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IFRT Report

Intellectual Freedom Round Table No. 57, Summer 2005

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Complete Issue for Continuous Printing

From the Editor

Doug Archer

As you will quickly discover, this issue is a bit shorter than the last several; it is our first quarterly issue. Well, OK. We said that in the last issue. However, this is the first issue to follow a previous issue after only three months. It is mostly composed of information concerning the upcoming (next week's) ALA Annual Conference in Chicago.

If you will be attending, we hope it will help you wade through the ocean of choices available at every annual meeting. If you will not be attending, we hope it will give you a taste of what IFRT is up to and alert you to intellectual freedom issues before the Association -- to be reported in the August issue.

Recent issues have contained favorite IF quotations as an occasional feature. This issue contains an article by Martin Marty (a featured speaker at the main IF program in Chicago) documenting one of the most frequently used and paraphrased quotes of the 20th century, "First they came for..." by Martin Neimoller.

To further whet your appetite for our main program, Carolyn Caywood has contributed a handout on religious freedom prepared for the League of Women Voters in Virginia.

Reports, articles, news, columns, reviews related to intellectual freedom are always welcome and may be sent to the editor or any member of the Publication Committee.

If you are not a member of the IFRT but have somehow stumbled upon our report and are interested, join us. Just go to <<http://www.ala.org/ala/ifrt/ifrtorg/joinifrt/joinifrt.htm>>"How to Join the Intellectual Freedom Round Table". Only fifteen bucks for a very good cause.

**Intellectual Freedom Programs at the 2005 ALA Annual Conference
June 23-29, 2005; Chicago, Illinois**
<http://www.ala.org/ala/oif/oifprograms/ifprograms/intellectual.htm>

Nanette Perez

Saturday, June 25

**Religion and Intellectual Freedom:
Divine Revelation in the Marketplace of Ideas**

Sponsored by the ALA Intellectual Freedom Round Table

Saturday, June 25, 1:30 p.m.-3:30 p.m., McCormick Place, N427

How can libraries serve both the religious and the secular demands made by members of their communities? Does demonstrating respect for religious life conflict with the separation of church and state? Come and explore these questions with our distinguished panelists.

Speakers:

- * **Martin E. Marty**, professor emeritus, University of Chicago, editor of *Fundamentalisms Observed* (The Fundamentalism Project), and author of *The Promise of Grace: A Journey of Faith*
- * **Susan Jacoby**, author of *Freethinkers : A History of American Secularism*
- * **Mike Wessells**, librarian, Timberland Regional Library and Pentecostal pastor
- * **Doug Archer**, librarian, University of Notre Dame and Church of the Brethren minister

Sunday, June 26

**Ethics and Librarianship:
Alternative Perspectives on the ALA Code of Ethics**

Sponsored by the ALA Committee on Professional Ethics

Sunday, June 26, 1:30 p.m.-3:30 p.m., McCormick Place, S105d

Relevant or relic? Does the ALA Code of Ethics live up to the challenges of the new millennium? Join the Committee on Professional Ethics for the first in a series of panel discussions and open forums to determine if the Code is sufficient or needs revision.

**Tiny Trackers:
Protecting Privacy in an RFID World**

Cosponsored by the ALA Intellectual Freedom Committee, the ALA Office for Information Technology Policy, and the LITA Technology and Access Committee

Sunday, June 26, 1:30 p.m. - 3:30 p.m., McCormick Place S404

This program is a follow-up to the successful RFID program held at the 2004 Annual Conference in Orlando. Panel members will discuss recent developments in RFID technology and the policy environment, privacy concerns, RFID issues specific to libraries and more.

Speakers:

- * **Jim Lichtenberg**, president of LIGHTSPEED, LLC, based in New York City
- * **David Molnar**, a graduate student in computer science at UC-Berkeley
- * **Jackie Griffin**, director of Library Services, Berkeley Public Library

**We've Got Your Back:
Librarians and Teens Speak Out on Intellectual Freedom**

Cosponsored by the ALA Intellectual Freedom Round Table and the ALA Young Adult Library Services Association

Sunday, June 26, 1:30 p.m.-3:30 p.m., McCormick Place, S403

This program seeks to provide practical information on how Young Adult librarians can stand strong in defense of intellectual freedom. Real-life challenges to intellectual freedom will be

shared by teens and librarians, and discussion will follow, with audience participation encouraged. A lawyer with expertise in the area of teen rights and intellectual freedom will be present to offer suggestions on how librarians can react to such challenges.

Speakers:

- * **Traci Truly**, Lawyer and author of *Teen Rights: A Legal Guide for Teens and the Adults in Their Lives* (Legal Survival Guides)
- * **Erin V. Helmrich**, Teen Services Librarian, Ann Arbor (MI) District Library
- * **Anne Heideman**, Youth Services Manager, Chippewa River District Library, Veterans Memorial Library, Mt. Pleasant, MI

Monday, June 27

IFC Issues Briefing Session

Sponsored by the ALA Intellectual Freedom Committee

Monday, June 27, 8:00 a.m.-10:00 a.m., Chicago Hilton and Towers, Waldorf

Please join us for a briefing session on the intellectual freedom hot topics at this conference.

Protecting Anonymity on the Internet

Monday, June 27, from 10:30 to Noon., Sheraton Chicago Hotel & Towers

Cosponsored by the ALA Intellectual Freedom Committee and the ALA Committee on Legislation. Panel members will discuss who is trying to prevent anonymity on the Internet and why, why anonymity is important, and how people can protect their anonymity.

Speakers:

- * **Franklin S. Reeder**, The Reeder Group
- * **Paul Alan Levy**, Public Citizen Litigation Group

**Intellectual Freedom:
A Casualty of War?**

Monday, June 27, from 1:30 to 3:30 p.m., McCormick Place, S403

Cosponsored by the ALA Intellectual Freedom Committee, the Association of American Publishers Freedom to Read Committee, and the American Booksellers Foundation for Free

Expression

It is said that the first casualty of war is the truth. Certainly, experience has shown that during wartime, access to information and the freedom to express ideas have become curtailed. This session will explore the history of Intellectual Freedom in wartime, the extent to which the current wars have impacted speech, and strategies for the book and information communities to help maintain our liberties during "perilous times."

Speakers:

* **Geoffrey R. Stone**, Harry Kalven, Jr. Distinguished Service Professor of Law, University of Chicago Law School, and author of *Perilous Times: Free Speech in Wartime from The Sedition Act of 1798 to The War on Terrorism*

* **Floyd Abrams**, a partner in the New York law firm of Cahill Gordon & Reindel, the William J. Brennan, Jr. Visiting Professor of First Amendment Law at the Columbia Graduate School of Journalism, and author of *Speaking Freely: Trials of the First Amendment*

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Christian Century; 12/14/94, Vol. 111 Issue 36, p1207

M.E.M.O: ORAL CONFESSION

Martin E. Marty

FEW TOPICS addressed in this column have drawn more sustained interest than (a) the origins and use of "the Christian flag" and the place of flags in the church sanctuary; (b) the source of the Serenity Prayer attributed to either Reinhold Niebuhr or a German pietist; (c) the Martin Niemoller saying that is the subject this week.

The saying attributed to Niemoller is so relevant, so telling and so well crafted that it is often quoted in books and speeches and reprinted on greeting cards and stitched samplers. The only problem is, no one can find it in any of the mountains of published Niemoller materials. Still, everyone believes he originated it.

This week's final, definitive, absolute comment on the matter comes from

Ruth Zerner, who teaches at Lehman College in the Bronx. She gave me an offprint of a chapter she contributed to *Jewish-Christian Encounters Over the Centuries*, edited by Marvin Perry and Frederick M. Schweitzer (published by Peter Lang). In "Martin Niemoller, Activist as Bystander: The Oft-Quoted Reflection," Zerner calls the churchman's famous phrase about being a bystander instead of a responsible actor "the most frequently quoted and misquoted of [Niemoller's] statements."

Zerner cites Franklin Littell as one of those who has publicized the quotation. "Franklin Littell has assured me that he verified his recollection of these words with an American church official who organized Niemoller's speaking engagements in the United States after the war." But no tape recorder caught it, so it was not transcribed or published. "Therefore, like biblical tales," says Zerner, "this biographical confession has its genesis in oral tradition." Niemoller's daughter Brigitte Johannesson told Zerner that Niemoller first made the remark in England between 1955 and 1969.

Who was included in the famous passage about persecuted people for whom Niemoller, a typical bystander now confessing, failed to act? All witnesses agree that he did not include Catholics, who are mentioned in later quotes, but did include communists. "Inevitably, Martin Niemoller's faith was Protestant, with more than a hint of anti-Catholicism," wrote James Bentley, Niemoller's British biographer.

In 1956 he answered a Jew:

I have never concealed the fact and said it before the court in 1938 that I came from an "anti-Semitic" past and tradition I believe that from 1933 I truly represented the Lutheran-Christian outlook on the Jewish question ... but that I returned home after eight years' imprisonment [by the Nazis] as a completely different person.

Zerner probes all the reports she can find of what Niemoller may have said (but never wrote) and, seconded by second wife and widow, Sibylle Niemoller, comes up with the following as the *textus receptus*. We will use it until some more definitive version arises.

First they came for the communists,
but I was not a communist--
so I said nothing.
Then they came for the social
democrats,
but I was not a social democrat--

so I did nothing.
Then came the trade unionists,
but I was not a trade unionist.
And then they came for the Jews,
but I was not a Jew--
so I did little.
Then when they came for me,
there was no one left who could
stand up for me.

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by Martin E. Marty

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**Religion and the First Amendment:  
A March, 2005, presentation to the League of Women Voters**

**Carolyn Caywood**

This year a bill in the Virginia General Assembly would have changed state law on religious liberty. In support of the bill, "Jack Knapp, executive director of the Virginia Assembly of Independent Baptists, said he believed court decisions have made the amendment necessary. 'We've come to the place now where the Christian religion is not even treated as an equal partner in religious liberty. We've come to the place where to express anything Christian is now against the law in the public forum,' he said." *Virginian-Pilot* 2/9/05, p.20

The First Amendment has two clauses on religious liberty - Establishment and Free Exercise. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These two clauses are in tension, creating a sort of tightrope for government to tread. Minority religions have protested infringements on their free exercise and recently, as in the Virginia bill, so have Christians. Civil liberties groups have protested funding plans that verged on Establishment, and viewed the Virginia bill as too close to an Establishment of religion.

Courts, in debating how to keep government balanced on the high wire, have come up with the Lemon Test. Government action violates the Establishment Clause unless it:

1. Has a significant secular (i.e., non-religious) purpose,
2. Does not have the primary effect of advancing or inhibiting religion, and
3. Does not foster excessive entanglement between government and religion.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/lemontest.html>

You have various background documents you can refer to as we discuss the following questions.

1. Has time changed interpretation of the First Amendment<sup>2</sup> and the Virginia Statute on Religious Freedom<sup>3</sup>?
2. Do these laws still meet our needs?
3. Does "free exercise" or Virginia's "freedom to profess" include speaking to students in a public school?
4. Would the bill be better if modified in some way? If so, how?
5. Is this bill different from the Ten Commandments monument case now before the Supreme Court?
6. How can we best explain our understanding of the tension between "establishment" and "free exercise?"

#### Resources:

1. The LWV National Position says, "The League of Women Voters of the United States believes in the individual liberties guaranteed by the Constitution of the United States. The League is convinced that individual rights now protected by the Constitution should not be weakened or abridged." Announced by the National Board, March 1982.

#### 2. US Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/estabinto.htm>

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/freeexercise.htm>

Also, US Constitution, Article VI: "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

[http://www.archives.gov/national\\_archives\\_experience/charters/constitution.html](http://www.archives.gov/national_archives_experience/charters/constitution.html)

#### 3. Virginia Statute for Religious Freedom

Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as it was in his Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious

persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish enlarge, or affect their civil capacities.

And though we well know that this assembly elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act shall be an infringement of natural right.

Source: *W.W. Hening, ed., Statutes at Large of Virginia, vol. 12 (1823): 84-86.*  
<http://usinfo.state.gov/usa/infousa/facts/democrac/42.htm>

4.HOUSE JOINT RESOLUTION NO. 537

Offered January 12, 2005

Prefiled October 15, 2004

*Proposing an amendment to Section 16 of Article I of the Constitution of Virginia, relating to free exercise of religion.*

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Patrons-- Carrico, Abbitt, Armstrong, Athey, Black, Bryant, Byron, Cole, Cosgrove, Cox, Dudley, Hargrove, Hogan, Hugo, Hurt, Ingram, Janis, Johnson, Jones, S.C., Kilgore, Landes, Lingamfelter, McDonnell, McDougle, Nutter, Parrish, Saxman, Sherwood, Ware, R.L., Weatherholtz and Welch; Senator: Puckett

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Referred to Committee on Privileges and Elections  
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RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 16 of Article I of the Constitution of Virginia as follows:

#### ARTICLE I

Section 16. Free exercise of religion; no establishment of religion.

That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities.

*To secure further the people's right to acknowledge their faith according to the dictates of conscience, neither the Commonwealth nor its political subdivisions shall establish any official religion, but the people's right to exercise their religious beliefs, heritage, and traditions on public property, including public schools, shall not be infringed; however, the Commonwealth and its political subdivisions, including public school divisions, shall not compose school prayers, nor require any person to join in prayer or other religious activity.*

And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

8.Amended: To secure further the people's right to acknowledge *God* according to the dictates of conscience, neither the Commonwealth nor its political subdivisions shall establish any official religion, but the people's right to *pray and to recognize* their religious beliefs, heritage, and traditions on public property, including public schools, shall not be infringed; however, the Commonwealth and its political subdivisions, including public school divisions, shall not compose school prayers, nor require any person to join in prayer or other religious activity.

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**Discussions from the Council email list of potential interest to IFRT**

**Carolyn Caywood, IFRT Councilor**

The IRC is monitoring Turkmenistan, which has closed most of its libraries (along with other institutions of civilization).

The Resolution on Workplace Speech, which IFRT endorsed, was postponed for a review by IFC before Annual. IFC reports that the resolution puts ALA in the position of giving legally misleading advice. There has been considerable discussion on how to rewrite it to avoid this problem and I expect a revised version to be on the agenda.

While considerable debate followed the presentation of a citation to Laura Bush, the only Council action I expect may be a resolution requiring that such actions be brought to the Council for endorsement. That could mean only at conferences, thus delaying ALA's responsiveness, or it could be by some phone/internet means that might violate our open meeting policy.

Privacy concerns were given a boost by the hijacking of part of ALA's member list. Function creep and RFID chips for library cards were also discussed.

How to manage disruptive posters on ALA email lists also drew debate with the IF lists being cited as examples. I don't expect any Council action, but it is interesting to know how widespread this issue is. And another form of Internet communication – blogs - generated debate back in March in the wake of an article by Michael Gorman.

Other resolution ideas floated at Midwinter were a condemnation of political grandstanders who want to excise GLBT authors from libraries, and a condemnation of the Administration practice of spreading disinformation. I have heard nothing further on these.

Council issues less directly related to IF include concern about library closings and funding cuts that continue in the wake of Salinas and may generate a resolution to create an ALA office to address this. Discussions of the financial stability of APA and of ALA's partnerships also keep resurfacing. And, in the wake of the *LJ* article there is concern about newly graduated librarians who can't find a professional job. There is a resolution pending about requesting an update of the US News ranking of library schools but discussion has been unfavorable. The administration of the second electronic ballot also drew discussion.

Finally, please note that the position of IFRT councilor will be on the 2006 ballot. I'll be glad to share my experience with anyone considering running for the office.

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