's going to be a  
5 variety of different kind of arguments. I  
6 mean, in the *Reno* decision it was determined  
7 that all kinds of communications over the  
8 Internet are entitled to full First Amendment  
9 protection. And there's also issues under the  
10 Commerce Clause as to whether local agencies  
11 or local levels of government can impact  
12 what's happening on a national, even  
13 international level. So those are questions  
14 among many I'm sure that are going to be  
15 looked at.

16 But I do feel that the nature of  
17 what you're trying to do, the principal case  
18 it seems to look at this is the *Loudoun*  
19 decision in the State of Virginia. But I  
20 think this case is distinguished because in  
21 there they were opening the door to filtering  
22 devices that denied the access to every person  
23 who came into that library. I think that's  
24 relevant here when I looked at your particular  
25 statute, for just a couple reasons.

1           At least my observation with  
2 regard to the ability for a school district to  
3 do this -- certainly school districts make  
4 determinations every single day about material  
5 that they should be able to make available to  
6 their students.

7           When you move to the context of a  
8 public library, I know in the *Loudoun* decision  
9 there was some -- there was this discussion  
10 about the principle that this public library  
11 is a public forum. And I would respectfully  
12 suggest that there's some countervailing  
13 arguments as to whether the public library is  
14 actually a limited public forum, as the  
15 *Loudoun* decision identified, or is it really  
16 more the collection which is at issue there.

17           I mean, the fact of the matter is  
18 I don't think today that I can walk into  
19 Delaware County Library and get access to the  
20 latest, you know, publication of *Hustler*. So  
21 they already make decisions about that which  
22 they will make available. And it's consistent  
23 to conclude that they should be able to make  
24 decisions about that which they should make  
25 available, not that they have to make

1 everything available simply because they have  
2 a mechanism now of getting it into the  
3 library.

4           Where I see a particular problem  
5 potentially arising is when you look at the  
6 laudable goal of protecting the children from  
7 access to it -- we already do that under the  
8 Obscenities Statute by preventing the  
9 opportunity to have this kind of thing made  
10 available to 17 year olds and under; where an  
11 adult may have access to it, but a child may  
12 not. And by analogy, you should be able to  
13 argue that the same thing can happen in a  
14 library context.

15           Where the language may cause a  
16 little bit of problem is when the public  
17 library Internet policies are designed and  
18 they have to generate acceptable use policies,  
19 that piece which would prevent or prohibit  
20 children under 17 from using the computer  
21 would certainly seem to be consistent with  
22 what we already do.

23           Where my own concern, even I --  
24 even though I say this is a laudable  
25 objective, is where you would suggest in, I

1 think it's Part A, Section 5 (a) (2), where you  
2 say prohibit any person from using the  
3 library's computer equipment and communication  
4 system for send or receiving, viewing or  
5 downloading material, you know, the character  
6 which is obscene. So if they download child  
7 pornography it's no question that's a  
8 violation of the criminal laws. But if an  
9 adult comes in and looks at material which  
10 would be constitutionally considered to be  
11 inappropriate for a child, it may still be  
12 appropriate for an adult.

13 And as a result, I think this  
14 particular provision may create problems  
15 somewhere down the line, as would, you know,  
16 blocking access to any person of materials.

17 Again, I go back on the words  
18 "that may be obscene." And that's the --  
19 that's the operative language, obscene,  
20 because we've had that whole question of  
21 obscenity and access to it developed  
22 throughout the history of the courts.

23 I guess I would close my  
24 observations, again, not as district attorney,  
25 because I -- I spoke about some things -- I

1 mean, I am here today as a district attorney  
2 in Delaware County, not taking the position  
3 for the District Attorney's Association  
4 because I'm really not empowered to do so.  
5 Again, as I said, I do see a limited nexus  
6 between this bill and what we as prosecutors  
7 generally deal with.

8 But certainly as a parent, you  
9 know, I appreciate having the additional  
10 opportunity to be here. And I want to close  
11 my comments with respect to the one -- just  
12 some general observations about just some  
13 practices here in Delaware County that I think  
14 are affected by this particular legislation.

15 And that is, access to obscenity  
16 or pornography in the library context -- we  
17 have had, I think, a very forward-thinking  
18 library system here. And I applaud some of  
19 the efforts that they have participated in  
20 with us and actually on their own with some  
21 grants to get students education about ways  
22 they can avoid being victimized by  
23 preferential predators.

24 But when -- I'm sort of looking  
25 here at the electronic information policy from



1 the county, and as a parent, it gives me some  
2 trouble where it says, "The Delaware County  
3 Library System does not censor your access to  
4 materials. We do not monitor and have no  
5 control over the information assessed through  
6 the Internet." Quite the opposite -- that's  
7 not their language, this is mine -- they say,  
8 "A parent or legal guardian, and only a parent  
9 or legal guardian, may restrict their children  
10 and only their children from access to  
11 Internet's resources available through the  
12 library."

13 I guess what that suggests to me  
14 is the very real possibility that is it just  
15 the kind of a place where we want to encourage  
16 children to go if there isn't some sort of a  
17 filtering mechanism where there is some way to  
18 deny access to children to this kind of  
19 activity, and you have a policy like this,  
20 you're just creating unfettered access to  
21 that. And it's just -- and this is just  
22 reasonable common sense.

23 I was 13. We know 13-year-old  
24 boys. They're going to get to that site.

25 And I don't think it's consistent

1 with responsibilities. The privilege of  
2 having so much of this new information brings  
3 a level of responsibility to have some insight  
4 into the limitations of some of that. And I  
5 believe the responsibility extends to either  
6 closing off access to the children. Or if  
7 there's going to be access to adults, why  
8 can't there be some balancing that says, you  
9 know, put that in a kind of a place where  
10 adult and only an adult, only the person  
11 viewing that screen can view that screen.

12           You mentioned the hostile  
13 environment. And, in fact, it would be if you  
14 could have this wide open and somebody sitting  
15 next to somebody who pulls any specific  
16 material up there, that could create a hostile  
17 environment for the person who's got a right  
18 to enjoy the privilege of that library without  
19 having to be accessing what the other person,  
20 adult, is looking at.

21           And similarly, why can't it be  
22 that if somebody wants access to that, it's  
23 the adult that has to go to a more limited  
24 area to do it, and recognize that that area  
25 will be monitored to some extent, not for what

1 the adult is doing with the adult, but to the  
2 extent that potentially that adult may be  
3 using that medium to lure a child into it.

4 Certainly you're not going to have  
5 a librarian overlooking somebody's shoulder  
6 and seeing what they're doing in a chat room,  
7 per se. But if there is an adult obscenity --  
8 adult looking at obscene pictures and they've  
9 got a six year old next to them, common sense  
10 would say it's not right to require, as a  
11 matter of policy -- even if that particular  
12 librarian's instinct was to say we don't  
13 filter this, we don't react to this kind of a  
14 thing. I mean, I know off the record there's  
15 the shhh rule, don't do it, but perhaps this  
16 ought to be a little more developed.

17 Those are my observations. And I  
18 thank you for the opportunity to testify  
19 before you, again, focussing on the limited  
20 extent to which this impacts on criminal law  
21 prosecution, just giving you some general  
22 observations as well based on some of the  
23 experiences we have from the task force work  
24 we've already done. Thank you.

25 CHAIRMAN BIRMELIN: Thank you,

1 Mr. Meehan. And we appreciate your coming  
2 here today. I'm going to give the members of  
3 the panel the opportunity to ask you  
4 questions, if you'd be willing to do that for  
5 a moment. Representative Egolf.

6 MR. MEEHAN: Sure.

7 REPRESENTATIVE EGOLF: Thank you  
8 very much for that opportunity.

9 Just a couple questions, I'm not a  
10 lawyer. I don't have the training. So I'd  
11 like to ask you a couple questions along that  
12 line.

13 We know that there have been cases  
14 where a person gets -- is in a bar and drinks  
15 till they're obviously drunk, a bartender  
16 keeps serving them, then the person goes out  
17 and has an accident, kills or injures  
18 somebody, can come back and sue the bartender  
19 because he didn't have the responsibility to  
20 stop the person or not serve them.

21 Is this type of thing possible in  
22 a example in a library where a person is  
23 viewing child pornography and would leave?

24 And I think the reason I ask is I  
25 have a couple cases, examples where somebody

1 did leave the area, leave the library and rape  
2 a child. If the librarian or the staff  
3 observed the person viewing the pornography,  
4 did nothing, and that person went out and  
5 raped a child, could they be held liable? Is  
6 that something that is a possibility there?

7 MR. MEEHAN: Well, you know, we  
8 always have to talk in -- in -- you don't want  
9 predict credentials, but my instincts on that  
10 is that's not the kind of a place we want to  
11 go. You know, we certainly have standards of  
12 that sort with respect to people that sell  
13 weapons and people that go out and commit  
14 crimes. We've moved -- you have as a  
15 legislature moved in a certain way with people  
16 who sell drugs to people and then have that  
17 drug kill somebody.

18 But I'm not so sure that we have  
19 enough of a nexus to be able to show that just  
20 because somebody is, you know, viewing  
21 pornography that they will then go back out  
22 and commit a crime of rape, that we would then  
23 put a burden on a librarian. Again, I really  
24 think that would open the door to some  
25 potential criminal liability, probably

1 wouldn't be justified anywhere -- anywhere  
2 close to justified on the part of librarians.

3           Now, that may be different if the  
4 librarian actually is watching an adult  
5 fondling a six year old. And again, I've  
6 also -- you know, right there in the chair and  
7 says nothing about it. And the bigger issue  
8 we're going to have is what do librarians do  
9 if they actually see that information right  
10 there? And I'm talking about visual image of  
11 a child in an obscene depiction.

12           REPRESENTATIVE EGOLF: That's what  
13 I was wondering, because I've read David  
14 Burt's report, the person that was on the  
15 conference here earlier. And there were  
16 several cases that were documented in  
17 libraries where that very thing happened.  
18 Librarian saw, you know, these things  
19 happening and did nothing. A couple cases  
20 asked the person to leave the library and that  
21 sort of thing, but did nothing; also didn't  
22 report what they observed, actually felonies  
23 being committed. But so that just came to  
24 mind.

25           Another question would be in the

1 harassment area. In his report also there  
2 have been cases of librarians who felt  
3 harassed because an individual was viewing  
4 pornography, invited the librarian or the  
5 staff person to come over and help them with  
6 the site, obviously in this case just -- and  
7 they did it repeatedly. So the person  
8 reported they were being harassed. Is that  
9 something -- would you prosecute something  
10 like that?

11 We get harassment in offices all  
12 the time where -- and let me back up a minute.  
13 In cases of a staff person, they asked to be  
14 relieved of that responsibility, they felt  
15 being harassed, and they were told by their  
16 supervisor we have to allow them to do this  
17 and you can't do anything about it.

18 Wouldn't that be -- in an office  
19 setting, we get cases where female employee  
20 feels harassed, supervisor doesn't do anything  
21 about it, they're prosecuted for harassment.  
22 Is that not the same type of thing, or am I  
23 way off?

24 MR. MEEHAN: No, I think you're  
25 asking a question that is an interesting

1 question to ask. I think, though, that the  
2 venue for that would not be in the criminal  
3 law. There's the potential for that to be  
4 resolved in, you know, in the context of a  
5 hostile work environment, which is really more  
6 in a civil -- a civil suit arena.

7           And there really is the potential  
8 for some sort of a tort or civil resolution to  
9 persons who at some future time may feel that  
10 they have been impacted by the presence of  
11 this, like a worker; but it wouldn't be one  
12 that would have a criminal nexus.

13           REPRESENTATIVE EGOLF: Okay. And  
14 then just one more question.

15           Back to you talking about the  
16 issue of reservation of evidence, were you  
17 concern -- I wasn't sure where you were going  
18 with that.

19           Were you concerned about the  
20 confidentiality of the library patrons? In  
21 other words, if you were trying to get  
22 evidence that they were viewing, committing a  
23 felony by accessing and viewing child  
24 pornography, for example, and then you want to  
25 get the evidence, were you concerned about the



1 issue of privacy there? I wasn't sure where  
2 you were going.

3 MR. MEEHAN: No. It's not a  
4 question of privacy.

5 Let's us assume that, for the sake  
6 of argument, it's an unquestionable case.  
7 This is the adult who has come in and actually  
8 downloaded images sent to him from another  
9 person in a series, not just a single. Let us  
10 say he's downloaded 50 separate images that  
11 he's going through which are all boys under  
12 the age of eight and in, you know, obscene  
13 poses.

14 That in and of itself is, per se,  
15 a criminal violation -- the actual  
16 downloading. And of course we go back again,  
17 possession, does one possess if it's on the  
18 Internet. These are issues we got to work  
19 through.

20 But I'm suggesting in a general  
21 sense that person being there, having that,  
22 once the librarian sees that, they're going to  
23 say, aha, you sir, are disinvited from any  
24 further activity in the library; but in  
25 addition we have this problem now: What are

1 they going to do with this evidence?

2 I mean, the same guy that bought a  
3 pound of cocaine and left it in the library,  
4 they call the police. The police would come,  
5 seize the cocaine, take it back.

6 We've got to go, seize the  
7 computer. We've got to go down and the  
8 librarian has to be a witness to say, yes,  
9 that is the material that I -- and I observed  
10 that person. We've got to be able to create  
11 the nexus.

12 What I'm suggesting to you is  
13 these are issues that are growing. And  
14 they're not absolute first impression; but as  
15 we go into new areas where the Internet's  
16 interactive, we in law enforcement are  
17 beginning to confront some of these things for  
18 the first time. And they're going to be  
19 problems for us.

20 REPRESENTATIVE EGOLF: Thank you  
21 very much. Thank you, Mr. Chairman.

22 CHAIRMAN BIRMELIN: Chairman  
23 Gannon.

24 REPRESENTATIVE GANNON: Thank you,  
25 Mr. Chairman. First, just an observation,

1 something that I just became aware of in the  
2 past day or two. It dealt with the  
3 evidentiary issue.

4 I have my computer at home set up  
5 so that I'm on the Internet 24 hours a day,  
6 seven days a week. It's what's called a cable  
7 connection. And one of the warnings that I  
8 got by leaving my computer open on the  
9 Internet, I'd be subject to somebody trying to  
10 get into my computer, a hacker.

11 So I came across a piece of  
12 software. It's called Black Ice. And it  
13 protects my computer from a hacker, but one of  
14 the elements in there, as I was configuring  
15 it, is what they call the evidentiary lock.  
16 So that if someone would try to get into my  
17 computer with a virus, Trojan Horse, if you  
18 will, they get access to my computer, this  
19 evidentiary log actually backtracks the source  
20 of that intrusion.

21 It doesn't just tell me there was  
22 an intrusion. One part of it does, but the  
23 other part, which is an encrypted log which  
24 you have to send to somebody to open it to  
25 find out what it is, but from the

1 documentation, this will actually go back to  
2 wherever the source was. I don't know how  
3 they do it, but they go through all the  
4 filters and whatever.

5           And I'm thinking that that -- this  
6 is the kind of technology that we're seeing  
7 now that would probably assist prosecutors  
8 when they're looking for that evidence that  
9 there's been a crime, particularly with this  
10 cyber connection, where it's sometimes very  
11 difficult because of the structure of the  
12 Internet to determine where the source of the  
13 whatever the criminal activity is.

14           Technology now, I just became  
15 aware, is apparently there that this can be  
16 backtracked.

17           The other observation is --

18           MR. MEEHAN: I was going to ask,  
19 Mr. Chairman, did you ever call the Pentagon  
20 and tell them about that?

21           REPRESENTATIVE GANNON: This may  
22 be the Pentagon developed this software. I  
23 had to download it. You couldn't buy it. You  
24 had to download it from -- on your computer  
25 from a site. But apparently it works very

1 well. It even told me when my IPO was  
2 actually accessing my computer to make sure  
3 the system was working properly.

4 So it went so far as to tell me  
5 when legitimate attempts to take a look at the  
6 system were occurring.

7 But I think there's -- I'm sensing  
8 that there's really two different paradigms  
9 here.

10 One is the -- where someone would  
11 want to obtain pornographic material, and the  
12 other one is where someone is trying to  
13 provide it. And what I see this bill as  
14 principally trying to do is to block off the  
15 providing of pornographic material at  
16 locations where, as a matter of public policy,  
17 you would deem inappropriate.

18 You know, we find it very easy in  
19 the past laws to say that retail store clerks  
20 can't sell cigarettes to anybody under 18, and  
21 if they do we prosecute the sales clerk. Now  
22 I'm not suggesting that we prosecute  
23 librarians and for where people get access,  
24 but we're prohibiting access to cigarettes to  
25 minors at retail stores. We don't want our

1 young folks getting involved in the habit of  
2 smoking cigarettes.

3           So I think essentially what  
4 Representative Egolf is attempting to do here  
5 is to prohibit the providing -- or the  
6 provider from making that type of material  
7 available to someone who is under 18 at a  
8 library site.

9           I don't see any constitutional  
10 problem with that. I think the -- those folks  
11 that maybe take the argument to the other side  
12 look at it as denying someone access to  
13 legitimate material, and they raise the  
14 constitutional issue of free speech -- that I  
15 should be able to go into a library and get  
16 access to anything I want, whenever I want,  
17 whenever the library's open.

18           And I think -- I don't think that  
19 that's what we're trying to do here. I think  
20 we have to look at it from two different  
21 aspects. What triggered me thinking that was  
22 when you said, well, I can't go down to the  
23 library and get *Hustler Magazine*, they're not  
24 going to provide it to you. That's not a  
25 point of source.

1           You can go down to the local  
2 magazine store and buy a copy or someplace  
3 else maybe and get a copy. But -- so I see it  
4 as prohibiting the providing of material. And  
5 I think that's a legitimate public policy and  
6 I think that's really what Representative  
7 Egolf is trying to do here. And I think the  
8 refinements that you suggested really enhance  
9 the bill and make it a lot easier to enforce  
10 and a lot more definable as to what we're  
11 trying to accomplish here.

12           That's really all the comments I  
13 had, Mr. Chairman. Thank you.

14           CHAIRMAN BIRMELIN:  
15 Representative Egolf has one more question.

16           REPRESENTATIVE EGOLF: This is, I  
17 guess, is more a comment, maybe get your  
18 feelings on this.

19           Chairman Gannon brought up the  
20 fact, you know, of restricting this to  
21 children, but maybe even go further and  
22 restrict it entirely in libraries, the  
23 pornography and obscenity, material harmful to  
24 minors.

25           And I think when we go that far

1 and say it's restricted to everybody, adults  
2 as well, the question is constitutionality.  
3 But would that not be similar to our Second  
4 Amendment rights to bear arms? We allow the  
5 bearing of arms, but yet we restrict certain  
6 arms such as automatic rifles are illegal.

7           So we're saying we have the right  
8 to bear but not some. Why wouldn't it be the  
9 same right as right to free speech but we're  
10 restricting some, in this case the obscenity  
11 and child pornography and so on to any  
12 individual?

13           MR. MEEHAN: Those are  
14 constitutional analysis that where you start  
15 to have -- you have to have a compelling state  
16 interest and then you've got to have a  
17 corresponding limited focus of that compelling  
18 state interest.

19           My concern is that some of these  
20 issues -- and Representative Gannon, you know,  
21 that was the ACLU, et cetera, these are --  
22 those are not necessarily cases of first  
23 impression provider. I mean, it's consistent  
24 of all of these transmissions are accorded  
25 full First Amendment rights.



1 I really think the key here is to  
2 focus on that, once again, which has in the  
3 past been deemed to be constitutionally  
4 permissible. But I really -- as a prosecutor  
5 I don't want to be personally involved in  
6 moving beyond the age of those 18 and trying  
7 to police what they do or do not access.

8 I may not agree with what  
9 everybody accesses, but I don't want to  
10 personally be involved in moving beyond that.  
11 But certainly when we're talking about our  
12 constitutional principle dealing with children  
13 and access to that, I do think that is  
14 permissible consistent with what we do in  
15 other areas, constitutionally consistent. And  
16 it's already framed within your statute or  
17 your proposed language, and therefore I think  
18 worthy of moving forward.

19 REPRESENTATIVE EGOLF: Thank you.  
20 Thank you, Mr. Chairman.

21 CHAIRMAN BIRMELIN: Thank you,  
22 Mr. Meehan. We appreciate your coming here  
23 this morning -- or this afternoon.

24 Next we have scheduled three  
25 testifiers. And we only have two chairs

1 there, so I'm going to ask those of you who  
2 are coming forward to bring another chair with  
3 you.

4 We have scheduled David Roberts,  
5 President of Pennsylvania Library Association;  
6 David Belanger, Director of the Delaware  
7 County Library System; and Barbara Casini,  
8 Director of the Radnor Public Library.

9 A VOICE: Two others also.

10 CHAIRMAN BIRMELIN: No. We're  
11 not going to give the opportunity to the other  
12 two to testify. We are going to accept your  
13 testimony in writing, however. It would be a  
14 little difficult for us to have all five of  
15 you up here at once.

16 The three whose names I just  
17 mentioned, would you please come forward? I  
18 think I can figure out who Barbara Casini is  
19 here, but -- I think. But I'd like  
20 Mr. Roberts and Mr. Belanger to identify  
21 yourself.

22 MR. ROBERTS: I'm David Roberts.

23 MR. BELANGER: I'm David Belanger.

24 REPRESENTATIVE EGOLF: As each of  
25 you speak, could you maybe move that

1 microphone to you. We're getting a lot of  
2 signals in the back we can't hear.

3 CHAIRMAN BIRMELIN: I understand  
4 that you all have written testimony -- we have  
5 copies of that -- and that you also have  
6 written testimony from two others. And I want  
7 to enter into the record the fact that Meg  
8 Hawkins, the librarian for the Rachel Kohl  
9 Community Library in Concordville,  
10 Pennsylvania; and Deborah Parsons, Library  
11 Director of Marple Public Library, also have  
12 written testimony. They will be entered into  
13 the record.

14 For the sake of the panel that we  
15 have here and the time that we're allowed, I'm  
16 only going to ask those three of you who are  
17 scheduled to give your testimony, and those  
18 other two will have it as a part of the record  
19 their testimony. We do have it in writing,  
20 and we'll give you the opportunity to do that.

21 I may be from the old school, so  
22 I'm going to be a gentleman and ask Miss  
23 Casini if she would give her testimony first.

24 MS. CASINI: Well, actually,  
25 because I'm part of the Delaware County

1 Library System, David Belanger actually is  
2 providing information that it's -- I'm putting  
3 my testimony in the context of information  
4 that he's giving you.

5 CHAIRMAN BIRMELIN: You're  
6 deferring to him.

7 MS. CASINI: Yes. I'm deferring  
8 to him.

9 MR. BELANGER: And actually I  
10 would like to --

11 CHAIRMAN BIRMELIN: You want to  
12 defer to Mr. Roberts. Okay. I think I've got  
13 it now. Mr. Roberts, Mr. Belanger, and then  
14 Miss Casini.

15 Mr. Roberts, when you're ready you  
16 may begin.

17 MR. ROBERTS: My name is David  
18 Roberts. I'm the president, currently, of  
19 Pennsylvania Library Association.

20 Pennsylvania Library Association  
21 is a membership organization includes  
22 professional librarians, clerical support  
23 staff, library trustees, Friends of the  
24 Library, and interested citizens.

25 Our members work in public

1 libraries, colleges and universities, public  
2 and private schools, and private industry.

3 I personally have worked in  
4 libraries as a reference librarian and  
5 coordinator of adult education and director of  
6 trustee for more than 33 years. I'm currently  
7 Director of the Wissahickon Valley Public  
8 Library, serving the municipalities of Ambler  
9 Borough, Lower Gwynedd and Whitpain Townships  
10 in Montgomery County, Pennsylvania. And I'm  
11 also the parent of two sons, grown sons, but  
12 sons.

13 Both personally and professionally  
14 I share the concerns expressed in House Bill  
15 2324 for the protection of children from  
16 possible harm via the Internet.

17 At the state level, the  
18 Pennsylvania Library Association has convened  
19 a committee of professional librarians to  
20 review these issues and develop a set of  
21 recommendations. Unfortunately, the committee  
22 has not completed its work at this time, but  
23 we will be happy to share their findings with  
24 the Committee when the report is finished.

25 Actually, fortunately their work

1 isn't finished, because what I would like to  
2 do is pose to them many of the questions that  
3 you've supposed to Mr. Burt, Mr. Meehan, and  
4 perhaps the rest of us, so that we can include  
5 in our deliberations your concerns, because  
6 they are very valid ones.

7           So we're very eager to work with  
8 you in this particular area, and it's in that  
9 spirit that I offer my remarks today.

10           The historical role of the library  
11 has been to make information, education, and  
12 culture available to the public. At one time  
13 libraries were necessary because there was a  
14 shortage of printed material and an  
15 institution was needed to collect and store  
16 it.

17           Now libraries are necessary  
18 because there has been an overwhelming  
19 explosion of information, and an institution  
20 is needed to help the public find the  
21 information they need and find their way  
22 through it.

23           The Internet is one of the tools  
24 that we use to fulfill that mission. It  
25 represents the most revolutionary advance in

1 the distribution of information system since  
2 the invention of movable type. Its impact on  
3 society and this country and around the world  
4 over the span of just a few years has been  
5 profound. Access to the Internet is quickly  
6 becoming essential to the conduct of business,  
7 education, and many other facets of everyday  
8 life.

9           The question that we wrestle with  
10 in public libraries is how to make the  
11 benefits of the Internet available to the  
12 broadest range of people, especially those  
13 people who cannot afford private access, and  
14 at same time not expose children to danger.

15           One approach that we have found to  
16 be successful is personal attention. Trained  
17 librarians spend a great deal of time learning  
18 what sites are authoritative and which ones  
19 are insubstantial.

20           One of the other dangers of the  
21 Internet is misinformation, particularly in  
22 the area of healthcare. Librarians work to  
23 make the same kinds of judgments about the  
24 authoritativeness and access of web sites that  
25 they have traditionally done about printed

1 reference books. After developing this  
2 knowledge, we work with people of all ages,  
3 all age ranges, to help them to find the  
4 information that they need.

5 We also monitor the use of  
6 Internet work stations in the library and  
7 enforce our public Internet policies, as  
8 already required by the Commonwealth of  
9 Pennsylvania, and terminate the display of  
10 material already prohibited by state law.

11 An approach that we have found to  
12 be unsatisfactory is filtering. In the  
13 library in which I work, Internet service is  
14 transmitted from the local school district and  
15 is, in fact, filtered. All of our terminals,  
16 all of our work stations are filtered. We  
17 have experienced the frustration of not being  
18 able to provide information that is legal and  
19 available on the Internet but blocked.

20 As an example, recently an adult  
21 wanted to do research on firearms but could  
22 not access the site at our library. He had a  
23 constitutional right to keep and bear arms,  
24 but not to read them. The examples of such  
25 occurrences are legion.



1           And it's not that simple for us to  
2 throw a switch. We don't control the flow of  
3 the Internet information. We have to go  
4 through several layers of people at the school  
5 district. So it's not as simple a matter as  
6 Mr. Burt said earlier.

7           But perhaps more important than  
8 the fact that filters block legitimate sites  
9 is the fact that they are quite porous in  
10 admitting sites that might be designated  
11 pornographic.

12           Inventive young people find ways  
13 around filters, despite what we heard earlier.  
14 And purveyors of pornographic materials name  
15 their sites with innocuous titles so the  
16 unsuspected chance upon them while searching  
17 for legitimate material in good faith. Once  
18 again, what works is thoughtful human  
19 vigilance, not mindless software.

20           And comment directly back to some  
21 of Mr. Burt's remarks, he mentioned there is  
22 approximately 12 million pornographic sites.  
23 He later said that the blocking software,  
24 filtering software filters most of them.  
25 Well, what is most? If there are 12 million

1 sites and they're blocking 80 percent of them,  
2 that means there's still 2.4 million sites  
3 that are not blocked. So filtering is  
4 something we really need to reconsider.

5 I am concerned that the proposed  
6 bill does not permit disabling the blocking  
7 software for bona fide research or other  
8 lawful purposes by anyone under 17 years of  
9 age.

10 Material that may be inappropriate  
11 for children six or seven years of age may be  
12 perfectly appropriate for juniors and seniors  
13 in high school, but professional library staff  
14 would not be permitted to make that  
15 distinction or use their professional  
16 judgement.

17 No one in the library community,  
18 certainly no one that I ever met, condones or  
19 promotes exposing children to pornography of  
20 any kind. But we sincerely believe mandating  
21 use of filtering as the solution creates more  
22 problems than it solves. It creates a false  
23 sense of security that could have the effect  
24 of lowering vigilance rather than tightening  
25 it. It imposes technological problems and

1 expenses that can be a drain to library  
2 resources. And I think there's more issues  
3 here than we heard earlier.

4 We strongly agree that we do not  
5 want pedophiles or sexual predators accosting  
6 children in our libraries or anywhere else,  
7 either electronically or in person.

8 We need help and legal guidance in  
9 how to handle these situations. And I believe  
10 Mr. Meehan's remarks were absolutely to the  
11 point in a number of the issues that we were  
12 wrestling with the libraries. How do we  
13 enforce the laws that are already in place?  
14 Do we call the police? Do we call the  
15 district attorney? What steps should we take?

16 In what ways might we be exposing  
17 ourselves to being sued by a patron because we  
18 made a wrong remark? We don't want to be in a  
19 position of suggesting that somebody's a  
20 pedophile when that's not appropriate and  
21 having that person turn around and sue us. So  
22 we need your help. We need the help of law  
23 enforcement generally.

24 I want to thank you for the  
25 opportunity to make a few remarks in this

1 important topic. I hope that there will be  
2 further discussion in this area among the  
3 library community, state and local law  
4 enforcement agency, the state legislature and  
5 administration in the interest of the children  
6 whose well-being we all seek to preserve.  
7 Thank you.

8 CHAIRMAN BIRMELIN: Mr. Belanger.  
9 Am I pronouncing that correct?

10 MR. BELANGER: Yes. Good  
11 afternoon, Mr. Chairman and members of the  
12 Committee. I would like to thank you for the  
13 opportunity to speak on this House Bill.

14 My name is David Belanger and I am  
15 the systems administrator of the Delaware  
16 County Library System.

17 I hold a master's degree in  
18 library science from Villanova University and  
19 a master of management in public  
20 administration from Penn State.

21 I have worked for the Delaware  
22 County Library System for nearly 14 years,  
23 including five in my current position.

24 DCLS is a federation of 26 public  
25 libraries in this county. All the libraries

1 are independent, sharing resources and  
2 participating in cooperative projects and  
3 other activities to enhance service to the  
4 public.

5 Each library has its own funding  
6 stream and board of directors representing its  
7 community. In total, over 240 citizens serve  
8 as volunteers on these boards.

9 They are selected in many ways.  
10 Some are appointed by local officials, others  
11 are elected or selected by nomination.

12 This afternoon I would like to  
13 describe the Internet use in Delaware County  
14 libraries. I will focus on how our policy was  
15 developed, and then one librarian is here to  
16 provide information on how that policy is  
17 working in their libraries. And then you have  
18 the testimony from two others in written form.

19 The decision on how to provide  
20 Internet access in our local libraries was one  
21 of the most difficult issues we have  
22 undertaken. The technology is new and very  
23 complex, and the policy issues complicated.

24 Having gone through this process,  
25 I would strongly recommend that the

1 development of a policy is a local issue and  
2 should be determined on a local community  
3 level.

4 The current state library  
5 legislation passed as part of Act 37 is  
6 flexible and allows for this local  
7 determination.

8 In 1995, the DCLS board created a  
9 committee to address technology issues.  
10 Committee members included representatives  
11 from libraries and the DCLS staff and  
12 reflected various staff responsibilities.

13 Internet-related issues soon took  
14 the forefront. The committee spent close to a  
15 year developing a technology plan and an  
16 Internet policy. The Internet policy was  
17 based on research, the experience of other  
18 libraries, and the committees' knowledge of  
19 local needs.

20 Numerous drafts were distributed  
21 to all member libraries, and feedback was  
22 given from library staff and citizen boards.  
23 After much revision and consensus building,  
24 final policy was adopted by the DCLS board in  
25 February 1997.

1           The full technical implementation  
2 didn't take place until the summer of 1998.

3           After using the policy for a year  
4 and getting patron input, it was reevaluated.  
5 The reevaluation was done, again, by a  
6 committee of member librarians, with  
7 significant input from all libraries and their  
8 citizen boards.

9           The amendments were approved by  
10 the DCLS board in November of 1999.

11           My point in detailing this  
12 chronology is to show that a great deal of  
13 thought and time went into the creation of a  
14 policy that was the consensus of DCLS library  
15 staff and their boards.

16           In developing policy, the  
17 committee chose to focus on the behavioral  
18 aspects of Internet use.

19           This is done in the manner similar  
20 to other library policies, such as acceptable  
21 behavior in the library.

22           The Internet policy specifically  
23 prohibits using the computer for any illegal  
24 purpose. Users are all advised to be  
25 considerate of others and use the service in a

1 nondisruptive manner. Time is generally  
2 limited to one hour per day, or twenty minutes  
3 is someone else is waiting to use the  
4 computer.

5 Computers are placed in libraries  
6 so they can be easily seen by staff. Policy  
7 also recognizes the important role of parents  
8 in guiding their child's use of the Internet.

9 DCLS libraries chose not to  
10 install filtering software. There are many  
11 reasons for this.

12 First, filters don't block all  
13 objectionable materials. Due to the sheer  
14 size of the Internet, 1.7 billion pages, it is  
15 unrealistic to assume a filtering company has  
16 scanned each of these pages for their  
17 suitability.

18 There are also ways to disable  
19 these filters. One web site provides  
20 instructions for circumventing four popular  
21 filters. For example, when we tested filters,  
22 while one staff person was installing the  
23 software, another staff person searched the  
24 Internet to find a way around the software.  
25 Before the first staff person would complete



1 the installation of the filter, the second  
2 person had downloaded a program to disable it.

3 There are also concerns about how  
4 filtering companies classify sites and their  
5 qualifications to do so. Most companies won't  
6 reveal the criteria they use to determine if a  
7 site is objectionable. This makes it  
8 impossible to determine the suitability of the  
9 filter. What might be objectionable in one  
10 community might not be in another.

11 Also, the companies don't reveal  
12 the qualifications of the personnel who make  
13 these decisions.

14 Perhaps more importantly, filters  
15 remove appropriate material. This was  
16 demonstrated last Wednesday in an article in  
17 the *Philadelphia Inquirer*.

18 Beaver College is considering  
19 changing its name. One of the reasons for  
20 this is because some filters block access to  
21 their site and e-mail.

22 During our policy development  
23 process, the committee visited a library with  
24 Internet access. Their computers had filters  
25 and we were unable to search our own

1 computerized card catalogue.

2           There are also logistical and  
3 economic problems with installing filters on  
4 over 200 computers in 28 locations with a  
5 technical staff of only 2 persons.

6           In addition to the acceptable use  
7 policy, DCLS promotes the positive use of the  
8 Internet. The DCLS web site provides links to  
9 quality web sites that are selected and  
10 organized into many categories, including  
11 sites for kids, teens, and homework help, some  
12 of which provide their own filters. In fact,  
13 the DCLS web site was -- was named a  
14 recommended site for parents to visit with  
15 their kids in the *Philadelphia Inquirer*  
16 magazine. The site is used heavily, with  
17 between 700 and 1,000 users each day.

18           I recently received an e-mail from  
19 a patron who had used the site to help her  
20 daughter with a report. She stated, "Then I  
21 just started checking out the web site in  
22 general. It is great. I am planning on  
23 spending hours more time looking around. I am  
24 sure my ten-year-old daughter will be playing  
25 around in the site and using it for research."

1                   Libraries also benefit from the  
2 state-funded Power Library Project. In this  
3 project, public can use various fee-based data  
4 bases for locating magazine articles and other  
5 research documents. Libraries are fortunate  
6 to have the state-supported resource, and we  
7 wish to thank the legislature.

8                   DCLS also recognizes the important  
9 role parents play in guiding their child's use  
10 of the Internet, and provides materials to  
11 help parents.

12                   We developed the brochure called  
13 "The Internet and You: A Parent's Guide,"  
14 which is available at all libraries.

15                   DCLS has also purchased multiple  
16 copies of "Get Cyber Savvy," a family guide  
17 for all libraries, as well as a picture book  
18 parents can read to younger children.

19                   We have a web page of information  
20 for parents, and a videotape titled "Parent  
21 Power, What Every Parent Must Know About The  
22 Worldwide Web" was given to each DCLS member  
23 library.

24                   This gives you an overview of how  
25 the Internet use is structured in Delaware

1 County libraries.

2 Now I would like to turn the  
3 presentation over to the librarians who will  
4 speak about how the policy is working in their  
5 libraries.

6 MS. CASINI: Good afternoon. Can  
7 you hear me?

8 I know I have a very light voice  
9 and I definitely need the microphone.

10 Good afternoon. Can everyone hear  
11 me?

12 My name is Barbara Palmer Casini.  
13 I'm the director of the Memorial Library of  
14 Radnor Township. I have a bachelor's degree  
15 from Swarthmore College and received a  
16 master's degree in library and information  
17 science from Drexel University.

18 I worked in both public and  
19 special libraries for over 25 years. I've  
20 written four professional publications and  
21 served on the boards of state and regional  
22 professional associations. I am the current  
23 Past President of the Pennsylvania Library  
24 Association.

25 I have also been a public library

1 trustee at the Ridley Township Public Library.

2 The Radnor Memorial Library is a  
3 member of the Delaware County Library System.  
4 It has been designated as an Area Resource  
5 Center -- that's because of the size of our  
6 collection and reference service -- since the  
7 system was founded.

8 The library's primary service area  
9 is Radnor Township, with the population of  
10 approximately 29,500. We receive 55 percent  
11 of our funding from the township; 15 percent  
12 from the state and the county; and 30 percent  
13 from local fund-raising, endowments, and  
14 gifts.

15 The Radnor Library board has 15  
16 members, of which two are appointed by Radnor  
17 Township, one is appointed by the Radnor  
18 School District, and the balance are elected  
19 by the board from nominees from the community.

20 We also have the very active  
21 Friends of the Library Association, with over  
22 500 members.

23 The Friends group runs two  
24 profitable book sales each year and also  
25 sponsors a series of programs and an annual

1 membership meeting.

2           Our meeting room is regularly used  
3 by over 73 community organizations, in  
4 addition to the library's own programs.

5           Library programs are frequently  
6 coordinated with local schools and preschools  
7 and the community organizations.

8           I'm giving you this information to  
9 show our very active involvement with the  
10 community that we serve. And we listen to our  
11 patrons. We strive to provide the services  
12 they need and value

13           Our public access Internet work  
14 stations are part of the Delaware County  
15 Library System's Electronic Information  
16 Network.

17           Radnor board and staff were  
18 involved in the development of the DCLS  
19 Internet use policy. Our board discussed and  
20 adopted the policy for the Radnor Memorial  
21 Library and it has proved to be a workable  
22 policy.

23           Our staff has received training in  
24 how to apply the policy and to deal with  
25 problems, should they occur.

1           Our Internet work stations are  
2 highly popular. We have eight Internet  
3 computers for public use. Four additional  
4 computers will be installed very soon.

5           We have located these work  
6 stations so that staff can visually monitor  
7 the screens to offer help and to intervene, if  
8 necessary. We have not found that patrons  
9 misuse our computers. They are used by local  
10 business persons, school children working on  
11 homework assignments, job seekers, senior  
12 citizens, investors, health care consumers and  
13 others.

14           It is not uncommon to find all of  
15 our public work stations in use and usually  
16 with a waiting list of people who want to use  
17 them.

18           The Access PA Power Library, with  
19 its many full-text information sources, has  
20 been much appreciated in Radnor. We thank the  
21 legislation and the Commonwealth for providing  
22 this valuable resource.

23           The Radnor schools are our  
24 partners in this project, including Archbishop  
25 Carroll High School, which is located in

1 Radnor.

2 The school librarians have again  
3 and again expressed their delight in having  
4 these data bases available.

5 In addition, our patrons and  
6 library card holders can access these data  
7 bases from home computers, and many do.

8 The Internet is a valuable  
9 information source. And we have seen many  
10 reference sources switch from CD-ROM  
11 publication to Internet access.

12 As a public library, we could not  
13 realistically do business without the  
14 Internet. The library offers training, both  
15 formal and informal, to patrons on how to use  
16 the Internet wisely. We make educational  
17 materials prepared by the Delaware County  
18 Library System and by others available to  
19 patrons.

20 We encourage mothers and fathers  
21 to accompany their children to the library and  
22 to be involved in helping their children to  
23 get the information they need for the school  
24 or recreation.

25 It's important to me to advocate



1 the widest possible access to information,  
2 whether it is information that I agree with or  
3 not.

4 I feel that censoring all Internet  
5 information available to public library  
6 patrons, as would be the case if House Bill  
7 2324 were adopted, would be inappropriate. In  
8 addition, 14 years of my library experience  
9 was in medical libraries. I developed an  
10 Internet web page for disabled persons at Moss  
11 Rehabilitation Hospital. From this experience  
12 and from observing the reference questions we  
13 receive at Radnor, I know that the Internet is  
14 an important source of information for health  
15 care consumers.

16 Software filters frequently block  
17 health care sites, because they deal with body  
18 parts and use other words also associated with  
19 sexuality.

20 I believe software filters are  
21 still imperfect and offer the public a false  
22 sense of security about protecting minors from  
23 inappropriate material, and often block or  
24 delay the access to necessary and important  
25 information.

1           In the end, where children are  
2 concerned, parents need to decide what is  
3 suitable. I have followed this belief in  
4 dealing with my own child and my  
5 seven-year-old grandson.

6           Pennsylvania's Library Code  
7 already requires that each library develop its  
8 own policy on Internet access for children as  
9 a condition of receiving state aid. With our  
10 close ties to our constituency in Radnor, the  
11 board, staff, and I feel we have a policy that  
12 is suited to our community. I hope the  
13 legislature will continue to allow public  
14 libraries in the state the latitude to develop  
15 Internet policies that are adapted to the  
16 needs of their own communities. Thank you.

17           CHAIRMAN BIRMELIN: Thank you,  
18 Mrs. Casini and Mr. Roberts, Mr. Belanger.  
19 I'll now give the opportunity to members of  
20 the panel to ask questions. And members of  
21 the panel, if you would, make sure you  
22 specifically indicate who you would like to  
23 answer the question, if you would.  
24 Representative Barrar.

25           REPRESENTATIVE BARRAR: David, can

1 I ask you how do you -- how does a library  
2 system pick their ISP? What criteria do you  
3 use?

4 MR. BELANGER: We piggyback on the  
5 county's Internet service provider. It's tied  
6 through the same Internet service provider.  
7 Our network ties back here to the courthouse  
8 and then into their service provider.

9 REPRESENTATIVE BARRAR: So in most  
10 of your testimony you felt because the filters  
11 were not 100 percent efficient in blocking  
12 pornography, pornography sites, that they  
13 shouldn't be used at all?

14 MR. BELANGER: That was one -- one  
15 aspect of it is that it also blocks  
16 appropriate material also.

17 REPRESENTATIVE BARRAR: How do you  
18 see the cost of the filters having an effect  
19 on your budget? Do you see that as a big cost  
20 in your overall budget? I know this year the  
21 legislature was very kind in giving --

22 MR. BELANGER: Right.

23 REPRESENTATIVE BARRAR: -- the  
24 libraries a rather large boost. In your  
25 overall budget do you see that?

1           MR. BELANGER: And we certainly do  
2 appreciate that. I have not done a detailed  
3 cost analysis of what it would cost. We have  
4 looked at a few filters as -- looking at how  
5 this bill is structured, I believe that we  
6 would probably have to install individual  
7 filters on each machine so they could be  
8 overridden.

9           That would cost the software,  
10 which, you know, I think we've priced it in  
11 the 25 to \$50 per machine cost. But there's  
12 also the cost of installing it and maintaining  
13 it on each of those individual computers.  
14 That would probably be much larger than the  
15 initial software cost.

16           REPRESENTATIVE BARRAR: I  
17 constantly hear groups say that, you know,  
18 when it comes to children, if it benefits one  
19 child it's worth the cost; or if it benefits  
20 one child even if it steps on the constitution  
21 a little bit it's worth that cost.

22           How do you feel about it in this  
23 case? Is it worth the cost if it protects one  
24 child from accidentally getting involved in --  
25 onto a site that may be harmful?

1 MR. BELANGER: That's a very  
2 difficult question because, I mean, there are  
3 so many other issues around it that complicate  
4 it and such.

5 I think, as the librarians say in  
6 their testimony and such, we do not have a  
7 great deal of problem with our existing  
8 policy. We have -- it is working in the  
9 libraries. We do continually reevaluate it,  
10 so, you know, what we have now appears to be  
11 working. I don't know if that exactly answers  
12 your question, but I think that's the spirit  
13 in which we've been proceeding with our  
14 policy.

15 REPRESENTATIVE BARRAR: If,  
16 Mr. Chairman, you would bear with me, I just  
17 want to relay a story that my daughter around  
18 Valentine's day went onto our Internet site  
19 and she put in the search word "romance."  
20 Well, you can imagine the sites that came up.  
21 I mean, some of them were very innocent, but  
22 other ones were just -- just terrible sites  
23 that I, you know, don't want her on.

24 We keep our computer in the living  
25 room so that it's right there with the TV and

1 we can watch everything our children are  
2 doing.

3 But in this case, filters  
4 definitely would have -- in a public library  
5 setting the filters would have helped.

6 MR. BELANGER: They would have  
7 helped. They would not have prevented it  
8 exclusively, but they would have helped.

9 Our web site, though, does list  
10 search engines that are filtered for children  
11 to use. We have, I'm not sure of the exact  
12 number, but there are six to eight, in that  
13 neighborhood, of search engines. So children  
14 can go to those search engines and with their  
15 parents or with their parents' guidance and  
16 use them so that they would not be exposed to  
17 that type of material.

18 REPRESENTATIVE BARRAR: Thank you.  
19 That's all I have, Mr. Chairman.

20 CHAIRMAN BIRMELIN:  
21 Representative Egolf.

22 REPRESENTATIVE EGOLF: You said  
23 you had search engines for the children. But  
24 then you said, though, that these don't work.  
25 So do you allow them to go into them without

1 supervision or, I mean --

2 MR. BELANGER: I'm not sure I --

3 REPRESENTATIVE EGOLF: You said  
4 several of -- you said earlier that a lot of  
5 this software and providers don't really  
6 filter out everything.

7 MR. BELANGER: That's correct.

8 REPRESENTATIVE EGOLF: So if you  
9 have one specifically for children, do you  
10 allow them to access them completely on their  
11 own or do you have somebody supervising them  
12 so they don't get into the parts where the  
13 server doesn't work, or the software?

14 MR. BELANGER: There are actually  
15 two different technologies. One is the filter  
16 that blocks the entire worldwide web. These  
17 are search engines where the provider of the  
18 search engine, the company that manages it,  
19 has gone out and selected sites as opposed  
20 to -- you know, everything has been  
21 prescreened. It's basically a prescreening.

22 Those are available on all the  
23 machines. And currently, in our situation,  
24 children can use any of the machines.

25 REPRESENTATIVE EGOLF: So they

1 can't go beyond, they don't go beyond what  
2 they specifically --

3 MR. BELANGER: They can -- they  
4 have full access to all of them, but those  
5 search engines, just like other links on our  
6 web site, they can go to and search. They  
7 could go from that, but yes, they can still  
8 use.

9 MS. CASINI: I just wanted to say  
10 that we have one Internet work station that's  
11 set up in the children's area of the library  
12 and it defaults to a page that selects  
13 child-friendly sites, so that -- so the  
14 children are offered links to sites that we  
15 know are safe for them when they -- when they  
16 sit down at that computer.

17 REPRESENTATIVE EGOLF: Okay.  
18 Thank you. You all seem to be very concerned  
19 about -- about children and families and so  
20 on, and doing what you can. And that's  
21 certainly -- certainly is commendable, because  
22 that's what I think we're all trying to do.

23 You mentioned the -- your local  
24 policies, but I wasn't sure what -- let's see,  
25 Miss Casini, you mentioned in here about that



1 you do visually monitor the screens. What do  
2 you actually do if you see -- and intervene if  
3 necessary, what do you actually do if you  
4 observe somebody accessing pornography?

5 MS. CASINI: If the person on duty  
6 in the area -- where it's really basically the  
7 reference area where our computers are set up,  
8 and the reference staff can visually monitor  
9 what's happening on all the screens. If they  
10 saw something that they felt was questionable,  
11 they would go -- probably go over and look  
12 more closely. Or if somebody complained to  
13 them about something that was appearing on the  
14 screen, they would -- they would ask the  
15 person, if they felt that it was offensive, to  
16 log off the site. And if they refused to, we  
17 would ask them to leave the library.

18 REPRESENTATIVE EGOLF: You mean if  
19 the --

20 MS. CASINI: So basically we have  
21 an acceptable behavior within a public library  
22 setting.

23 REPRESENTATIVE EGOLF: You ask the  
24 patron if it's objectionable?

25 MS. CASINI: The person who is

1 using the Internet terminal to leave the site,  
2 tell them this is not an appropriate place for  
3 them to be viewing that material. And I  
4 think -- I don't know whether I could  
5 characterize the kinds of infractions that we  
6 have found in Radnor as actual obscen --  
7 obscenity, but they're probably sex --  
8 something slightly sexual in nature and the  
9 librarian feels it's getting pretty near the  
10 bone, maybe, or has a complaint from a patron,  
11 in which case we would ask them to leave the  
12 site or leave the library.

13 REPRESENTATIVE EGOLF: Have you  
14 had any complaints at all?

15 MS. CASINI: Not very frequently.  
16 It actually works quite well and people are  
17 very responsible. A lot of the use of our  
18 Internet terminal are for people checking  
19 their e-mail. And a lot of -- a lot of what's  
20 going on in the screen is technical rather  
21 than graphic.

22 REPRESENTATIVE EGOLF: And just  
23 one thing I'm not sure, maybe I misunderstood.  
24 You had said that you don't feel censoring all  
25 Internet information available to public

1 library patrons would be the case -- you feel  
2 that censoring all Internet information would  
3 be the case if this bill were adopted.

4 MS. CASINI: Well, if we have a  
5 filter it basically depends -- the way we're  
6 set up in Delaware County, we have a feed from  
7 the county. If we -- unless we decided that  
8 there was some computers that we did not wish  
9 to filter and designated them as for adults  
10 and unfiltered, you know, they would be  
11 filtering all -- all of the information on the  
12 Internet, we would be denying people  
13 information that they might have a right to  
14 view. And although it -- you're telling us we  
15 can turn them off, in fact, there's probably  
16 going to be a considerable delay before --  
17 before that happens.

18 I feel -- I think it's -- it's  
19 very important to preserve the freedom to  
20 read -- which I interpret is also the  
21 Internet -- in a public library; that public  
22 libraries have to have information for  
23 everyone, even sometimes information that I  
24 personally find objectionable. And I think we  
25 have to be very, very careful when we limit

1 that for adults, as well as children.

2 REPRESENTATIVE EGOLF: I --

3 MS. CASINI: Therefore, I think  
4 it's -- it's something that needs to be  
5 examined very carefully, I think, before  
6 legislation is adopted.

7 REPRESENTATIVE EGOLF: Okay. I  
8 just wanted to correct -- you said that it  
9 would be cens -- if this bill were adopted we  
10 would be censoring all Internet information.

11 MS. CASINI: Well, filtering is  
12 censoring. That is my interpretation. It  
13 means that we're deciding that certain things  
14 will not be made available.

15 REPRESENTATIVE EGOLF: Well, then  
16 wouldn't that be the same thing, you said  
17 monitoring, if you see something that's not  
18 appropriate, wouldn't that be censoring also  
19 then? You're just doing it by person rather  
20 than software.

21 MS. CASINI: Well, we're letting  
22 people at least get to the site. And I  
23 don't -- I don't know. It's a very -- the  
24 Internet is presenting us with tremendous  
25 problems in libraries. They are not easy

1 problems to solve. We're trying to preserve  
2 the access to information, and also to protect  
3 children and also to not offend other people  
4 who are in the library at the same time. It's  
5 not easy.

6 My staff wrestles with this  
7 problem all the time. I think we have to be  
8 very careful with legislation, however,  
9 because -- because it is very important that  
10 public libraries have a lot of -- you know,  
11 free access to information as broadly as  
12 possible.

13 REPRESENTATIVE EGOLF: I agree,  
14 certainly agree. We don't want to have  
15 legislation if there's not a problem. And it  
16 sounds like you're very concerned about the  
17 problem.

18 It looks like all three of you  
19 actually are certainly concerned, but we're  
20 hearing different testimony as far as the  
21 effectiveness of filtering of providers  
22 compared to what Mr. Burt said. So I'm  
23 certainly encouraged by the Pennsylvania  
24 Library Association having a committee to look  
25 into this.

1           I would certainly be interested in  
2 seeing the results of that, because I think  
3 that's what we really need to do is get, you  
4 know, research and find out if there are  
5 problems and complaints.

6           Now, so far the report I've seen  
7 from Mr. Burt shows that there really are  
8 problems. In fact, some areas there have been  
9 policies that say don't do anything, allow  
10 children all complete access. So we go from,  
11 you know, that extreme to certainly we don't  
12 want to cut off everything, we need -- and  
13 research, according to Mr. Burt, we can still  
14 get into research when necessary. You're  
15 saying that's not adequate. So certainly if  
16 we have more information it can help. I  
17 certainly, as sponsor of this bill, would  
18 welcome that.

19           But right now, as was mentioned  
20 earlier, certainly we should be considering  
21 the children. And if that makes a little more  
22 inconvenient for an adult to get -- has to  
23 wait a day to get some information, if we can  
24 keep the children from accessing some of this  
25 harmful material -- and obviously it's harmful

1 or it wouldn't be illegal -- then maybe we  
2 need to make an inconvenience on the adults  
3 for that purpose.

4 I know it's a tough problem. And  
5 again, I applaud you for trying to do  
6 something about it. Many libraries are not.  
7 Believe me. And that's maybe why we need to  
8 require them to.

9 MR. ROBERTS: Mr. Egolf, if you  
10 would forward to me any questions that the  
11 committee does have I would be more than happy  
12 to ask our committee to look into it, because  
13 it's very, very important to us.

14 MR. BELANGER: And I just wanted  
15 to add one thing, to echo some of Barbara's  
16 comments, is that our policy does specifically  
17 state that a library, as a public facility,  
18 must maintain an atmosphere conducive to the  
19 enjoyment of all members of the public.  
20 Individuals afforded the freedom to use the  
21 library have the responsibility not to engage  
22 in offensive or disruptive conduct, and that  
23 would be where the librarian would say that  
24 that's inappropriate for you to be doing that.

25 REPRESENTATIVE EGOLF: Thank you,

1 Mr. Chairman.

2 CHAIRMAN BIRMELIN: I want to  
3 thank you folks for testifying this afternoon.  
4 Thank you very much.

5 Next scheduled testifier is Larry  
6 Frankel. He's the Executive Director of the  
7 American Civil Liberties Union in  
8 Pennsylvania. Mr. Frankel, do you have  
9 written testimony today?

10 MR. FRANKEL: Yes, we provided it.

11 CHAIRMAN BIRMELIN: Would you  
12 like to introduce your guest, please?

13 MR. FRANKEL: I would be very  
14 pleased to do that so. Chairman Birmelin,  
15 other members of the Committee, the witness  
16 that will testify for the ACLU today is  
17 Mr. Jeffrey Rothman. He's second year law  
18 student from the University of Pennsylvania  
19 Law School participating in a legislative  
20 clinical program that they have been operating  
21 there, and he's working in my office.

22 CHAIRMAN BIRMELIN: The common  
23 request is that you hold the microphone, I  
24 guess. It doesn't --

25 MR. FRANKEL: It probably makes it



1 a lot easier.

2 CHAIRMAN BIRMELIN: It's not  
3 picking up from a very far distance, so if you  
4 don't mind holding it. If you want, 15 words  
5 or less, reiterate what you just said there.

6 MR. FRANKEL: I was just  
7 introducing Mr. Jeffrey Rothman. He's a law  
8 student at the University of Pennsylvania Law  
9 School, and he's going to present our  
10 testimony today.

11 CHAIRMAN BIRMELIN: Okay.  
12 Mr. Rothman.

13 MR. ROTHMAN: Thank you very much.  
14 Thank you for the opportunity to  
15 speak here today.

16 As recognized by the U.S. Supreme  
17 Court in the landmark case of *Reno v. ACLU*,  
18 the Internet is perhaps the most inclusive and  
19 democratic medium for information that's ever  
20 existed. Justice Stevens, in his opinion for  
21 the majority, likened it to both a vast  
22 library including millions of readily  
23 available and indexed publications and a  
24 sprawling mall offering goods and services.

25 It has held that free speech on

1 the Internet was to be afforded the highest  
2 possible protection, and that any governmental  
3 attempt to curtail speech on the Internet  
4 would be subject to the highest level of  
5 constitutional scrutiny.

6 The ACLU believes that House Bills  
7 No. 4 and 2324 are both unconstitutional and  
8 by limiting access in an arbitrary and  
9 capricious manner to this vast web of  
10 limitless educational potentiality,  
11 detrimental to the welfare of people of all  
12 ages.

13 The danger of overbroad censorship  
14 contained in these bills is inherent to the  
15 very modes of censorship called for  
16 specifically by the implementation and the  
17 enforcement clauses that they contain.

18 The bill states that either  
19 blocking software or on-line blocking servers  
20 are required for public libraries, public  
21 schools. These mechanisms speak very broadly  
22 indeed.

23 The on-line blocking service  
24 operate by way of key words which are then  
25 screened out. This may eliminate, for

1 example, sites with any consecutive appearance  
2 of the letters S, E, and X, even if they're  
3 contained in separate words -- for example,  
4 Mars exploration or sexton and the like -- and  
5 those relating to breast cancer, the erection  
6 of sky scrapers, gay and lesbian issues,  
7 Superbowl XXX -- because of the three X's in  
8 the Roman numeral -- and countless other rich  
9 repositories of information merely because  
10 they contain such taboo words and phrases.

11           The blocking software poses  
12 problems no less serious, by simply allowing  
13 the software companies to choose for  
14 themselves which specific sites on an  
15 ever-changing Web will be censored. This poses  
16 a danger that, as well as imposing their own  
17 particular and contingent standards to what is  
18 harmful, the software company will block sites  
19 that are critical of their product or their  
20 political ideology.

21           In either case, valuable  
22 information is caught and excluded in a very  
23 widely cast net, while much of the potentially  
24 harmful material that it was intended to  
25 screen out slips through the meshwork anyhow.

1           Such modes of censorship, while  
2           instituted for the purpose of protecting  
3           children's sensitive minds, may in actuality  
4           serve to retard their development and  
5           maturity.

6           Our schools and libraries exist in  
7           order to not only bestow substantive  
8           knowledge, but to help instill faculties of  
9           critical thinking and judgment that are so  
10          vital in our complex and ever-changing world.  
11          By merely excluding information, and not  
12          helping children to learn to discriminate for  
13          themselves between the wheat and the chaff, we  
14          would be doing them, and by implication our  
15          wide society, a very great disservice.

16          The proposed bills are likewise  
17          flawed in that they treat older minors and  
18          younger minors identically, and restrict  
19          access to Internet sites for all age and  
20          maturity levels to the same degree, and with  
21          the same broad and capricious strokes.

22          This dumbing down the Internet to  
23          the lowest common denominator threatens all of  
24          our young people, but especially the most  
25          precocious, mature, and promising among them.

1                   Recognizing this, the U.S.  
2                   District Court for the District of New Mexico,  
3                   in recently enjoining a New Mexico statute  
4                   which was attempting to ban communications of  
5                   indecent materials to minors, quoted the Court  
6                   of Appeal for both the 4th and the 11th  
7                   Circuits stated, quote, "If work is found to  
8                   have serious literary, artistic, political, or  
9                   scientific value for a legitimate minority of  
10                  normal, older adolescents, then it cannot be  
11                  said to lack such value for the entire class  
12                  of juveniles taken as a whole."

13                  Thus, these Circuit Courts have  
14                  recognized that a blanket treatment of all  
15                  juveniles is unconstitutional if it, quote,  
16                  Interferes with the rights of minors to access  
17                  and view material that for them is protected  
18                  by the First Amendment.

19                  The failure of these bills to  
20                  distinguish between age groups faces other  
21                  constitutional problems as well, as it  
22                  prohibits adults in our library from, quote,  
23                  sending, receiving, viewing, or downloading  
24                  material, the character of which is reasonably  
25                  believed to be harmful to minors.

1 Federal District Court of  
2 Virginia, as we mentioned, the *Loudoun*  
3 Decision, has recently decided that it's  
4 unconstitutional to prevent adults from having  
5 access to materials deemed to be harmful to  
6 minors. Provisions in House Bill 2324 are  
7 very similar to those of the statute which the  
8 *Loudoun* court permanently enjoined from  
9 implementation.

10 By actually preventing adults from  
11 accessing material deemed to be harmful to  
12 minors, as the librarian was stating, House  
13 Bill 2324 falls squarely within the category  
14 of what was held in *Loudoun* to be an  
15 unconstitutional restraint on protected  
16 speech.

17 With regard to House Bill No. 4,  
18 while it only prohibits and does not prevent  
19 adults from accessing such information, the  
20 provision for sanctions for transgressions of  
21 prohibitive behavior, which the bill requires  
22 of the library's acceptable use policies, may  
23 very well be deemed by the courts to be an  
24 unconstitutional ensnarement of adult library  
25 patron in a net only to guard children.

1           As stated in the U.S. Supreme  
2 court's decision in *ACLU v. Reno*, in order for  
3 a statute to be narrowly tailored to a state's  
4 compelling interest in the protection of  
5 children, the limitations placed on speech,  
6 and access to speech, must constitute the  
7 least restrictive means of meeting that  
8 compelling interest. House Bills No. 4 and  
9 2324 do not employ this requisite  
10 constitutional care, thus, risk being struck  
11 down.

12           Other potential constitutional  
13 problems arise due to these bills'  
14 infringement of interstate commerce. The  
15 federal district court in *ACLU v. Johnson*  
16 granted an injunction of New Mexico's statute  
17 not only on First Amendment grounds, but also  
18 because it regulated Internet conduct  
19 occurring wholly outside the state, and, thus,  
20 constituted an unreasonable and undue burden  
21 on interstate and foreign commerce.

22           The New Mexico District Court  
23 summed up the ruling of the District Court for  
24 the Southern District of New York in *American*  
25 *Library Association v. Pataki*, directing us to

1 the conclusion that, quote, Purely intrastate  
2 communications over the Internet do not exist.

3 The arbitrary and capricious  
4 screening mechanism required by these bills  
5 may very well prevent many marketers, advisers  
6 and sellers from reaching potential patrons  
7 and prevent the children and adults subject to  
8 those overbroad screenings from accessing  
9 products and services that could enhance the  
10 quality of their lives and their educational  
11 pursuits. The unconstitutional burden of  
12 interstate commerce mirror the  
13 unconstitutional infringement of free speech  
14 that are inherent in these bills.

15 The ACLU is also concerned with  
16 these statutes' requirements that the  
17 libraries' and schools' acceptable use policy  
18 be approved by the Secretary of Education,  
19 under the threat of a loss of funding.

20 This represents an unjustified  
21 transference of global decision making to the  
22 state level where the particular needs and  
23 desires of a community may not be reflected in  
24 the individual judgment of the Secretary of  
25 Education.



1                   The added clause on House Bill  
2 2324 requiring the Secretary of Education to  
3 compile a list of acceptable software programs  
4 and on-line service is especially curious in  
5 this regard. In addition to the obvious lack  
6 of any practicable criteria by which the  
7 Secretary could evaluate these complex  
8 technological products, the bill seems to be  
9 saying that there should be but one standard  
10 of acceptability to be determined in advance  
11 solely by the Secretary, and that will apply,  
12 with the blanket effect, to all of the varied  
13 and unique characters of the many communities  
14 that comprise our state.

15                   We believe that the decisions as  
16 to what content should be appropriate for  
17 children should remain with the families and  
18 communities which form the child's social  
19 milieu, and not with an official in  
20 Harrisburg, who is necessarily unfamiliar with  
21 the social context within which such decisions  
22 must be properly formed.

23                   Additionally, any funds withheld  
24 under this bill would only serve the function  
25 the unduly restricting the educational

1 opportunities to be provided by our libraries  
2 to students, as well as breeding local  
3 resentment of the forced acceptance of the  
4 removal of local authority over the rearing of  
5 their own children.

6           The funds withdraw provisions are  
7 especially harsh under House Bill 2324, which  
8 even removes the provision provided in House  
9 Bill No. 4 which grants the school or library  
10 board immunity from fund withdrawal while they  
11 appeal any of the Secretary's adverse decision  
12 to the Commonwealth Court.

13           Thus, these bills could most  
14 easily, through their insensitivity to  
15 particularities and needs of local  
16 communities, serve to undermine the very  
17 social development of our children that they  
18 seek to protect.

19           Another, and on its face more  
20 shocking, problem with these bills lies with  
21 the appeals process they provide for aggrieved  
22 library patrons whose request for access to  
23 materials on Internet have been denied by  
24 library personnel.

25           In addition to the initial hurdle

1 of having to meet the library's standards of  
2 what would be appropriate material to view in  
3 the first place, the bill would then require  
4 aggrieved library patrons -- would then  
5 require of them that they present themselves  
6 before the intimidating and already extremely  
7 overloaded mechanism of the court system to  
8 simply seek access to desired information.

9           Additionally, the *Loudoun* court  
10 points out that the U.S. Supreme Court  
11 considers such appeals provisions to be  
12 unconstitutional requiring, as one of the  
13 procedural safeguards necessary for any prior  
14 restraint on speech to be deemed  
15 constitutional, that, quote, The censor must  
16 bear the burden of going to court to suppress  
17 the speech and must bear the burden of proof  
18 once in court, unquote.

19           Also, insofar as the library  
20 personnel who make the initial decision to  
21 reject a request for access to blocked  
22 material are to be considered government  
23 officials, constitutional problems again  
24 arise. The court in *Loudoun* quotes the 4th  
25 Circuit has found that, quote, The guarantee

1 of freedom of speech afforded by the First  
2 Amendment is abridged whenever a government --  
3 government makes the enjoyment of protected  
4 speech contingent upon obtaining permission  
5 from government officials to engage in its  
6 exercise under circumstances that would permit  
7 government officials unfettered discretion to  
8 grant or deny the permission.

9           Because of this, quote, Permitting  
10 government officials unbridled discretion in  
11 determining whether to allow protected speech  
12 presents unacceptable risk of both  
13 indefinitely suppressing and chilling  
14 protected speech.

15           The *Loudoun* court continues, Such  
16 unconstitutional unfettered discretion exists  
17 when a regulation creating a prior restraint  
18 on speech fails to impose adequate standards  
19 for officials to apply in rendering a  
20 decision.

21           The bills in question cannot be  
22 said to impose adequate standards for library  
23 personnel to use in their decisions since the  
24 terms relied upon are so very vague. The  
25 definitions in the Crimes Code, which the

1 bills employ, is designed for a judge or a  
2 jury to use in weighing the issues of fact in  
3 a criminal trial; they contain vague phrases  
4 that were never designed to be used and would  
5 be improperly used as standards in assisting a  
6 librarian or school official to censor  
7 material on the Internet.

8           It seems manifestly inappropriate,  
9 as well as unconstitutional, to use the Crimes  
10 Code's definitions in this way. The bill's  
11 provision allowing for school districts -- for  
12 school districts to adopt a policy that seeks  
13 to prevent students' Internet access to  
14 pervasively indecent and vulgar material is  
15 likewise exceptionally vague and broad and  
16 could potentially allow school officials to  
17 censor access to works of great literary and  
18 artistic value because of their personal  
19 preferences. This would most obviously be  
20 stunting to our students' intellectual  
21 development and would, again, be doing them a  
22 great educational disservice.

23           Lastly, and perhaps most telling,  
24 are the provisions in the bill allowing for  
25 the disabling of the blocking technology in

1 schools and libraries for nonstudents and  
2 persons over age 17, respectively, to, quote,  
3 enable unfiltered access for the purpose of  
4 bona fide research or other lawful purpose.

5           It is difficult to tell what bona  
6 fide research would entail here. Perhaps one  
7 would need to have an advanced academic degree  
8 and be aiming at the publication of one's  
9 research. Perhaps the subject matter of the  
10 research would have to meet with the approval  
11 of the decision-making personnel within the  
12 library or school. Perhaps one might have to  
13 be working on the subject that's considered to  
14 be useful in some way.

15           It clearly seems to indicate,  
16 however, that a healthy and normal curiosity  
17 for intellectual stimulation and the desire to  
18 be informed about subjects far and wide would  
19 not suffice. The existence of this provision,  
20 for the disable blocking technology for bona  
21 fide research, seems to be itself an admission  
22 that significant amounts of valuable speech  
23 would be arbitrarily cut -- cut out if this  
24 bill should pass.

25           The felt need for the inclusion of

1 this clause and its troublesome corollaries  
2 demonstrates for us powerfully why the bill  
3 should not pass.

4 In conclusion, the Internet  
5 prevents unprecedented opportunity for members  
6 of our community of all ages to learn, grow,  
7 and explore the complexities of our world.  
8 Mandatory censorship through blocking  
9 technology is not, however, the answer to  
10 legitimate concerns for protecting our  
11 children from images and ideas for which they  
12 may not be ready.

13 The ACLU is fully in favor of the  
14 articulation of acceptable use policies for  
15 schools and libraries, policies that help to  
16 teach children to determine for themselves  
17 what is of value and what is trash; and that  
18 encourage children to inquire about that which  
19 might be confusing to them, rather than  
20 fruitlessly trying to hide all potentially  
21 harmful material behind a very large screen  
22 and, thus, preventing them from access to much  
23 that would be of great value to their mental,  
24 physical, and spiritual development.

25 Blocking technologies is not the

1 answer. Prudence, concern, and willingness to  
2 engage the questions and curiosities of our  
3 young minds are what is needed.

4 Thank you very much for your time  
5 and attentiveness. I also included an  
6 addendum here just comparing 2324 and House 4.  
7 I won't bother reading it. It just shows 2324  
8 omits whatever references to constitutionality  
9 that House Bill No. 4 did.

10 Thank you, again. I'd be very  
11 happy to answer any questions you might have.

12 CHAIRMAN BIRMELIN: If you were  
13 not here for my opening remarks, I commented  
14 that House Bill 2324 is a later, more current  
15 version of House Bill 4 and probably would be  
16 the bill that would be the one that the  
17 legislature would work on and/or approve, if  
18 it got to that point, as opposed to House Bill  
19 4.

20 MR. ROTHMAN: It's far more  
21 problematic, for the reasons that I've  
22 outlined.

23 CHAIRMAN BIRMELIN: Well, I have  
24 about 55 things I disagree with you on your  
25 testimony, and I won't bore the audience with



1 that. But I'll give you -- leave the  
2 opportunity for Mr. Egolf to do so.

3 REPRESENTATIVE EGOLF: Well, I  
4 wouldn't -- I guess I have one question. You  
5 were saying that you consider librarians as  
6 the government if they would -- if they would  
7 decide, whatnot, to unblock or what they  
8 should block; is that correct?

9 MR. ROTHMAN: If the courts were  
10 to deem that a library official was the  
11 government official deciding on what a library  
12 patron could view or not view, then there  
13 would be constitutional problems under that  
14 particular clause.

15 MR. FRANKEL: I think if you look,  
16 the *Loudoun* case is exactly -- one of the  
17 basis for the *Loudoun* case, they deem a public  
18 library to be an arm of the government.

19 REPRESENTATIVE EGOLF: So you  
20 would not -- then are you saying then that if  
21 a local library decided to restrict access to  
22 any pornography and obscenity, then you would  
23 object to that?

24 MR. ROTHMAN: The thing is the  
25 libraries are not required to -- to have

1 Internet access at all.

2 REPRESENTATIVE EGOLF: Right.

3 MR. ROTHMAN: But once they do  
4 give access to the Internet, the *Loudoun* case  
5 calls it a limited public forum, and once they  
6 are within that forum you cannot then go and  
7 censor out things arbitrarily once you're  
8 within the Internet.

9 REPRESENTATIVE EGOLF: So you're  
10 saying you would object to any library if they  
11 tried to restrict or censor out, filter out  
12 that kind of material? Is that what you're  
13 saying?

14 MR. FRANKEL: I think we have to  
15 start with understanding that our difference  
16 is important legal differences between the  
17 terms obscenity, pornography, and harmful to  
18 minors.

19 Obscenity is deemed to be that  
20 which is not protected by the First Amendment.  
21 So if they could specifically and only target  
22 what is obscenity, that might sustain, you  
23 know, constitutional challenge.

24 But the bill that is before us,  
25 the policy that was in place in the *Loudoun*,

1 the policies that have been in place in other  
2 litigation, the bill passed by Congress, did  
3 not deal solely with obscenity or solely with  
4 child pornography.

5 That is one of the significant  
6 issues in the court decisions. The  
7 legislation has always gone beyond that to  
8 areas which are constitutionally protected.  
9 And that is an issue. If one wants to talk  
10 about what kind of policy, one has to be very  
11 clear with what terms one uses. And I think  
12 the district attorney pointed out transmitting  
13 that which is obscene, meets the definition of  
14 obscenity, has been determined to be obscene  
15 can be legislatively acted upon. Other areas,  
16 such as child pornography, can be  
17 legislatively acted upon.

18 I think it's important to keep  
19 this terminology straight, because it's what  
20 the courts look to in these cases. Harmful to  
21 minors, pervasively indecent, and vulgar are  
22 not terms the courts recognize in terms of  
23 First Amendment litigation.

24 REPRESENTATIVE EGOLF: I  
25 understand that. But you didn't really answer

1 my question. So if -- if a local library  
2 wanted to filter out the obscenity, child  
3 pornography, and material harmful to minors,  
4 you would object to that?

5 MR. FRANKEL: We certainly would  
6 object to the harmful to minor part, because  
7 that is not a legal term. It is too vague.  
8 It is too overbroad. If they had a policy  
9 that -- and there's a lot of conditions  
10 here -- that only blocked that which was  
11 obscene and did not go beyond that, no, we  
12 wouldn't have a problem. How do you develop  
13 that policy is a very difficult question.

14 REPRESENTATIVE EGOLF: But earlier  
15 your testimony was we should leave it to the  
16 local libraries, let them develop their own  
17 policies according to the local community.  
18 Well, if they develop -- if one library maybe  
19 out of ten develops a policy to restrict  
20 material harmful to minors, they're doing  
21 exactly what you wanted, but now you're saying  
22 that's not acceptable.

23 MR. ROTHMAN: Sometimes the policy  
24 that we would recommend would not involve  
25 filtering program. That could involve --

1                   REPRESENTATIVE EGOLF: You first,  
2 though, in your testimony you said you really  
3 prefer to leave it to the local libraries to  
4 develop their own policy. Now you're saying  
5 they must develop a policy that you agree  
6 with.

7                   MR. ROTHMAN: Well --

8                   MR. FRANKEL: It's not what we  
9 agree with, Representative Egolf. It's what  
10 the constitution permits.

11                   REPRESENTATIVE EGOLF: But you're  
12 not allowing them to do what you wanted.

13                   MR. FRANKEL: The Constitution  
14 does not permit library here or anywhere else  
15 to adopt a policy that says you restrict  
16 harmful to minors. It's the same way that a  
17 local government could not try and outlaw  
18 something which the Constitution clearly  
19 permits, whether it's under the First  
20 Amendment or under -- what if the local  
21 municipality wanted to say police officers  
22 don't have to get search warrants. Well, I'm  
23 sorry, the United States Constitution requires  
24 that. The United States Constitution will  
25 permit local entities to adopt policies that

1 are consistent with the Constitution, but not  
2 policies that violate the Constitution.

3 MR. ROTHMAN: There is also what's  
4 known as content usual time, place, or manner  
5 restrictions which could be implemented, as  
6 the librarians had mentioned -- time limits,  
7 an hour; if people are waiting, 20 minutes --  
8 keeping them in view, these types of things.  
9 And plus, you know, I've read policies  
10 designed by libraries across the country that  
11 require a type of driver's ed. course before  
12 you use the Internet in order to teach  
13 children how to use it, what's appropriate,  
14 how to cope with something you would come  
15 across to help them to mature, to help them to  
16 grow. It doesn't just try and hide things  
17 from them so that eventually -- eventually in  
18 their life they're going to be presented with  
19 some material anyway. We'd like to protect  
20 them from it at an early age, but  
21 unfortunately we live in a very complex world  
22 and these things come up and children see it  
23 on TV. and unfortunately in the newspaper  
24 every day, violent photographs.

25 REPRESENTATIVE EGOLF: Thank you.

1                   CHAIRMAN BIRMELIN:    Thank you,  
2 gentlemen, Mr. Rothman, Mr. Frankel. Thank  
3 you for coming.

4                   Our next testifier is Mr. Stephen  
5 L. Herb. He has a Ph.D. He's chairman of the  
6 Intellectual Freedom Committee of the American  
7 Library Association.

8                   I know when it's a vegetable we  
9 call it an herb, but I think probably you  
10 pronounce with an H.

11                  MR. HERB: I do. Being an  
12 omnivore, I guess.

13                  CHAIRMAN BIRMELIN: You may begin.

14                  MR. HERB: Chairman Birmelin,  
15 members of the Subcommittee on Crime and  
16 Corrections of the House Judiciary Committee,  
17 ladies and gentlemen, thank you for giving me  
18 the opportunity to participate in this hearing  
19 today.

20                  I'll do a sound check. I've never  
21 been accused of being quiet. Am I all right  
22 in the back there? Good.

23                  My name is Stephen Herb and I'm  
24 the head of the Education and Behavioral  
25 Sciences Library at Penn State University,

1 University Park, and the executive director of  
2 the Pennsylvania Center For The Book.

3 Before coming to Penn State I was  
4 coordinator of children's services for the  
5 Dauphin County Library System in Harrisburg  
6 for nine years.

7 I'm also chair of the American  
8 Library Association's Intellectual Freedom  
9 Committee, and I'm here today representing the  
10 American Library Association.

11 The ALA is the nation's oldest and  
12 largest association of librarians and trustees  
13 with close to 60,000 members representing all  
14 types of libraries, public school, academic,  
15 state, and special libraries serving  
16 government, business, and other institutions.

17 ALA is the voice of America's  
18 libraries and millions of people who depend on  
19 them. Its mission is to promote the highest  
20 quality library and information services in  
21 order to enhance learning and ensure public  
22 access to information.

23 House Bill 2324 would require all  
24 school and public libraries to establish  
25 acceptable use policies for the Internet. In



1 fact, virtually all public libraries offering  
2 Internet access, 97 percent, have or are  
3 developing Internet use policies.

4 The problem is that House Bill  
5 2324 goes on to require those policies to  
6 include the use of either software programs or  
7 on-line servers that block access to material  
8 that is, quote, obscene or child pornography  
9 or harmful to minors.

10 In addition, the state will  
11 withhold funding from any library that fails  
12 to establish a policy that is, quote,  
13 acceptable to the Secretary of State.

14 By the way, just as an aside, I  
15 wish to state for the record that the American  
16 Library Association -- contrary to rumors here  
17 and there and misquotes -- has never, ever  
18 promoted porn -- child pornography in  
19 libraries, or obscenity. We are against those  
20 things that are illegal, such as child  
21 pornography and obscenity, and wish to help in  
22 any way we can to fully prosecute anyone who  
23 engages in that kind of behavior at a library  
24 or elsewhere, as law abiding citizens.

25 It's just that sometimes we get

1 associated with that reputation. And the  
2 First Amendment is something that you can  
3 believe in and still be for people abiding by  
4 the law. So I just thought I'd throw that in.  
5 That's an important issue, not something that  
6 libraries are promoting by any means.

7           The concerns underlying this  
8 legislation are important. I commend the  
9 Committee for taking a serious look at  
10 children's Internet safety, and I share the  
11 sponsors' concerns that children's experiences  
12 on the Internet be safe, educational and  
13 rewarding.

14           As new technology is proliferated,  
15 it is critical that we balance the  
16 extraordinary value they bring to  
17 communications and learning with responsible  
18 use and careful guidance. Nevertheless, as a  
19 practicing librarian, I remain concerned about  
20 the impact that the state mandate will have on  
21 local control and community decision making.  
22 Librarians are on the front line providing the  
23 training, support, and guidance that children,  
24 parents, and all library users need to become  
25 responsible Internet users.

1           For example, the Public Library of  
2 Nashville offers free two-hour classes called  
3 the "Internet for Parents and Children."  
4 Classes are designed for parents and children  
5 to work in pairs at a computer. Topics  
6 include introduction to the Internet, how to  
7 navigate through cyberspace, on-line safety,  
8 how to use the library's electronic catalogue,  
9 and the library's "Kid's Page," and how to  
10 find local family activities on-line.

11           The Canton, Michigan, Public  
12 Library has a Cyber Kids program. Parents and  
13 children must sign a Cyber Kid Agreement that  
14 explains the library's policy on children's  
15 Internet access. Children and their parents  
16 also must attend a half-hour cyber orientation  
17 session, which includes an overview of the  
18 Internet and a list of cyber rules.

19           Once they have completed the  
20 session, kids receive a sticker for their  
21 library card. This provides access to the  
22 Cyber Kid's Room, where seven work stations  
23 are set up just for children.

24           The Free Library of Philadelphia,  
25 I think a local -- nearby, right. I forget

1     how far east I drove, but I'm almost there --  
2     offers a Bits and Bytes program. It includes  
3     an after school computer science club for  
4     fourth to sixth graders that explores science  
5     software and science web sites, teenage tech  
6     team assistance provide tutoring and computer  
7     assistance. The library also offers workshops  
8     to introduce technology to parents, teachers,  
9     and child care providers, as well as other  
10    special programs.

11                   In fact, libraries are one of the  
12    few institutions providing the general public  
13    with Internet instruction. How we provide  
14    training, support, and guidance varies  
15    somewhat, depending on the community we serve.

16                   The process of developing  
17    acceptable use policies has been important for  
18    communities. It can help parents and other  
19    care givers to become more aware of the issues  
20    and options they have to control or limit  
21    their own children's access to home computers.

22                   We think that local decision  
23    making is working, and we're very concerned  
24    that a state blocking and filtering mandate  
25    will intrude unnecessarily in the prerogatives

1 of local community-based institutions, as well  
2 as into the professional decision making and  
3 judgment of public and school librarians.

4 While no one approach to Internet  
5 safety will satisfy everyone in the community,  
6 I believe it is possible to work with the  
7 community to fashion a bottom up approach that  
8 reflects community values, addresses core  
9 concerns, and provides useful solutions.

10 Not surprisingly, local  
11 decision-making processes vary significantly  
12 and the solutions are extremely diverse.

13 But what they have in common is  
14 involvement of the community, understanding of  
15 local norms and values, knowledge of practices  
16 that take into account the information needs  
17 of children and teens, and a general good  
18 faith desire to find the solution that  
19 respects the diverse perspectives in the  
20 community.

21 It has been my experience that the  
22 use of filtering software is not a  
23 particularly effective way to guide children  
24 away from, quote, "questionable" material on  
25 the Internet, nor is it a well-suited solution

1 for libraries.

2 Librarians serve as communities'  
3 principal source of information. For many,  
4 the public library provides the only access to  
5 the vast resources available on the Internet.

6 Many of those libraries, nearly  
7 half, have only one terminal with graphical  
8 access to the World Wide Web.

9 To mandate that one computer be  
10 filtered would block access to library users  
11 of all ages, not just children and youth. Use  
12 of an on-line server that blocks material  
13 would have the same results. Moreover,  
14 blocking software does not just target  
15 "illegal material." Oh, if only it did. If  
16 only there were a one-to-one correspondence  
17 between those two, we would be in such good  
18 shape. But it does not. It deprives the  
19 community to access to many sites that provide  
20 valuable as well as constitutionally protected  
21 information for both adults and children on  
22 subjects ranging from breast cancer and AIDS  
23 to religion and politics.

24 In New York recently, news sites,  
25 NBC and CNN were blocked from students trying

1 to do research reports in high school by their  
2 filtering on their on-line service provider.

3 At the same time, such software  
4 also fails to provide protection from  
5 materials that others may find, quote,  
6 "objectionable," however defined.

7 While blocking and filtering  
8 products can be useful tools for parents to  
9 use at home perhaps, as public institutions  
10 supported primarily by local public tax  
11 moneys, libraries have other obligations.  
12 They must meet the information needs of the  
13 entire community or school population while  
14 upholding the basic principles of the First  
15 Amendment and maintaining the privacy and  
16 confidentiality of users.

17 Within the same community, within  
18 the same school district or library system  
19 indeed, even within the same library or school  
20 building, users have vastly different needs.  
21 State mandated blocking software cannot  
22 responsibly anticipate the information and  
23 curricular needs of a diverse community or  
24 determine the best sources of information for  
25 any particular public or school library user.

1                   This is the responsibility of  
2 library and school boards that reflect the  
3 values and standards of their constituents and  
4 who are in the best position to know how to  
5 guide children's Internet access within these  
6 institutions.

7                   When a library installs commercial  
8 filters or blocking software, it transfers the  
9 professional judgment about the information  
10 needs of the community from the local  
11 governing officials and the community  
12 librarians and teachers, to anonymous third  
13 parties -- often part-time workers with no  
14 credentials and no ties to the community --  
15 who evaluate sites for the software filter  
16 manufacturer. Unlike software manufacturers,  
17 librarians have professional skills and are  
18 dedicated to serving their community's  
19 education needs. They have a responsibility  
20 to work with governing boards to help develop  
21 policies that assure appropriate Internet use.  
22 Librarians also must respond to community  
23 complaints and potential legal action over  
24 improper or inadequate blocking.

25                   Librarians are also very concerned



1 about the so-called quick fix that fail to  
2 teach children how to best use the Internet.  
3 Our children are growing up in a global  
4 information society. They need to learn  
5 critical viewing and information skills that  
6 will help them make good judgments about the  
7 information they encounter. Students of all  
8 ages must be able to assess as well as access  
9 information. They must be able to distinguish  
10 between information that is useful and  
11 valuable and that which is not, to handle and  
12 reject content that may be offensive to their  
13 values, and to adhere to on-line safety rules  
14 when confronted with uncomfortable situations.

15           Simply blocking offensive and  
16 unwanted content will not teach students these  
17 critical skills. Librarians believe that  
18 there are many alternatives to help children  
19 make wise and responsible use of the Internet.  
20 Librarians provide training for children,  
21 parents, and teachers on appropriate Internet  
22 use. Almost all libraries have established  
23 local Internet use policies for children and  
24 other library users which set the rules for  
25 appropriate behavior in libraries or schools

1 when using on-line resources.

2 Librarians provide guidance on how  
3 to assess the value and reliability of  
4 Internet resources. The American Library  
5 Association, for example, has developed  
6 "Families Connect," which provides on-line  
7 classes developed by the American Association  
8 of School Librarians, and teaches Internet  
9 safety and basics, as well as recommends how  
10 to make the most of Internet resources.

11 Most importantly, librarians  
12 assure safe and positive on-line experiences  
13 for children based upon each child's needs, by  
14 guiding them to educational, entertaining, and  
15 valuable sites. In addition to providing  
16 direct advice and guidance to children seeking  
17 to research particular topics or find certain  
18 information, many individual libraries, as  
19 well as the American Library Association, have  
20 developed children's web sites and home pages  
21 that lead children directly to the best the  
22 Internet has to offer.

23 For example, the ALA has developed  
24 "700+ Amazing, Spectacular, Mysterious,  
25 Wonderful Web Sites for Kids and the Adults

1 Who Care About Them" to guide children and  
2 parents to sites that are site educational and  
3 entertaining.

4           Notwithstanding the many concerns  
5 about the use of filtering, some communities  
6 have made the decision to install blocking  
7 software in libraries. Others have tried  
8 blocking and eventually removed the software  
9 because it proved to be ineffective, overly  
10 broad, and difficult to maintain. Still  
11 others have carefully studied the costs and  
12 benefits of filtering with their library and  
13 school boards, have decided to use other  
14 methods to guide children's Internet use.  
15 Others have installed filters in some machines  
16 and not in others. But all in the library  
17 community who have looked at children's  
18 Internet access have made their decisions  
19 based on local community circumstances and  
20 norms, and trained professional judgment.

21           In conclusion, librarians  
22 understand that increased access to the  
23 Internet in schools and libraries has  
24 heightened concerns about children's ability  
25 to access inappropriate and illegal material.

1           Those concerns are serious, but  
2 they are not new. Communities have been  
3 developing many different and effective ways  
4 to guide children's access that are informed  
5 by professional research and judgment and  
6 local norms and values. The state should not  
7 interfere with local control and decision  
8 making by maintaining a single approach to a  
9 multifaceted problem. There is no one right  
10 solution; there are many.

11           Finally, it makes little sense  
12 that in order to receive state funds school  
13 and public libraries should be required to  
14 spend their valuable resources of mostly local  
15 tax dollars to purchase software filters that  
16 cannot do what this bill wants them to do.

17           Filters are flawed before they are  
18 installed, ineffective the moment they are  
19 activated, and become less effective each day  
20 they operate.

21           Filters will not and cannot solve  
22 the problems of obscenity and child  
23 pornography on the Internet. That is the  
24 purview of law enforcement. The law  
25 enforcement community doesn't rely on a piece

1 of faulty technology to perform their  
2 challenging duties. They rely on sound  
3 judgment of men and women who have been well  
4 trained and who believe in serving the needs  
5 of their local communities.

6           Something very similar can be said  
7 about the people who serve in Pennsylvania's  
8 libraries. One of the true glories of this  
9 nation is the concept of a library. Walking  
10 through a library's door is the greatest of  
11 all equalizers. All who follow the library's  
12 rules and obey existing laws are welcome.

13           The library does not discriminate  
14 based on wealth or race or gender. The  
15 library user's religion or what he or she does  
16 for a living does not affect the service a  
17 library user receives. A child's individual  
18 home circumstances do not affect how a child  
19 is treated at the library.

20           All children are welcome to find  
21 the information they need to become the best  
22 adults they can grow up to be. The tradition  
23 of libraries in Pennsylvania is a great one.  
24 And that tradition depends on the human touch  
25 provided in local school and public libraries.

1 That's the human touch provided by local  
2 government leaders, library board members,  
3 librarians, staff, and volunteers, the people  
4 who know their local communities because  
5 they're members of those communities.

6 I visited hundreds of libraries  
7 during my professional career and I never  
8 cease to be moved by how much the people who  
9 run them care about the people they serve.

10 I always trust those people above  
11 any given piece of computer software. I  
12 always trust parents to help their own  
13 children to make the right choices in  
14 libraries. I hope the Commonwealth will  
15 extend that trust to the parents of  
16 Pennsylvania and the local library leaders as  
17 well. Thank you.

18 CHAIRMAN BIRMELIN: Thank you,  
19 Mr. Herb. You're so inspiring; I want to  
20 become a librarian now. I probably would have  
21 said some of the same things about being a  
22 teacher, but I'm not sure that I could say  
23 that about being in politics.

24 MR. HERB: I'm sorry to hear that.

25 CHAIRMAN BIRMELIN: I'm sorry to

1 have to say it:

2 Just a few comments, and some of  
3 them are directed at your remarks, but maybe  
4 some are more so at the general tone of those  
5 who have imposed the legislation that we're  
6 dealing with today.

7 First of all, I think very few, if  
8 any, people would disagree with some of the  
9 very positive things that are happening in our  
10 libraries. I mean, you gave us several  
11 examples. And the bottom line was that you  
12 wanted to guide parents and children to sites  
13 that are safe, educational, and entertaining.  
14 And I think good citizens want to do that.

15 And I think good citizens don't  
16 want illegal activity to take place in their  
17 libraries. I think the difference of opinion  
18 that maybe some folks here today have is how  
19 does that occur and to what degree.

20 One of the things I guess -- and  
21 that's just a comment. I'm not asking you to  
22 answer a question here.

23 But one of the comments that I've  
24 heard a couple of times is that basically we  
25 need to let children allow to make -- let

1 children make the decisions on wise use of the  
2 computers and the Internet specifically. And  
3 I'm a little bit concerned.

4 I don't think children are  
5 equipped to do that. They need guidance.  
6 They need direction. They need parental  
7 guidance. And in an opportunity where they  
8 don't have that -- and I know that that's  
9 possible in our libraries, because, quite  
10 frankly, many of them are understaffed. I  
11 suspect you don't have -- and most libraries  
12 that have computers you don't have somebody  
13 sitting there and the only thing they do is  
14 watch what's coming up on the screen of those  
15 who are sitting there using the Internet.

16 So, you know, it's not consistent  
17 to say that our libraries are concerned and  
18 are doing a good job but that there may be  
19 some needs that are still not able to be met  
20 by them.

21 I personally represent a very  
22 rural area. Most of the libraries that I  
23 represent -- and I've never actually  
24 calculated the number -- but the two counties  
25 I represent -- I'm going to guess -- they're



1 somewhere in the neighborhood of 20, they're  
2 all almost always staffed by one person and  
3 maybe two at most; they have multiple floors;  
4 and they also have rooms or sections of the  
5 building that are very difficult for one or  
6 two people to be able to provide the kind of  
7 monitoring, for instance, that Delaware County  
8 Library System is able to provide. And to  
9 what extent they're able to do it I don't  
10 know.

11 So, you know, I have a little bit  
12 of a concern when we think that just simply  
13 educating children is going to resolve this  
14 problem. And so if you want to make a  
15 comment.

16 MR. HERB: Yeah, you're right. I  
17 think that you raise a valid point. And I  
18 give praise to the legislature, to the  
19 Governor, for recent actions that probably are  
20 going to be a stronger message, and that is  
21 increase funding and increased attention to  
22 those needs of libraries, especially those  
23 that are manned or womaned by one person,  
24 often a volunteer, often part time.

25 And you're right, that may not be

1 enough guidance. But I don't think that then  
2 the counterargument is that that makes a  
3 filter an alternative answer, as much as it  
4 means that we need to work harder to provide  
5 that guidance with Big Brothers, Big Sisters,  
6 other volunteers in the community, after  
7 school clubs, shared resources at the district  
8 level in the state.

9           We have many, many other  
10 alternatives that can increase that knowledge  
11 and that education in a very positive  
12 proactive way. I think that the problem with  
13 the filtering is that negotiation that by  
14 somehow doing that we're protecting the state  
15 and everything's going to be good. And I  
16 think you've heard enough reasons now today  
17 from all sources that isn't going to be  
18 enough. As a matter of fact, it is -- it is  
19 ultimately a quick fix solution.

20           Even though I praise your concerns  
21 and efforts -- I understand those and I share  
22 those with you -- but I think that just  
23 blocking certain sites from all libraries in  
24 order to receive funding is not the answer to  
25 protecting kids.

1 I think it increased focus on  
2 libraries and the importance of that education  
3 aspect and the importance of parents taking  
4 responsibility for their kids, too. Sometimes  
5 we don't even mention that at this hearing  
6 today, but that is one of the most critical  
7 things that we face is that we have to hold  
8 parents accountable for the behavior of their  
9 children, the raising of their children.

10 I hear that all the time in  
11 political campaigns, but I think we need to  
12 bring it back into this message. And the way  
13 we do that is to make them take  
14 responsibility. For example with younger  
15 kids, I never thought a two year old should go  
16 into a library and use the library  
17 independently. If you see a toddler come in,  
18 open the library door by himself and walk in  
19 and sit down, we notice in libraries. We take  
20 some action when a two year old does that.

21 Well, I think that we need to look  
22 at the Internet in that way, too. There are  
23 certain ages where I don't think kids should  
24 be sitting down and using the Internet  
25 terminals by themselves. And then there are

1 other ages where they maybe do it but they  
2 have to do it in a limited amount of time  
3 because of that time, manner, and use policy.  
4 And then there are older kids, teenagers, who  
5 have more independence. We have that.

6           You know what, though? It's the  
7 local -- it's the local service situation. We  
8 have those now with programs with the kind of  
9 attention we give them through reference  
10 librarians and things like that. It's just  
11 that we move this -- this way of doing  
12 business that we've been doing for a hundred  
13 years over to this new technology. And we're  
14 adapting it and we're being surprised and  
15 startled sometimes, no doubt about it. But  
16 we're trying to --

17           CHAIRMAN BIRMELIN: I have never  
18 made the assumption that a piece of software  
19 is the solution to the problem. And I don't  
20 think Representative Egolf has made that  
21 statement. Or maybe some have assigned that  
22 motive to him, but I don't think that's the  
23 case with what he's trying to do here.

24           And I applaud those who have  
25 demonstrated today that they are doing

1 actively some things to try to prevent as much  
2 of this as is possible. And quite frankly,  
3 they'll never be able to prevent a hundred  
4 percent of it.

5 I don't -- you know, somebody  
6 mentioned earlier that these young people are  
7 very inventive and very clever at ways of  
8 getting around barriers. And it's not just on  
9 the Internet. It's rules that mom and dad lay  
10 down for them and the school lays down for  
11 them. And it's in the nature of a teenager,  
12 in particular, to go to wherever the  
13 boundaries are and to try to push them back a  
14 little bit.

15 So no matter what we do, I think  
16 we're going to find that that's the case with  
17 many of our young people. But I am also  
18 concerned that, in particular representing the  
19 areas that I do that are rural, that have  
20 small libraries that they're probably not  
21 opened more than maybe twenty hours a week;  
22 and they know that having Internet access is  
23 important, especially in a rural community.

24 You may think it's important in,  
25 you know, suburban Delaware County, but

1     imagine if you're in, you know, counties that  
2     I represent -- Wayne and Pike Counties --  
3     where library's basically their only real  
4     opportunity to use the Internet for many  
5     people and only, you know, one or two computer  
6     stations and one person manning that library  
7     for 20 hours or 25 hours a week. And that  
8     librarian's busy doing a lot of other things  
9     and they just can't afford to sit there and  
10    keep an eye on what some teenagers have done  
11    to come in and use that computer for a few  
12    minutes or an hour or something.

13                 So all that having been said, I  
14    understand and applaud the efforts that have  
15    been made. But I also, as a legislator, have  
16    to say to myself, well, there are  
17    circumstances perhaps where there are other  
18    things we need to and can be doing.

19                 This legislation is perhaps flawed  
20    in some people's eyes and not perfect. I  
21    don't think it should necessarily be trashed  
22    because it doesn't do all of the things that  
23    we would like it to do. That's just a  
24    comment.

25                         Representative Egolf.

1                   REPRESENTATIVE EGOLF: Thank you.  
2 I -- always legislation -- not always. Quite  
3 often legislation is introduced because there  
4 is a problem, and many times it may be blown  
5 out of proportion, it's not the problem that  
6 you think it is; and other cases it is a very  
7 severe problem.

8                   The information that I have -- and  
9 I've got letters here from parents; I have the  
10 report from Mr. Burt who we heard from; have  
11 several other publications, too many. I have  
12 a whole -- probably that thick (indicating) of  
13 incidents where people were concerned about  
14 the children getting access in the libraries,  
15 in schools to this material we've been talking  
16 about today; about incidents happening,  
17 children getting raped in a library in a rest  
18 room, molested right outside the library.  
19 Just uncounted cases. And there's a problem  
20 there.

21                   And one thing disturbed me, and I  
22 hope you disagree with, sounds like you do,  
23 but you're the -- Ann Symons --

24                   MR. HERB: Ann Symons.

25                   REPRESENTATIVE EGOLF: -- is she

1 current president --

2 MR. HERB: Former.

3 REPRESENTATIVE EGOLF: -- of the  
4 American Library Association recently said  
5 that the whole issue of protecting children  
6 has been blown way out of proportion by the  
7 media and those that seek to promote their own  
8 agendas.

9 So the official position of the  
10 American Library Association is there is not a  
11 problem. They would not even say, well, if  
12 there's accusations, which we're hearing,  
13 let's do a study. They didn't even want to --  
14 they encouraged the libraries not to respond  
15 to a group who was trying to find out really  
16 how big is the problem, what are the number of  
17 incidents. Because if there's only a few  
18 incidents don't make legislation.

19 But if there's a lot, you know, a  
20 number that's significant, then we need to  
21 consider something, whatever it may be.

22 And maybe education is the answer  
23 and maybe legislation is the answer, maybe  
24 something in between, maybe a combination of  
25 both, but the American Library Association



1 took the official position -- now maybe  
2 they've changed since then -- the official  
3 position there's not a problem, don't answer  
4 the questions, don't submit the data that was  
5 requested.

6           There was officially, you know,  
7 requests for data incidents. Libraries were  
8 told -- member libraries were told don't  
9 submit it, it's an invasion of privacy of the  
10 patrons. Even when it was definitely illegal  
11 accessing of information, so on, they didn't  
12 want that to get out.

13           It just seemed like the whole --  
14 all the information that I've been seeing was  
15 that they were -- they were really fighting  
16 the -- they didn't want to admit, didn't  
17 want -- or fought the idea even if they knew,  
18 I don't know, if there was a problem. And  
19 let's not find out if there's a problem. We  
20 don't want to hear if there's a problem seemed  
21 to be the attitude. And so I -- you seem like  
22 you disagree with that. I hope you do.

23           MR. HERB: I do. I say that --  
24 I'd say that, to be fair, we do have to be  
25 cautious about the data collecting methods of

1 any really truly vested interest. And without  
2 casting dispersions on any speakers or any  
3 positions, I have seen some very low quality  
4 research on -- being cited sometimes.

5 And I certainly don't mean to do  
6 that here or anything that you just mentioned,  
7 but without naming names out in the field, ALA  
8 has been under attack for a couple of years.  
9 And maybe what I'll do is I'll say that they  
10 might have been reacting a little defensively  
11 on a couple of occasions because they have  
12 been -- here they are trying to let parents  
13 work with their kids, they're trying to  
14 support these local libraries that are doing  
15 such wonderful things -- and the vast majority  
16 of them with unfiltered computers -- are doing  
17 wonderful things for kids, and we're getting  
18 attacked as if we're some sort of demonic,  
19 satanic beast, when all we're really trying to  
20 do is to get kids to be with their parents and  
21 to become smart kids.

22 And so it's really hard when you  
23 have that position and you're being attacked.  
24 So I -- I will say that I think Judy Krug has  
25 occasionally let loose a quote that she wishes

1 she could pull back. And I bet Ann Symons  
2 wouldn't mind pulling that one back.

3           But I tell you what I would love  
4 to see is I would love to see more data  
5 collected from an independent body with no  
6 vested interest other than in America, so that  
7 I would say keep ALA out of it. I'm willing  
8 to step aside. And let's keep Filtering Facts  
9 out of it and let's get someone in there who  
10 has no vested interest except in the goodness  
11 of our culture -- just the way you guys are  
12 acting here today on behalf of the citizens of  
13 the Commonwealth -- and let's collect some  
14 more data.

15           Because I think what we'd find is  
16 we'd find something that isn't on either  
17 extreme. I think we would find lots and lots  
18 of wonderful things happening in libraries and  
19 a couple of incidents that ten years ago they  
20 wouldn't have been caused by the Internet, but  
21 do you know, if we looked at this legislative  
22 effort ten years ago we would have gotten rid  
23 of rest rooms in public libraries, because the  
24 rest room has always been something that has  
25 caused trouble for us and we've always kept

1 our eye on it. Seriously. I'm not kidding.

2 A public rest room in any building  
3 is always a problem. Always has been, always  
4 will be. And that has nothing to do with the  
5 Internet. Just to throw that one example out.

6 We need to be watchful in our  
7 communities to protect kids, because we do  
8 care about those kids who walk in the library  
9 doors.

10 If I could just tell one little  
11 anecdote, when I used to do preschool story  
12 time at Colonial Park Mall on the East Shore  
13 branch Dauphin County Library System, a parent  
14 of a three or four or five year old would say  
15 to me is it necessary for me to stay with my  
16 child. And I would say, well, you know, if  
17 your child gets up while story hour's ongoing  
18 and leaves, I have 30 other children that I'm  
19 working with, I can't get up and follow him  
20 out; I think you should stay; I do think you  
21 should stay; you need to take that  
22 responsibility for your child.

23 Some parents would still walk out  
24 of the room into the adult side of the library  
25 and disappear. Now, what I didn't tell them

1 was that if that child got up and left, I  
2 would go after them. I would have interrupted  
3 the story. But I told them what the policy  
4 part was.

5 But the concern, the protection  
6 for kids is what makes the local community  
7 library great. These are people who care  
8 about the children who are coming in those  
9 doors.

10 I think that they care enough to  
11 do the job they need to have done through  
12 these acceptable use Internet policies.

13 REPRESENTATIVE EGOLF: Yeah, but  
14 see -- well, in the one report, and I'm going  
15 back to Mr. Burt's -- before I get into that,  
16 are you saying that he has a special interest?

17 MR. HERB: Oh, yeah.

18 REPRESENTATIVE EGOLF: What is  
19 that?

20 MR. HERB: Well, he's sponsored by  
21 some very, very conservative political groups.  
22 They pay him, they support his web site, and  
23 they have, I would say, a position that is not  
24 just in the interest of protecting children,  
25 but it's in the interest of protecting

1 children within a very narrow focus. And that  
2 is when you talk about what's appropriate for  
3 children, there are many, many things that you  
4 would take home for your kids from a library  
5 that some of the people who support him would  
6 consider inappropriate for the library. It's  
7 not child pornography, it's not obscenity,  
8 it's -- it's books that might have the word --  
9 you've heard of Harry Potter, for example, and  
10 the books about that the best selling boy  
11 wizard, books about Halloween ghosts and  
12 witches.

13 I'm not saying every person who's  
14 against those books are the exact people  
15 supporting Mr. Burt, but I am saying that  
16 whenever you have a strong position taken like  
17 that with the interests of a very special  
18 focus, it's important to look at that big  
19 picture. And he does have very much support  
20 from a very conservative backing. Nothing  
21 wrong with being conservative.

22 REPRESENTATIVE EGOLF: That's  
23 right, if there's a special interest is  
24 protecting children.

25 MR. HERB: If it were, but at the

1 same time, I guess you would agree --

2 REPRESENTATIVE EGOLF: What is he  
3 profiting from it, I guess?

4 MR. HERB: I'm not sure. I'm -- I  
5 don't think he's profiting personally as much  
6 as it's supporting and underwriting his  
7 agenda.

8 REPRESENTATIVE EGOLF: But if that  
9 agenda is to counter -- well, in any case,  
10 whatever, if it's -- if it's protecting  
11 children but overprotecting them, still,  
12 though, to get research, why should we object  
13 to his finding out the facts and stating the  
14 facts? And that's what it seemed like the ALA  
15 was doing.

16 MR. HERB: Yeah, it's hard -- it's  
17 very, very hard when you feel strongly about  
18 something --

19 REPRESENTATIVE EGOLF: But then  
20 that shows the ALA seems like it has a special  
21 interest to not get the facts.

22 MR. HERB: What you're raising is  
23 a valid point. That's why I was saying if we  
24 could have a data collecting group that didn't  
25 include us, I think -- not that I think we're

1 lying with statistics and figures by any  
2 means -- but I do think that when you have a  
3 strong interest in something it's harder to be  
4 objective. That's the best I can do about it.  
5 And I would say that if ALA is being placed  
6 under scrutiny for us occasionally not  
7 reacting as fairly as we think we can because  
8 we love libraries so much -- and we do -- then  
9 I would say at the very least let's shine that  
10 same spotlight on David Burt and say that he  
11 is not exactly coming clean with all his  
12 methodologies.

13 I have access to a lot of  
14 behind-the-scenes kinds of conversations and  
15 memos -- and again, I don't want to go after  
16 him because there are lots of people out  
17 there -- we all need to look at this thing, I  
18 think, fairly in this -- in the brightest  
19 light possible, because we do want to do right  
20 by our kids in Pennsylvania.

21 REPRESENTATIVE EGOLF: Well, I  
22 know if I were being attacked by someone  
23 making statements I would say, you know, show  
24 me the proof. And I would try to get facts  
25 from the other side. And again, if the ALA --



1 the ALA, of all places and all organizations,  
2 ought to be concerned about information, data,  
3 getting it out instead of stonewalling.

4 MR. HERB: No, we are. I think  
5 that what Ann was trying to say there was that  
6 it's just that if you look at the huge numbers  
7 of libraries and then you see the number of  
8 reports of problems, you realize that they  
9 don't even average out to a report per  
10 library.

11 REPRESENTATIVE EGOLF: But  
12 there -- and he -- well, in any case, in the  
13 report he gives statistics to show of the  
14 numbers that were contacted, the numbers that  
15 did not respond, the numbers that would  
16 definitely not respond, objected to  
17 responding. I mean, he breaks them down  
18 number by number. And then of the numbers  
19 that did respond, the number of incidents is  
20 very high. But he states that out of these  
21 numbers, he doesn't say out of all of them or,  
22 you know -- so he -- he's very clear. He's  
23 not trying, I don't think, that I've seen,  
24 he's trying to hide.

25 Now, if there's other reports,

1 I -- I would welcome to see those.

2 MR. HERB: Well, I think we do  
3 have a study, actually, that was conducted at  
4 the University of Pennsylvania that we'll  
5 share with you.

6 REPRESENTATIVE EGOLF: I would  
7 like to see that very much.

8 MR. HERB: But we also have -- I'm  
9 chairman of the Intellectual Freedom Committee  
10 of ALA, and we instructed every library in the  
11 country who was contacted under Mr. Burt's  
12 survey to respond, because we believe in the  
13 freedom of information, the freedom of access  
14 to information across-the-board. We're not  
15 selective in how we respond to that.

16 Some libraries may have chosen not  
17 to do that. I think that was their error to  
18 do that, because I agree with you that to have  
19 the honest data examined is the only way we  
20 can really arrive at the kinds of solutions  
21 that we can compromise and reach together.  
22 And I think that that was unfortunate.

23 At the same time, I think some  
24 libraries, to be fair, felt knowing his  
25 political position, they were afraid how the

1 data was going to be used and that it wasn't  
2 just a Freedom of Information Act and a  
3 request, but it was one where they had seen  
4 some evidence where those facts had been  
5 presented in a selective way in the past and  
6 so that's -- that's where it gets a little  
7 complicated.

8 REPRESENTATIVE EGOLF: Well, what  
9 was done, unfortunately, has put a very bad  
10 light on the ALA.

11 MR. HERB: I'm hoping I  
12 counteracted that a little bit today.

13 REPRESENTATIVE EGOLF: You have.  
14 One other comment I would like to make. You  
15 made mention about children, students of all  
16 ages must be able to assess as well as access  
17 and confront some of these things and make  
18 decisions. What we've seen in other areas, we  
19 have laws that are based on the fact that  
20 children can't make decisions in some cases.  
21 For example, if a 20 year old has sex,  
22 intercourse, with a 13 year old, even though  
23 the 13 year old consented, we say it's  
24 statutory rape because we say that the child  
25 13 can't make decisions such as that.

1           So we know -- and that's just one  
2 example. There's numbers of other ones, we  
3 don't allow children to make their own  
4 decisions, yet here we're saying they should  
5 get into this stuff, which is -- I don't think  
6 anybody can say -- you know, it's some really  
7 horrible information there and it's illegal.  
8 So we must find that it's bad or we wouldn't  
9 be made illegal.

10           Yet we're saying they have the  
11 ability to decide to get out of it or decide  
12 that it's going to be harmful or -- and not  
13 get into it, they should be able to have that,  
14 and yet -- so how do you --

15           MR. HERB: We provide as much  
16 guidance as we can. We provide as much  
17 control as we can for little kids. As kids  
18 get older, it grows into kind of a mall  
19 situation where if a parent feels, for  
20 example, their child is going to listen to the  
21 rules of the home at a mall and stay at the  
22 mall with their friends when approached by a  
23 stranger, not to go out to the car or get in  
24 with them, that kind of thing, the parent is  
25 judge -- is making the decision based on their

1 parenting.

2           The same thing, I think, goes with  
3 the library. There comes a point where a  
4 parent should be there with the child, should  
5 be there, should be there, and then at some  
6 point the parent says I trust you, the way I  
7 trust you at the mall. And that varies from  
8 age to age, community to community.

9           But the point is it's not -- it's  
10 not 17 and below, it's not all or none. It's  
11 a community-based, library-based decision.

12           But you're very right. Some kids  
13 have to be a lot older before they make those  
14 decisions, and some parents even make  
15 mistakes. But one of the things about the  
16 United States is we allow parents to make  
17 mistakes in deciding what's right for their  
18 children.

19           REPRESENTATIVE EGOLF: Thank you  
20 very much.

21           MR. HERB: Thank you.

22           CHAIRMAN BIRMELIN: Thank you,  
23 Mr. Herb.

24           And our last testifier for this  
25 afternoon is Brian Fahling. He's the senior

1 policy advisor for Center for Law for American  
2 Family Association.

3 Mr. Fahling, if you would come  
4 forward, please.

5 MR. FAHLING: Mr. Chairman and  
6 members of the subcommittee, before I get  
7 started formally, I wanted to thank Mr. Herb  
8 for affirming that it's okay to be  
9 conservative. This coming from no less  
10 authority than the head of the Intellectual  
11 Rights Committee, I guess, if I haven't  
12 misspoken. So I just wanted to get that out  
13 of my system.

14 I was very excited back there that  
15 to hear him say that.

16 I am senior policy advisor for the  
17 American Family Association Center for Law and  
18 Policy. The Center for Law and Policy is a  
19 nonprofit organization that, among other  
20 things, advises legislators at the local,  
21 state, and national level --

22 CHAIRMAN BIRMELIN: Mr. Fahling,  
23 I'm going to ask you to hold the microphone  
24 while you give your testimony.

25 MR. FAHLING: To hold it?

1                   CHAIRMAN BIRMELIN: Yeah. It  
2 doesn't pick up very well unless you're within  
3 six inches, and I think people in the back are  
4 going to have a difficult time hearing you if  
5 you don't hold it.

6                   MR. FAHLING: I'll resist the urge  
7 to sing.

8                   CHAIRMAN BIRMELIN: We will make  
9 sure that you don't.

10                  MR. FAHLING: You and my family as  
11 well. As I was stating, we at the Center for  
12 Law and Policy advise legislators at the  
13 local, state, and national level on the issue  
14 of constitutional concern. Constitutional law  
15 is my area of expertise. I would also note  
16 that I do trial and appellate work in the area  
17 of constitutional law, with particular  
18 emphasis on First Amendment issues.

19                  I am pleased to speak to you today  
20 on the subject of the constitutionality of  
21 filtering the Internet in public schools and  
22 libraries. Specifically, my testimony today  
23 will focus upon the constitutional issues  
24 implicated by House Bill, now, 2324. I  
25 hope -- I trust you'll forgive me identifying

1 on House Bill 4. I didn't have 2324 available  
2 to me. I recently looked at it and my  
3 comments remain germane to that bill.

4 I wish to begin by observing what  
5 the proposed legislation does not do. It does  
6 not regulate the Internet nor does it operate  
7 correctly against speakers who utilize that  
8 vast information data base.

9 The House Bill, as proposed,  
10 operates only upon public schools and public  
11 libraries; thus, the bill reaches no further  
12 than inside the walls of public libraries and  
13 schools in Pennsylvania. They are, in a  
14 nutshell, required to filter the Internet to  
15 guard against admission of material that is  
16 obscene or child pornography or harmful to  
17 minors. This is unremarkable. After all, it  
18 is the business of schools and libraries to  
19 exercise discretion about what they will  
20 acquire and make available within their walls.  
21 No less, according to the Supreme Court has  
22 set forth that proposition.

23 The fundamental question presented  
24 here is whether Pennsylvania's public schools  
25 and libraries that provide Internet access to



1 students and patrons are constitutionally  
2 required to allow access to everything found  
3 on the Internet, including obscenity, child  
4 pornography, and material harmful to minors.

5 The answer to that question is  
6 emphatically no. It is doubtful that anyone  
7 would argue that public schools and libraries  
8 should be required to allow access to child  
9 pornography and obscenity. Indeed,  
10 transmission of obscenity and child  
11 pornography, whether via the Internet or other  
12 means, is already illegal under federal law  
13 for both juveniles and adults.

14 This is another way of saying that  
15 obscenity and child pornography are not  
16 protected by the First Amendment. That may be  
17 absolutely proscribed.

18 This then narrows our present  
19 subject matter inquiry to the constitutional  
20 propriety of regulating in public schools and  
21 libraries material harmful to minors that is  
22 acquired over the Internet.

23 Material that is harmful to  
24 minors, while enjoying protection under the  
25 First Amendment, is nevertheless not immune

1 from regulation by Pennsylvania because the  
2 Supreme Court has recognized that states have  
3 a compelling interest in protecting the  
4 physical and psychological well-being of  
5 minors.

6 I will not here dwell upon the  
7 subject of whether Pennsylvania's public  
8 schools may be required to filter out material  
9 that is harmful to minors, because this is a  
10 matter too plain to be denied. Common sense  
11 and constitutional law, strange bedfellows  
12 though they may be, counsel that such material  
13 may be denied access into the domain of public  
14 school.

15 This leaves, then, the question of  
16 whether public libraries may filter the  
17 Internet to provide protection to minors for  
18 material that is harmful to them. Opponents  
19 of filtering by libraries attempt to argue  
20 that filtering the Internet in a public  
21 library is like removing a book from its  
22 shelf. And this was, in fact, ruling of a  
23 federal district court in Virginia where an  
24 Internet filtering policy had been adopted by  
25 a library.

1           In the case of *Mainstream Loudoun*  
2 *versus Board of Trustees of the Loudoun County*  
3 *Library*, Judge Brinkema concluded that when a  
4 library purchases Internet access, it must  
5 accept all that is carried on that medium.  
6 Judge Brinkema analogized the Internet a  
7 collection of encyclopedias in which the  
8 library had redacted portions deemed unfit for  
9 library patrons.

10           I respectfully disagree with Judge  
11 Brinkema's analogy. As the Supreme Court has  
12 noted, the Internet is a unique medium and  
13 presents heretofore unknown problems for  
14 public libraries that provide access to it.

15           The Internet is not at all like  
16 the familiar set of encyclopedias by Judge  
17 Brinkema. Other unique mediums such as  
18 broadcast media also present their own  
19 problems. And because of these special  
20 problems, the Supreme Court has recognized  
21 special justifications for regulation of the  
22 broadcast media that are not applicable to  
23 other speakers.

24           As I stated at the outset of my  
25 remarks, the bill does not purport to regulate

1 the Internet at the speaker level. This is  
2 important because, despite its recognition of  
3 unique nature of the Internet, in 1997 the  
4 Supreme Court, in striking portions of  
5 Communications Decency Act, concluded that the  
6 regulation of the Internet at the speaker  
7 level does not provide the special  
8 justifications for more restricted regulation  
9 that arise with the broadcast media.

10 The CDA, the Communications  
11 Decency Act, was distinct from and a more  
12 difficult case than the bill here proposed  
13 because it applied broadly to the entire  
14 universe of cyberspace at the speaker level  
15 rather than being limited, as House Bill No.  
16 2324 is, to the acquisition of sexually  
17 explicit material in public schools and  
18 libraries. It also imposed criminal penalties  
19 for violations of its provisions.

20 Even so, the Court's reasoning is  
21 instructive to the present occasion. The  
22 Court emphasized that as the Internet existed  
23 at that time, the risk of encountering  
24 indecent material by accident was remote, that  
25 communications over the Internet did not

1 appear on one's screen unbidden, and that  
2 almost all sexually explicit material was  
3 preceded by warnings as to the content.

4 The reasons given by the court in  
5 1997 not to allow special treatment of the  
6 Internet at speaker level are fundamentally no  
7 longer true.

8 David Burt has provided you with a  
9 significant factual record that demonstrates  
10 precisely the opposite to be true in the year  
11 2000.

12 Similarly, and the only case thus  
13 far to address library Internet filtering, the  
14 Loudoun County case, a judge found that the  
15 library failed to meet its burden in  
16 demonstrating the reality of the problem with  
17 individuals accessing child pornography or  
18 obscenity or minors' access to materials that  
19 are illegal as to them.

20 The only evidence advanced by the  
21 library in support of its claim that the  
22 policy was necessary was a single incident in  
23 another Virginia library and reports of  
24 isolated incidents in three other libraries  
25 across the country.

1           What was an isolated problem in  
2 1998, however, is now a problem national in  
3 scope, as was made clear earlier today by the  
4 testimony of David Burt.

5           It is undeniable that unfiltered  
6 access to the Internet and public libraries  
7 does and will result in children being exposed  
8 to sexually explicit images and text that  
9 undermine their psychological well-being.

10          It is equally unassailable that  
11 unfiltered access to the Internet in public  
12 libraries does and will result in children  
13 being exposed to pedophiles, as well as being  
14 exposed to men and boys masturbating. These  
15 are the unique characteristics of allowing  
16 unfiltered Internet access in public  
17 libraries.

18          I would note that these are not  
19 the type of problems normally associated with  
20 a set of encyclopedias found on library  
21 shelves.

22          The unique nature of and the  
23 problems posed by the Internet to public  
24 schools and libraries have no real analogue in  
25 First Amendment jurisprudence. This is not to

1 say that no guidance may be found.

2 For example, the Supreme Court's  
3 decision upholding an FCC ruling imposing  
4 administrative sanctions on a broadcaster for  
5 broadcasting a monologue that was patently  
6 offensive provides some guidance.

7 In its analysis of the FCC ruling,  
8 the Court stated that the availability of  
9 constitutional protection for a vulgar and  
10 offensive monologue that was not obscene  
11 depended on the context of the broadcast,  
12 which included the ease with which children  
13 may obtain access to broadcasts, coupled with  
14 the government's interest in the well-being of  
15 its youths and the parents' claim to authority  
16 in their own household to direct the rearing  
17 of their children as a basic structure of our  
18 society.

19 Application of the Supreme Court's  
20 analytical framework in *Pacifica* -- that's the  
21 case I just discussed -- to the present bill  
22 are strongly in favor of constitutionality.  
23 The context includes public schools and  
24 libraries, where children are quite naturally  
25 found. The context also includes the fact

1 that children can access sexually explicit  
2 material on the Internet with great ease, and  
3 if they do not seek these sites by design, the  
4 odds are great that they will accidentally  
5 come upon such a site, either by their own  
6 inadvertence or because someone has left the  
7 site with sexually explicit images on the  
8 computer screen.

9           Beyond the danger of direct  
10 exposure to material harmful to minors is the  
11 adverse secondary effect of the injury to  
12 children who are brought into contact with  
13 pedophiles and individuals who might be  
14 masturbating in public view while viewing  
15 sexually explicit material over the Internet.

16           Combined with Pennsylvania's  
17 interest in the well-being of its youth and  
18 the parents' claim to afford an authority in  
19 their own household to direct the rearing of  
20 their children as a basic structure of our  
21 society, special treatment of Internet access  
22 in public schools and libraries such as that  
23 provided by the proposed Act is justified.

24           As I just noted, Pennsylvania has  
25 set forth twin purposes in requiring Internet



1 filtering. Each purpose under traditional  
2 First Amendment analysis is tested according  
3 to different constitutional standards.

4 In the first instance, the bill  
5 seeks to protect children from the direct  
6 effects of sexually explicit material, which  
7 is a content based limitation on speech.

8 As a content based limitation,  
9 there is a heightened inquiry which asks  
10 whether the interests asserted by the state  
11 are compelling; whether the limitation is  
12 necessary to further those interests; and  
13 whether the limitation is narrowly drawn to  
14 achieving those interests.

15 The second purpose articulated in  
16 support of the bill is to protect children  
17 from the adverse secondary effects of  
18 permitting unfiltered access to the Internet.

19 The adverse secondary effects  
20 cited in the proposed Act include  
21 protecting -- excuse me -- include protecting  
22 against sexual harassment and attracting  
23 pedophiles and other sexually disturbed  
24 persons who present a danger to children.

25 Since this purpose can be

1 justified without reference to the content of  
2 the speech, a more relaxed inquiry was made.  
3 Is the regulation reasonable as to time,  
4 place, and manner?

5 Under either test the bill would  
6 survive, in my opinion.

7 As already noted, Pennsylvania has  
8 compelling interest in safeguarding the  
9 physical and psychological well-being of its  
10 children. The limitation the bill would  
11 impose is necessary to further Pennsylvania's  
12 interest in protecting its children, because  
13 it's clear without that Internet filtering it  
14 is impossible to protect them from exposure to  
15 sexually explicit material.

16 And the limitation is narrowly  
17 drawn to prohibit only material that is  
18 obscene, child pornography, and harmful to  
19 minors. This narrow limitation is obtainable  
20 because technology has advanced to such a  
21 degree that Internet filters are very active  
22 in blocking only the prohibitive material; and  
23 on the rare occasions that a user may be  
24 denied access to a site that is not  
25 prohibited, the bill provides for an expedited

1 procedure for users to have the site  
2 unblocked. Because the bill meets the content  
3 based test, *a foriori*, it satisfied the less  
4 exacting test of being a reasonable time,  
5 place, and manner regulation. There remain  
6 abundant alternative avenues of access to the  
7 Internet available to those who wish to obtain  
8 pornographic material.

9 The special problems raised by  
10 unfiltered Internet access in public libraries  
11 present new questions to be considered at the  
12 intersection between First Amendment and the  
13 interest states have in protecting their  
14 children from material harmful to them.  
15 Nevertheless, the enduring principles embedded  
16 in the First Amendment have a good deal to say  
17 to the subject.

18 The lack of a precise analogue in  
19 the Internet -- or to the Internet in First  
20 Amendment jurisprudence does not leave us  
21 without the means to apply its enduring  
22 principals to the question now before this  
23 subcommittee.

24 John Marshall, the great Chief  
25 Justice of the United States Supreme Court,

1 explained how we are -- how we are to go about  
2 answering such questions. He said, "It is not  
3 enough to say that this particular case was  
4 not in the mind of the Constitutional  
5 Convention of the Articles framed, nor the  
6 American people when it was adopted. It is  
7 necessary to go farther and to say that, had  
8 this particular case been suggested, the  
9 language would have been so varied, as to  
10 exclude it, or it would have made a special  
11 exception."

12           If, then, it had been suggested  
13 that those who framed the Constitution and to  
14 the American people at the time that the First  
15 Amendment would serve as a bar to the states  
16 in protecting their children against sexually  
17 explicit material in public libraries, would  
18 they have so varied the language of that  
19 Amendment as to exclude such an outcome? It  
20 is certain they would have.

21           In closing, I encourage you not to  
22 be distracted by accusations of censorship and  
23 claims that the First Amendment will somehow be  
24 dealt a fatal blow if the bill should become  
25 law.

1           You should be infinitely more  
2 troubled at the prospect of leaving  
3 Pennsylvania children unprotected from  
4 pornography and pedophiles who prey upon them  
5 when it is in your power to protect them, at  
6 least in your schools and libraries. The  
7 First Amendment does not stand in your way.

8           Those -- that concludes my  
9 prepared remarks. I have a couple of comments  
10 on the testimony that was provided by the  
11 ACLU; not in the form of rebuttal, but in the  
12 form of correction.

13           There was a couple of  
14 misstatements about the state of the  
15 constitutional law. And it's an important  
16 issue, and if you will permit me to identify  
17 those and direct for the subcommittee to -- to  
18 the Supreme Court opinions that will clarify  
19 the matter.

20           One of the attorneys indicated  
21 that harmful to minors is not a  
22 constitutionally recognized term. I wrote  
23 that down in quotes. I trust I'm not being  
24 unfair to him in how I remembered it.

25           But in the case of *Ginsberg v.*

1     *State of New York*, the Supreme Court back in  
2     1965 or 1968 at least was aware of the term  
3     harmful to minors in the constitutional sense.  
4     And I'll just read a brief passage from that.

5             In that case the court said, The  
6     attack on subsection F is that the definition  
7     of an obscenity, quote, harmful to minors, is  
8     so vague that in all honesty distributor of a  
9     publication cannot know when he might be held  
10    to have violated that section.

11            The court goes on and finds that  
12    it does not offend the requirements of due  
13    process.

14            So certainly back in 1968 the  
15    Supreme Court was aware of that term. The  
16    subcommittee has simply incorporated within  
17    the present proposed legislation its statute  
18    which already prohibits the dissemination of  
19    materials harmful to minors, which I've looked  
20    at that language and that language is  
21    constitutionally sound.

22            There was one other significant  
23    issue where there was a mistaken statement  
24    made, and that is with regard to the question  
25    of prompt judicial review.

1 I'm going to read from the  
2 prepared remarks which were read precisely by  
3 the ACLU attorney. And he said this, he said,  
4 Additionally, the *Loudoun* court points out  
5 that the U.S. Supreme Court considers such  
6 appeal provisions to be unconstitutional,  
7 requiring, as one of the procedural safeguards  
8 necessary for any prior restraint on speech to  
9 be deemed constitutional, that the censor must  
10 bear the burden of go -- of going to court to  
11 suppress the speech.

12 In other words, he's suggesting  
13 that your provision for prompt judicial review  
14 are going to be found unconstitutional because  
15 you haven't placed the burden upon the state  
16 to seek prompt judicial review. He's quite  
17 wrong.

18 In 1990 in the case of *F.W.P.B.S.*  
19 *v. City of Dallas*, the Supreme Court examined  
20 those provisions. And as it did so, it  
21 concluded that the Constitution, in fact, did  
22 not require that the state bear the burden of  
23 initiating court action.

24 So those are two important and  
25 essential principles I think that were

1 mistakenly misrepresented before the  
2 subcommittee today.

3 I guess at this time I can take  
4 questions.

5 CHAIRMAN BIRMELIN:  
6 Representative Egolf.

7 REPRESENTATIVE EGOLF: I don't  
8 have any questions. Thank you very much for  
9 the testimony. He's answered a lot of --

10 CHAIRMAN BIRMELIN: I do have a  
11 question.

12 MR. FAHLING: I'm sorry.

13 CHAIRMAN BIRMELIN: I'm allowed  
14 to do that.

15 MR. FAHLING: I understand,  
16 Mr. Chairman.

17 CHAIRMAN BIRMELIN: I was kind of  
18 curious in the way that you -- you sort of  
19 dwindled down to what you consider to be the  
20 issue at hand, where there is conflict and  
21 some legal discussion.

22 And you rather quickly decided  
23 that none of this applied to the public school  
24 libraries. And in the end of page one it  
25 says, I'll not dwell on the subject of whether



1 Pennsylvania's public schools may be required  
2 to filter out material that's harmful to  
3 minors because it's a plain -- it's a matter  
4 too plain to be denied.

5 And then you go on to say that now  
6 the only issue is public libraries.

7 MR. FAHLING: Right.

8 CHAIRMAN BIRMELIN: On what legal  
9 basis do you make that statement?

10 MR. FAHLING: Well, I'll date it  
11 back to the *Board of Education v. PECO*, which  
12 was a case in the Supreme Court that really  
13 centered on a book removal from a library.

14 And in that case the Court found  
15 that the removal of -- the motivation was  
16 based upon a disagreement with the content of  
17 that book then that would be an  
18 unconstitutional act. But nevertheless,  
19 within that opinion relates some ground work  
20 and built upon constitutional principles that  
21 really give broad discretion to schools with  
22 respect to curricular matters and regulating  
23 the life, if you will, of the school.

24 And you know, we have harmful to  
25 minor statutes. Pennsylvania Commonwealth

1 certainly has that. And it -- when I say it's  
2 too plain to be denied, when we have public  
3 schools we're talking about institutions  
4 filled with minors. And the Supreme Court, to  
5 my knowledge, and the lower court has ever  
6 never found that schools may not safeguard the  
7 inner sanctum, if you will, of those schools  
8 by keeping out material harmful to the very  
9 ones they're charged with protecting.

10 CHAIRMAN BIRMELIN: In your  
11 experience, what other states have legislation  
12 that's already in place that is similar to  
13 what Representative Egolf has proposed here  
14 today?

15 MR. FAHLING: I think you guys had  
16 actually quite a good list. On some of the  
17 information that I got, I know Michigan does.  
18 I believe Arizona, New Mexico. To be honest,  
19 it's difficult to go off the top of my head.  
20 We have tracked that, but there are a good  
21 number of states that already have legislation  
22 on the books or pending that will regulate  
23 Internet access to public libraries and school  
24 through the use of a filter.

25 For instance, Michigan passed

1 theirs probably a year, year and a half ago.  
2 And their provision's a little different  
3 because they're set up structurally different  
4 from -- in terms of how their library systems  
5 work. So they simply make it -- grant  
6 permission, if you will, for libraries to  
7 regulate the Internet by use of filter. Other  
8 states make it mandatory.

9 CHAIRMAN BIRMELIN: But do most  
10 states include filtering devices, software  
11 filtering?

12 MR. FAHLING: I believe some do,  
13 but I can't give you a specific example on  
14 that right now.

15 REPRESENTATIVE BIRMELIN: Is your  
16 role in the American Family Association to  
17 follow and track this particular issue? I  
18 assume that's why you're here today.

19 MR. FAHLING: It is. It's  
20 somewhat of a burgeoning issue. As I say, we  
21 have a mixed role, if you will. One is  
22 litigation and appeal work on First Amendment  
23 issues. I would say that Family Research  
24 Council is more of a data base gathering  
25 entity than we are. What we might do is track

1 within our litigation schedules; and when  
2 we're invited to speak to legislatures,  
3 Congress, then we'll build and work from data  
4 bases that generally are already in existence.  
5 We're not necessarily set up to collect and to  
6 follow on a daily basis.

7 CHAIRMAN BIRMELIN: Probably my  
8 last questions, unless your answer raises  
9 another one in my mind, earlier we heard  
10 Mr. Herb say that he felt that if we could do  
11 a -- have a nonprejudicial, unbiased third  
12 party that had no agenda and/or financial  
13 stake in the results of the comprehensive  
14 study to determine -- to determine the extent  
15 and the solution to the extent of the problem  
16 created by minors having Internet access to  
17 pornographic and/or obscene sites, that the  
18 American Library Association would welcome  
19 that and would be glad to back off and let  
20 somebody do that.

21 In your opinion, who or what  
22 organization do you think would be most able  
23 to do something like that and provide that  
24 kind of information that, of course after it's  
25 finished everybody else will fight about, but

1 at least go into it with this objectivity  
2 where there is no vested interest and/or  
3 political bias in the process? Do you have  
4 any ideas on that?

5 MR. FAHLING: Well, I think that's  
6 an excellent question. I think if we can find  
7 such a group I wish you would tell me.

8 CHAIRMAN BIRMELIN: No. I'm  
9 asking you.

10 MR. FAHLING: I understand. It  
11 seems that organizations are established and  
12 they have mission statements and they have  
13 goals. And with that come agendas. I don't  
14 think any of us is free of bias. I certainly  
15 am not. I haven't yet met the individual who  
16 is or the organization that does not bring  
17 with it some presuppositions.

18 Having said that, I still think  
19 that one can do a fair empirical analysis of  
20 the problem. I am familiar with Mr. Burt's  
21 work. Yes, he does have an agenda, and I  
22 believe that agenda is simply to protect  
23 children from material harmful to them.

24 If you'll note the data that he  
25 relies upon is data that he pulls from the

1 libraries themselves And he simply puts  
2 forth hard numbers.

3 If you just want to look at those  
4 hard numbers, those provide you with your  
5 factual predicate for passing this  
6 legislation. You don't have to listen to his  
7 commentary; you can offer your own commentary.  
8 But facts that are derived from libraries  
9 themselves -- in other words, he's not going  
10 into the libraries and recasting them. He  
11 gets the information out -- or from police  
12 reports, so on and so forth.

13 But that type of information is  
14 not subject to bias. It is naked, brute fact.  
15 And perhaps some don't like his commentary,  
16 but nevertheless I would submit that  
17 reasonable minds would have a difficult time  
18 disagreeing that there is indeed a problem and  
19 it is national scope and something needs to be  
20 done and it is not enough to leave it to  
21 librarians.

22 I found that comment remarkable  
23 that librarians are more than willing to  
24 exercise censorship practices at the site  
25 level and somehow not deem that to be

1 censorship. I would submit to you that if  
2 anybody were to challenge those practices and  
3 they were tested in court, there's not a  
4 library in the state, there's not a library in  
5 this country that would not be found to be  
6 acting unconstitutionally. That is arbitrary  
7 and capricious. There is unfettered  
8 discretion there.

9           What you are providing with this  
10 Internet filtering bill is boundaries. Rather  
11 than having 500 different librarians in the  
12 state decide what is, what is not appropriate,  
13 there are guidelines that are tied to your  
14 statutes. You find the best filtering system  
15 available, you are thereby narrowly tailored,  
16 find the least restrictive means of  
17 accomplishing the objective. It is not a  
18 perfect world. You will not do it perfectly.  
19 That is not the standard.

20           Supreme Court has repeatedly said  
21 mathematical precision is not required. And  
22 unless something is done, the Internet will  
23 spin out of control. And at a minimum it must  
24 be regulated within the boundaries of the  
25 public schools and libraries.

1                   CHAIRMAN BIRMELIN:    To your  
2   knowledge, do any of the crime fighting, law  
3   enforcement organizations in our country  
4   tabulate any data on specific sex crimes -- I  
5   mean reports that have been made here -- that  
6   occur in libraries?

7                   MR. FAHLING:    I haven't seen the  
8   actual data bases, but I believe the F.B.I. is  
9   in the process of doing that and does have  
10  information available.

11                  CHAIRMAN BIRMELIN:    I mean, we've  
12  heard stories of following the children in the  
13  libraries or in the library's rest room, which  
14  Mr. Herb himself said is a big problem.  But I  
15  was just wondering does F.B.I., does it  
16  collect this data?  Do they have it specific  
17  to this site?

18                  MR. FAHLING:    You mean with  
19  respect to the libraries?

20                  CHAIRMAN BIRMELIN:    Yeah, I  
21  mean --

22                  MR. FAHLING:    I'm sure that type  
23  of information is available.  I think it's a  
24  healthy undertaking.  I think you want to make  
25  the record as strong as you can, factually



1 undergird it, and you're able to do that.

2 About six months ago I flew down  
3 to Broward County, Florida, and met with a  
4 mother and her daughter. And the daughter had  
5 gone into the library and there was a man  
6 masturbating in plain view while watching  
7 material, sexually explicit material on the  
8 Internet. The library didn't want to do  
9 anything about it. They wanted to hush it up.  
10 They said that was the first time it happened.

11 Well, it wasn't the first time it  
12 had happened. Public records disclosure  
13 requests determined that it happened many,  
14 many times. It was never reported.

15 So that's what we're dealing with  
16 here is oftentimes libraries are reluctant to  
17 come clean on how extensive and pervasive the  
18 problem is. Not all libraries. I'm not  
19 impugning anybody's motive.

20 What I am saying is that we do not  
21 get the whole story. Yes, I think that it  
22 would serve you well to dig further, dig  
23 deeper and undergird the factual  
24 base.

25 CHAIRMAN BIRMELIN: And I

1 understand, too, that if it's not reported,  
2 it's not going to be data that's collectable  
3 by F.B.I. or anybody else, because then there  
4 is no written report that you can  
5 accumulate --

6 MR. FAHLING: Right.

7 CHAIRMAN BIRMELIN: -- at that  
8 point in time.

9 MR. FAHLING: Well, in Holland,  
10 Michigan, for instance, they have public  
11 information records request was made for the  
12 hits on pornographic sites at the libraries  
13 there. And what they had done was by design  
14 they had programmed the computer to, after a  
15 matter of days or week as I recall, to go  
16 ahead and purge all that information. So you  
17 couldn't really find out how many hits were  
18 being made on those pornographic sites.

19 It's not only the library in  
20 Holland, Michigan. It's happening in other  
21 libraries. And that might be another avenue  
22 to track this -- to get data on this, which is  
23 to require libraries to keep data banks that  
24 stand beyond the two weeks or four weeks and  
25 have reporting requirements on that. I think

1 then you'll get a very clear picture of what's  
2 going on.

3 CHAIRMAN BIRMELIN: Well,  
4 Mr. Fahling, we want to thank you for your  
5 time for coming here today and for your  
6 testimony.

7 That concludes this public hearing  
8 today. And this meeting is adjourned.

9 (Hearing concluded at 4:32 p.m.)

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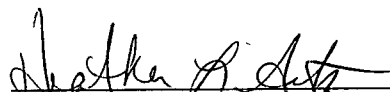
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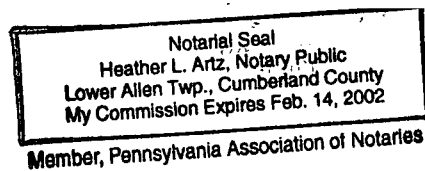
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

  
Heather L. Artz, RMR  
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