

AUTHORS GUILD

Winter 2006 **BULLETIN**



BATTLE IN THE STACKS: Does Google Need a License?

Symposium: Debate at the New York Public Library

The Guild's Congressional Testimony on Fair Use and Google

Poet Laureate Daniel Hoffman on the Rights of Authors

Jung's Meddlesome Heirs

The Authors Guild Interview: Sarah Vowell

LETTERS TO THE EDITOR

I strongly support Nick Taylor's position on the Google swindle. Back in my dissolute youth, when I was writing a lot for magazines, I realized that my work was acting as bait to attract readers to advertisements for goods I often deplored. I made a choice, aware of the implications.

There is, however, absolutely no reason why I should allow my work similarly to be used by Google, once again as bait to attract people to their advertisements, not only without payment, but without my permission or, possibly, even knowledge.

One of the points of copyright is to give the creator of the work control of it. Google is denying me that right.

James Lincoln Collier
New York, NY

In his interview with Isabel Howe in the Fall 2005 Bulletin, Oscar Hijuelos misrepresents our contract with him for his first novel, *Our House in the Last*

The Guild encourages members to write to the Bulletin. Letters should be sent to "Letters to the Editor," The Authors Guild, 116 West 23rd Street, New York, NY 10011. They can also be faxed to (212) 564-5363, or sent via e-mail to staff@authorsguild.org (type "Letters to the Editor" in the subject line). Letters may be edited for length, grammar and clarity.

World, mentioning a low advance and "disadvantageous royalties." He insinuates that we took advantage of his inexperience, and the fact that he was not represented by a literary agent. This is simply untrue. I would like to present the facts to your readers so that they can judge for themselves.

In 1980 Oscar wasn't a Pulitzer Prize-winning author of many novels. He "turned up at our door"—as he says in his own Afterword to the 2002 edition of *Our House in the Last World*—"with several thousand pages of fragments and chapters stuffed into several shopping bags." We read all those pages, and we gave him a contract. The terms were as follows: a \$4,000 advance against standard hardcover royalties escalating at standard intervals from 10% to 12.5% to 15% and paperback royalties that begin at 6% and escalate to 7.5%.

We then spent many months working with Oscar,

Continued on page 49

ALONG PUBLISHERS ROW

BY CAMPBELL GEESLIN

The headline in The Wall Street Journal told the story: "Authors Take Aliases To Cover Up Flops: With Stores Tracking Sales, One Bad Book Is Poison."

Reed Farrel Coleman had published six mystery novels, but his sales were declining. As sales drop, the chain bookstores reduce their orders until they don't carry a writer's books at all. Coleman's agent suggested that he try a pseudonym, and when *Hose Monkey* is published next October his name will be Tony Spinoso.

Agent Richard Pine told The Wall Street Journal, "You're only as good as your last book's sales to much of the retail market."

Dean James runs a Houston bookstore and has published seven novels and six nonfiction books. His next, *Flamingo Fatale*, is about a woman who lives in a trailer park. James's pseudonym will be Jimmie Ruth Evans. The author said, "I knew I'd have a better chance under a different name because I know how the book business works."

William P. Kennedy wrote military thrillers, but they weren't selling well. He changed his name to

Diana Diamond. His third Diamond novel, *The Good Sister*, became a bestseller. Terrill Lee Lankford's agency wanted him to use a pseudonym for *Blonde Lightning* because an earlier book, *Earthquake Weather*, was not a big seller. Lankford refused. He said, "Just to defeat the computers at Barnes & Noble and Borders isn't a good reason for doing this."

Barry Martin, co-owner of a bookstore in South Pasadena, Calif., agreed that this new practice is deceitful and said, "Publishers will do anything to sell a book."

OPINIONS: E. L. Doctorow's new novel, *The March*, is about Gen. William Tecumseh Sherman's scorching march through the South.

The author said that he intended this book to bear the relationship to reality that a Van Gogh painting might have to a real landscape. "Among other things, a novel is a system of opinions," he told The New York Times.

Continued on page 32

THE AUTHORS GUILD BULLETIN

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Overheard

"We asked if you, your company, stood behind Jim's book as a work of nonfiction at the time and they said absolutely [H]ow can you say that if you haven't checked it to be sure?"

—Oprah Winfrey to Nan Talese, head of Random House's Doubleday imprint, which published James Frey's discredited *A Million Little Pieces*. On the *Oprah Winfrey Show*, January 26, 2006

WINTER 2006

Articles

Opening Lines:
Up from the Ruins
By Nicholas Weinstock
Page 5

Published as Written
By Isabel Howe
Page 6

The Authors Guild Interview

Sarah Vowell
By Nellie Bridge
Page 7

BATTLE IN THE STACKS: Does Google Need a License?

Search and Seizure
By Paul Aiken
Page 12

Symposium

Google, Authors & Publishers Face Off
Page 14

Google and Authors' Rights
By Daniel Hoffman
Page 20

Departments

<i>Along Publishers Row</i>	2
<i>Letter from the President</i>	4
<i>Legal Watch</i>	10
<i>Bulletin Board</i>	44
<i>Members Make News</i>	45
<i>Books by Members</i>	47

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Cover Credit

From the President

BY NICK TAYLOR



From Amazon to Google in four short years.

That's how much the world of books has changed during my two terms as the Authors Guild's president. It didn't start with Amazon, of course. But the last four years illustrate the extent to which the challenges that face us as writers trying to make a living—and the opportunities presented to

us as well—are the result of the continuing shift from the world of ink and paper to that of the Internet.

We first learned of the impunity with which our property could be purloined by digital transmission when *The New York Times* and other publications sold electronic rights they didn't own to databases that collected large fees for access to stories and book excerpts that you and I wrote. We won that fight. The publications and databases settled for fees that could go as high as \$18 million. Those settlement talks had just begun when I was first elected in February 2002. Now the settlement has been all but approved, and I hope that 2006 will see distribution of money to authors who filed claims under the settlement last year.

The database rights theft, and successful lawsuit, showed how valuable our work is to the content revolution created by the Internet. The Internet also made possible the virtual bookstore. The first of these was Amazon.com. When its founder, Jeff Bezos, realized that he could connect with other bookstores by way of the Internet, that meant that he could provide a central bookshelf for all the used books that used to be found in dusty, fascinating bookstores scattered in cities and towns all over the country—and, in fact, with anybody who had a used book to sell, store or not.

That happened soon after I was elected, too. Paul Aiken, the Guild's executive director, called me to say that Amazon had started enticing its customers to resell books they had purchased from Amazon, sending them messages such as "You can earn \$54.37 by selling the books you bought in the last six months!" This was intended to promote Amazon's recently launched used bookselling service, which advertised used copies on the same page as the new book, sometimes even before its publication. When a reader got to the page where your new book was featured, there was a

little blue window that said the book was available used for less. Used book sales were cannibalizing new book sales, and those sales contributed nothing to the royalty streams of either writers or publishers. We asked Amazon to give a new book a little breathing room, six or 12 weeks, so it could develop a sales profile that would help a publisher decide whether or not to push it further, before forcing it to compete with cheaper versions of itself. We were rebuffed, and Paul said we ought to advise our members with websites to de-link from Amazon. I agreed, and we did.

What a shitstorm that produced! Bezos knew how to use the Internet better than we did at that time. He whipped up a campaign of e-mails—we got thousands—and opinion that somehow concluded that we

***We believe the goal of making books
searchable online is a good one. . . . We
also believe that authors have an absolute
right to share in the increased value to
Google that our content is creating.***

wanted to keep cheap books off the market and thus were anti-reader. Never before has the struggling community of writers, which is by far the majority of us, been so successfully—and incorrectly—transmogrified into a wealthy elite. Well, business is business, and I guess Jeff did what he had to do, and we'll know better next time. But we're still right. A new book deserves a window of opportunity for making its own way in the world before used copies are thrown up against it, because if new books can't find a market there won't be any used books to buy for less.

We watched the music industry's agonies over illegal downloading and file sharing, and felt a little complacent. The book, after all, is not only the words it contains, but a widely and well-loved object in itself. We were spared the trials of the music business, and those of Hollywood, because the book was its own interface with the user, not requiring the intervention of sound and video technologies that are the portals for digital intake and output. People resisted reading e-books on a screen. We wondered, of course, in what way and at what time our snug world too would be

Continued on page 49

Opening Lines

Up from the Ruins

BY NICHOLAS WEINSTOCK

Now and then, in the messy failure of doomed writing projects, there is—along with the inevitable pain, patience and madness—comfort to be found. It's not just the bitter comfort of joining a rich literary tradition of unpublished masterpieces. Nor is it the false solace that with one dud under your belt, you have earned the right to uninterrupted triumph from here on in. Rather, it is the reality that many of our stumbles turn out to be unexpected lurches forward and that actual progress is often being made, and genuine potential being built, when it seems that our best efforts are merely falling flat. In the rugged landscape of book publishing, where things grow bravely and slowly, many projects take root in the cracks and rubble of previous flops.

Until recently, the literary career of Tom Greanias, 40, would seem to be a string of nonstarters and near-misses leading to nothing much. As a reporter in Washington, D.C., with a graduate degree in journalism, Greanias provided news to local NBC affiliates before going to work in the fledgling telecom industry—all the while eagerly planning to be an author, and with high hopes, writing a novel about World War II. The good news is that over the course of three years he was able to complete the manuscript and land an agent. The bad news is that the book, as Greanias points out, "is still in my desk drawer. Back then—this is before *Saving Private Ryan*—World War II was not a hot topic. My agent submitted it everywhere, but we were only able to interest one publisher enough for them to offer a few suggestions, and I never did the rewrite they wanted. I just moved on."

Nicholas Weinstock is the author, most recently, of *The Golden Hour*. He has been a member of the Authors Guild Council since 1999.

Where Greanias moved on to was Los Angeles, where the brief interest of feature producers in his novel was enough to entice him to relocate. He began writing a movie script, titled *Chain of Command*, about a female secretary of education who becomes president of the United States after a nuclear attack kills the first 15 people in line for the office. He finished the script in 1996—just in time for Columbia Pictures to

produce *Air Force One*, a concept similar enough (the president and his entourage come under attack from terrorists) to blow his chances of success.

"I was disappointed," Greanias admits. "This was the early '90s, which was really the high season for spec scripts [scripts written independently and without payment] in Hollywood. I had plenty of friends who just wrote a few lines of a movie treatment and got real money. So that came as a real disappointment."

But just as the unpublished novel was enough to get him to Los Angeles, the un-purchased movie script ushered in his next opportunity—true to the accidental and improvised nature of a writer's

progress—was bungled into the most fruitful idea he'd had so far.

"My agent mentioned to me a book called *Runes*," Greanias recalls, about the ancient European art of reading mystical stones, "that he thought I might want to consider developing into a feature. I was still pretty thrown by the rejection of *Chain of Command*, so I wasn't paying that much attention, and when he said the title I thought he said *Ruins*. I had just read a National Geographic article about the discovery of ruins in Antarctica, and I sparked to the idea immediately. By the time I saw the correct title of the book, I'd already started to imagine a story in which the ruins of Atlantis may or may not have been found in Antarctica—and since I hadn't gotten much satisfaction out of writing screenplays, I started writing the book."

The book took another three years to write and rewrite, in the course of which the story evolved into "six or seven completely different novels" and Greanias went through three agents who tried and failed to find publishers. Losing hope, he started tinkering

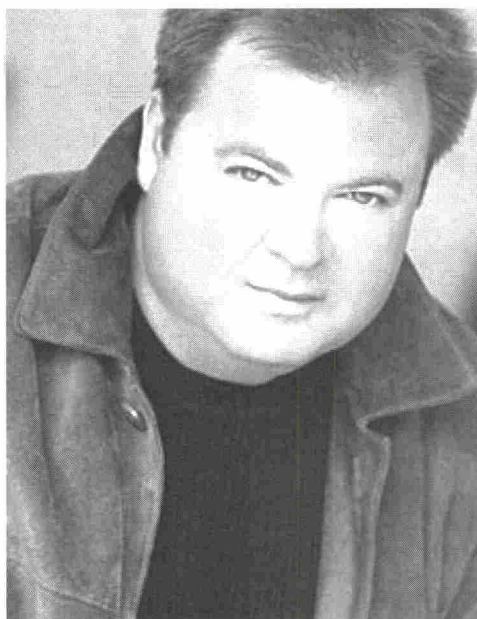


Photo: Keylyn Major Howard

Tom Greanias

Continued on page 46

Published as Written

BY ISABEL HOWE

Deirdre Bair's biography of Carl Gustav Jung, the founder of analytical psychology, was published by Little, Brown & Company in November 2003. *Jung: A Biography* was praised by both critics and scholars. "It is unlikely that another biography can ever equal this in its scrupulousness and the depth of its research," said The New York Times. The Journal of the American Psychoanalytic Association agreed: "Bair's splendid new biography easily outshines its predecessors and is a treasure trove of information."

The response from the living relatives of C. G. Jung, however, was less positive. The Swiss heirs—and protectors of Jung's estate—identified a handful of what they considered factual inaccuracies in the work. These included disagreements concerning Jung's name at christening, the color of the family's sailboat, and Bair's depiction of Jung's wife, Emma, as cold and unfeeling. Bair, the award-winning biographer of Simone de Beauvoir, Samuel Beckett and Anaïs Nin, maintains that her arguments are supported by intensive archival research, as well as by eight years of on-the-record interviews with the Jung heirs.

Several months after the book was first released, the heirs contacted Little, Brown with their grievances, requesting that the book be withdrawn or that all future editions be amended. The publisher refused, on the grounds that the heirs had no claim under United States law. When the heirs contacted Knaus Verlag, a Bertelsmann imprint that was preparing to release a German translation of the biography, they got a very different response.

Because of the difference between libel and privacy laws in the United States and those in much of Europe, the heirs would have been able to assert claims in a German court that would never have flown in the U.S. Fearing a lawsuit, Knaus Verlag proposed including the heirs' version of events in the German-language edition, in the form of two additional pages of text and about 40 annotations. Bair, furious, refused to allow them to proceed. "I took this position not only for myself and my book," says Bair, "but also for every writer who will come after me and whose work might be subjected to the same kind of interference." Through her lawyers, she urged the heirs to honor their original agreement with her, in which they had agreed to read the book only after it was published so as to pre-

Isabel Howe is a member of the Authors Guild staff.



Photo courtesy of The Bairt Centre

Deirdre Bair

vent such interference, and invited them to express their objections in a different forum, "from writing their own book to holding a press conference to denounce mine, to convening scholars at a colloquium where their views would be fully expressed." The heirs persisted.

Soon after learning that Knaus Verlag was preparing to proceed with the heirs' additions, Bair, a longtime Authors Guild member, contacted the Guild and was put in touch with Director of Legal Services Anita Fore. Fore advised Bair as to how she should approach Knaus Verlag and, together with Bair's lawyer, they were able to prevent any change to the German translation by pushing the publisher to live up to its contractual obligations. The book, released in October, was published without the heirs' "corrections."

Bair's success is an important one. Had the German translation been published with the changes the heirs requested—and without Bair's agreement—a troubling precedent would have been set. To have one's work translated and one's ideas disseminated across national borders is usually an honor for a writer. (Editions of *Jung* have been issued in the UK, Holland and Germany, and are scheduled for Italy, France and Korea.) In this case, the honor became "abhorrent" to Bair, an experience she told the International Herald Tribune was like being the victim of a crime. "I felt like someone broke into my house and tried to rearrange my furniture," she said. With the publication of *C. G. Jung: Eine Biographie*—without "corrections"—there's order in the house once more. ♦

The Authors Guild Interview:

SARAH VOWELL

Continuing our series on the working life of writers, Nellie Bridge interviewed Sarah Vowell, who joined the Authors Guild Council in 2005. Vowell is the author of *Take the Cannoli: Stories from the New World*, *The Partly Cloudy Patriot*, and most recently, *Assassination Vacation* (Simon & Schuster), an idiosyncratic examination of the deaths of four American presidents. Vowell is a contributing editor to public radio's *This American Life*, the voice of teenage superhero Violet Parr in Pixar Animation Studios' *The Incredibles*, and a regular on *Late Night with Conan O'Brien*.

With so many projects going on, how do you find time for writing?

The Internet, and all these cable channels, and all these TV shows, and radio shows, and magazines—I call all that “the Machine,” and the Machine just needs to be oiled. I need swaths of time, so it means really planning ahead. I’ve instituted this policy of trying to do public speaking for only two months in the fall and two in the spring, because otherwise I could just spend my whole life yakking. It really takes a lot of discipline to say no to people, partly because I’m a nice girl, and partly because I’m still a freelancer. It just kills a freelancer to say no to a thing, even if it’s a thing you aren’t getting paid for. I spent my whole twenties as this scared freelancer working 16 hours a day, afraid to say no to anything, because I couldn’t really afford to. I just wanted to get all this experience, and pay my rent, and now I still find it really difficult to say no to something. To write books, you need so much time. So much of it isn’t writing. It’s just sitting, and thinking, and mulling, and pacing, and you know, walking to the crackers. . . . I need huge chunks of time with nothing on the schedule. I’m scheduled so far in advance now that I have to schedule free time really far in advance too.

What happens after you spend a lot of unscheduled time writing?

I don’t write my books just to sit on a shelf. I want people to read them. Every time you do an interview, or they mention your book title, is important—constantly reminding people your books exist. I always thought that writing a book was just writing a book, you know:

You sit there, you write it, you edit, and then you’re done. But now I see that writing a book is the whole process—promoting it, talking about it, and doing readings. I see writing a book as a much longer, bigger, more laborious process. When a book comes out, I really do give my life over to promoting it. I’ve just resigned myself to that fate. I used to resist it a little more. When you’re a writer, you’re the kind of person who wants to sit in a room for two or three years by yourself. But if you’ve done it right, if you’ve sat in the room for three years by yourself, and then the book comes out, all of a sudden you have to go talk to dozens, if not hundreds of people a day, and go to different cities, and stay in all these strange hotel rooms. It’s kind of the antithesis of a writer’s personality, or at least it is of mine, so that’s always an adjustment.

One thing I’ve come to love more and more about writing is editing, taking the time to say exactly what I want to say. Sometimes on book tour if I’m yakking, sometimes all day, it’s just a bunch of live me, and I so much prefer the edited me.

Has becoming more experienced in the publishing world made you freer to do what you want in your writing?

Absolutely. When I was younger, I worked in college radio. This was the ‘80s, when indie rock was getting started, and we were all so anticorporate. We thought major labels—those were the dirty words—were these soul-sucking money machines. Not that they aren’t, but I have been continually surprised the last few years by just how sentimental I am about my little Viacom subsidiary, Simon & Schuster. I’ve been there for seven years, working with the same editor, and I’m so blissfully happy. They’re so good to me. They really back me up, and have been nothing but kind and supportive and smart about publishing my books. They have been such good friends to me that I really couldn’t be happier with them. And it makes me feel that I have all this freedom. I have responsibility too, the kind of responsibility that comes from affection; I don’t want to let them down because they’ve done so much for me. My books are kind of weird. It’s amazing to me that someone wanted to publish them, and that they keep wanting to. My editor and I have this really utopian author-editor relationship, and I am incredibly thankful for it. A good story has drama and conflict, so “I love Simon & Schuster” is not a good story—but it’s the truth.

How would you describe your publishing career in story terms?

Everything that’s happened to me, good and bad, has been a total accident, it seems. When I go to speak at colleges and schools, sometimes I think I’m not the

most inspirational speaker because a lot of would-be writers are always asking, "How do I get to do what you do?" and it just all seems like such an accident. Telling a 19-year-old student, "Try to be in the right place at the right time," doesn't really help that person make plans. I never planned anything, and so far it's worked out OK. Even all the upsets worked out for the best.

Could you share any of those upsets, perhaps as cautions to our members?

Well, not so much as cautions, but as congratulations on failure. I actually wanted to be an art historian. I really, really wanted to go to Berkeley's art history Ph.D. program, and I did not get in. The only graduate school I got into for art history was the School of the Art Institute of Chicago, which ended up being a great place to go to school, but was also where I met Ira Glass, who was starting *This American Life*. I would never have gotten into radio otherwise, and so much happened to me because of working on that show. Not just in terms of opportunity, but in terms of the kind of writing I would do, like more narrative writing, humorous writing. I was going to be a critic. But because I went to the one school I got into, I happened to meet one of the three or four people who really changed my life for the better. Now I sometimes speak at Berkeley. I speak at a lot of schools I couldn't have gotten into, but I love speaking at that school I did not get into, and being overpaid to do it. So everything seems to work out, in a way. I don't know if that's a good lesson to learn or not, because it makes you kind of apathetic about your defeats, but all of my defeats have worked out for the best, eventually.

Those years spent writing 16 hours a day must also play a part in things working out . . .

Yes. No matter what I was doing, I did always work really hard. Certainly when I was starting out as a young writer, I wrote a lot. Mainly because I was so poorly paid for every single thing I wrote and I had to pay my rent, I just wrote so much every day. But experience is good. Experience is almost this organ that I can feel inside of me. It's nice to be able to fall back on that.

In an e-mail about setting up this interview, you said you were sick of talking about yourself, having just finished a book tour. How do you deal with that during the tour?

I just suck it up. Even if I'm talking to someone I'd rather not be talking to. If it's a newspaper reporter in some town, I picture someone I know in that town, and I pretend that I'm talking to my friend. You just have to suck it up. I keep reminding myself that that's



Photo © Bennett Miller

Sarah Vowell

why it's called work. Sometimes work is having to do things you'd really rather not be doing. The promoting of a book is what gets people to read it, which is what makes it possible for you to write the next book. It's necessary and it's good, even though it's sometimes a pretty brutal schedule. But not compared to real, hard jobs with physical requirements.

Any tips for writers who are stuck in the middle of a piece?

Sometimes if something isn't going very well, it's because it isn't a good idea. I do a lot of writing that I just toss out. I think sometimes quitting is the noble gesture. One incredibly helpful thing, I find, for figuring out what's good and what's not, is reading it aloud. If you're reading something aloud, especially in front of other people, if something is really too long and really boring, you can just feel them squirming. And you can actually feel yourself dying to get through the boring bit. And if you, the writer, are dying to get through the boring bit, imagine how the reader would feel. It also lets you know what's working, if you find yourself looking forward to reading a certain paragraph, or enjoy reading it. There's something about reading it in real time that lets you figure out just how really boring it is. I think it helps you be less precious about what you're doing, and a little more honest about flaws.

In Assassination Vacation, you mention going off "the historical tourism deep end."

I like historical tourism as opposed to history-history, because there's more to talk about. There's more going on. It takes place in the present. Especially with American historical tourism. American history is so largely grisly, and dark, and kind of just plain embarrassing.

And then historic sites—people who visit them generally are people who are on vacation. It's fascinating to me that you would be spending your leisure time learning about some horrible injustice or genocide or war or murder. With those kinds of things, you don't know there is going to be something to write about, but generally with those circumstances, you have a better shot at it. It's also a way to put myself, and the reader along with me, there. I wasn't at the Lincoln assassination, but I can go to Ford's Theater and talk about park rangers, and tourists. It also adds a little more flavor. I like reading straight history books, but I always wonder, as I'm reading, "Where were you when you learned that?" In the acknowledgments, you see them thanking librarians of various archives. But I always think, When did you go there, and what did you have for lunch, did your kids go with you, what did you do at night, how did you get there, is it hard to get to? I wish I could be one of those erudite third-person expert-type writers, but I'm just not.

How do the rewards of a This American Life piece differ from the rewards of writing a book?

There's really nothing more satisfying for a writer than a book. The *This American Life* process is pretty grueling, so on finishing one of those stories I have a sense of elated accomplishment. It's very intense. It's so quick and very casual on the radio, but it's generally put together by way of an incredibly complicated editing process. Some of the stories I've done have had twenty-something drafts. There's a lot of being on the phone with your producer at midnight, talking and talking and editing it again and again and again. In the end, it doesn't sound the way it's put together at all, thank God, because it's just such a breezy little logical sounding hour, but it's a very rigorous process. Afterward you hear right away from people you haven't heard from in years. "I was driving from . . ." People who listen to the radio always want to tell you where they were, for some reason. "I was doing the laundry" or "I was coming home from the grocery store," and it kind of makes you feel like part of their life, in a way that books don't. Maybe they say, "I was on vacation," but generally they are just sitting their living room, reading a book. But with the radio, for some reason, they just love to tell you where they were.

Sounds like how you write history.

Yeah. That's exactly what I deserve.

Any thoughts on the Guild's recent lawsuit against Google?

Here's what I think of what I do. I love my job. Ever since I was a little girl, all I ever wanted was a job. I'm

not overly romantic about it; I don't think of it as a huge big deal, really; I just feel very proud of me sitting there doing my job. So I'm not very grandiose about writing, but on the other hand, it is my job, and when I work, I expect to be compensated for my work. It's very simple. This summer I was talking with someone about whether The New York Times should charge for its online edition or not. And this person expressed surprise that in this day a person would be required to pay for information. As if information is air, or something. Information—someone has to think it up. That really shocked me when she said that, because that's how I make my living, providing information, of a sort. The problem is not only that they are trying to make copyrighted material available for free—that in and of itself I have problems with, because I think writers should be compensated for their work—but they're making money off it. That's illegal and just plain wrong. I'm all for the free flow of information, and I love Google. I use Google several times a day, if not sometimes dozens of times a day. I think it's great. I think a lot of that information is put out there because people want other people to see it, and it should be free. I think it's wonderful technology, but I think that scanning books and making them available for free on the Internet is wrong, especially if it's part of a money-making enterprise. ♦

Questions on Contracts?

The Bulletin will inaugurate a column on publishing contracts in the next issue. Mark L. Levine, the author of *Negotiating a Book Contract: A Guide for Authors, Agents and Lawyers* and a lawyer for more than 35 years, will answer questions submitted by Guild members in each issue. The column will be in Q & A format.

Please submit your questions by e-mail to QandAColumn@authorsguild.org or by regular mail to the Guild's office. Mark is a former partner with the New York office of Boston's Sullivan & Worcester and co-editor of *The Complete Book of Bible Quotations* (Pocket Books, 1986) and *Tales of Hoffman*, a collection of courtroom confrontations from the "Chicago 7" Conspiracy Trial (Bantam Books, 1970). His articles about publishing have appeared in the Authors Guild Bulletin, the New York Law Journal and other publications. A graduate of New York University School of Law, where he was a member of the Law Review, and the Columbia University Graduate School of Journalism, he has been a member of the Guild since 1978.

LEGAL WATCH

Battle In the Blogosphere

John Doe v. Patrick Cahill
Supreme Court of Delaware

Most of us have heard firsthand accounts of boorish book reviews posted by everyday readers on Internet forums, blogs and message boards. Bad reviews always sting, but when combined with the often colorful language of the Internet community—"this hack must have lied his way into a book deal because he obviously knows nothing about this subject!"—authors may be inclined to reach out to the nearest attorney. "That's libel!" the targeted author may cry. "Can't I sue?"

In fact, because the rough-and-tumble, two-cents-worth atmosphere of the Internet often makes it unlikely that such statements will be taken as fact, and because mere opinions cannot be libelous, it may be even more difficult to pursue a case against a blogger or message board commentator than against a traditional print journalist, even though the language used on the website is much more vehement. In a recent case decided by the Delaware Supreme Court, the court stated that "[b]logs and chat rooms tend to be vehicles for the expression of opinions; by their very nature, they are not a source of facts or data upon which a reasonable person would rely." The Delaware court agreed with earlier courts' findings that many comments in cyberspace cannot be interpreted as factual statements. Comments posted on message boards and blogs, often posted anonymously and loaded with rhetorical hyperbole and subjective speculation, carry the odor of opinion, not fact, while only factual statements can be the basis of a libel lawsuit.

The issue at stake was whether the plaintiffs, Smyrna City Councilman Patrick Cahill, and his wife, Julia Cahill, could compel the Internet Service Provider, Comcast, to identify the anonymous website forum participant the couple claimed had libeled Patrick Cahill. The allegedly defamatory statements were posted on "The Smyrna/Clayton Issues Blog," sponsored by the Delaware State News, which had been set up as a forum for a discussion of community issues, including the performance of local politicians. The blog's guidelines stated, "[t]his is your hometown forum for opinions about public issues." A participant calling himself Proud Citizen posted two comments, which asserted that Councilman Cahill was a failed leader, a roadblock and a paranoid person in mental decline:

"[C]ahill has devoted all of his energy to being a di-

visive impediment to any kind of cooperative movement. Anyone who has spent any amount of time with Cahill would be keenly aware of such character flaws, not to mention an obvious mental deterioration. Cahill is a prime example of failed leadership"

The Cahills brought the lawsuit against the anonymous forum participant by filing a complaint against John Doe, a legal procedure used when the defendant is unknown. (The Cahills sued three additional anonymous forum participants for defamation and invasion of privacy. Only one John Doe defendant was involved in the case under discussion.)

***"[B]logs and chat rooms tend to be
vehicles for the expression of opinions;
by their very nature, they are not
a source of facts or data upon which
a reasonable person would rely."***

In order to go forward in his lawsuit, Councilman Cahill sought to compel Comcast to identify Proud Citizen. The Delaware Supreme Court noted that statements on the Internet are as entitled to First Amendment protection as statements made in traditional print media, and that the protection extends to anonymous Internet speech posted under an alias or otherwise anonymous user name. The First Amendment does not, however, protect defamatory speech. The court observed that in order to decide the case, it had to "adopt a standard that appropriately balances one person's right to speak anonymously against another person's right to protect his reputation." The court described the Internet as "a unique democratizing medium unlike anything that has come before." A legal decision that would allow the disgruntled subject of a website discussion to too easily discover the identity of an anonymous user could chip away at the freedom many users feel when contributing to blogs and bulletin boards because they know they will not be ostracized or suffer retaliation for expressing unpopular ideas. The court said:

"We are concerned that setting the standard too low will chill potential posters from exercising their First Amendment right to speak anonymously. The

possibility of losing anonymity in a future lawsuit could intimidate anonymous posters into self-censoring their comments or simply not commenting at all. A defamation plaintiff, particularly a public figure, obtains a very important form of relief by unmasking the identity of his anonymous critics."

A low standard would mean that plaintiffs with weak defamation cases or plaintiffs with no intention of pursuing the defamation case could bring lawsuits merely to discover the identity of their anonymous critics and seek revenge and retribution against them.

The Delaware Supreme Court held that in order to justify stripping Proud Citizen of his anonymity, the Cahills would have to prove that they had reasonably tried to notify Proud Citizen that he was the subject of a disclosure order (by posting a message on the blog, for example) and that the merits of their case would survive a motion for summary judgment. In other words, the Cahills would have to show that their case contained all the elements required for a defamation lawsuit to go before a judge or jury.

Under Delaware law, it was necessary for the Cahills to show that Proud Citizen's Internet statements were defamatory, that they were about Patrick Cahill, that the statements were actually published, and that a third party would understand the character of the statements to be defamatory. Ordinarily, public figure plaintiffs such as politicians and famous authors must also show that the statements are false and the defendant made them with actual malice. However, the Delaware Supreme Court acknowledged that a plaintiff would have a hard time proving malice on the part of an anonymous defendant and held that a public figure defamation plaintiff would not be required to produce evidence on this element of the claim.

The Delaware Supreme Court decided that the councilman could not insist upon knowing the identity of Proud Citizen because the comments posted at the website could not be reasonably construed as defamatory, the first element of the defamation claim.

Authors interested in learning more about termination of rights on works transferred to a publisher on or after January 1, 1978, should consult the detailed guide to the subject by Margo E. Crespin, Assistant Director of the Kernochan Center for Law, Media and the Arts and Lecturer-in-Law at Columbia Law School, available on the Authors Guild website. The guide is accompanied by a sample notice of termination, and can be found at www.authorsguild.org, under Contract Advice.

The court decided that the statements could not be construed as anything other than opinion—indeed, the forum advertised itself as a place for opinions. "Given the context of the statement and the normally (and inherently) unreliable nature of assertions posted in chat rooms and on blogs, this is the only supportable conclusion," the court ruled. "Read in the context of an internet blog, these statements did not imply any assertions of underlying objective facts."

Since opinions cannot be construed to hold defamatory meaning, the politician could not satisfy the requirements necessary to compel identification.

The higher court also explicitly disagreed with the position taken by the trial court with respect to Proud Citizen's statements about Cahill's paranoia. The trial court agreed with the Cahills' position that Proud Citizen's comment that "Gahill is as paranoid as everyone in town thinks he is" could be construed as a libelous suggestion that Patrick Cahill had engaged in a homosexual, extramarital affair. The argument was that Proud Citizen's typographical error—"Gahill" instead of "Cahill"—was a deliberate misspelling of Cahill's name in a way that would allow it to be pronounced as "Gay-hill" instead of "Cay-hill." The Delaware Supreme Court disagreed: "Using a 'G' instead of a 'C' as the first letter of Cahill's name is just as likely to be a typographical error as an intended misguided insult."

—Anita Fore
Director of Legal Services

When is a Kiss Just a Kiss?

Ward v. Klein a.k.a. Simmons
Supreme Court of the State of New York

Georgeann Walsh Ward, a former girlfriend of legendary Kiss cofounder and bass player Gene Simmons, recently instituted actions against him for defamation (libel and slander) and invasion of privacy. Ward, who met Simmons in 1972, alleged that photographs taken of her when they dated for a short time over 30 years ago appeared in a 2004 documentary produced by Simmons and Viacom without her knowledge or consent. The documentary, entitled *When Kiss Ruled the World*, featured several photographs of her during a segment entitled "24-hour whore," which focused on Simmons's sexual exploits in the 1970s. She claimed that the manner in which these photographs were used was defamatory and violated her rights of

Continued on page 48

Battle in the Stacks: Does Google Need a License?

On September 20, 2005, in response to Google's announcement of its plan to digitize the contents of five major libraries, the Authors Guild filed suit against the company, charging massive copyright infringement. Google's ambitious plan is to digitize 15 million books from the libraries of Stanford, Michigan, Harvard and Oxford Universities, and the New York Public Library, and make them available in whole (books in the public domain), or in part (works that are still under copyright). Google would make money on the scanned books by selling ads alongside search results.

Search and Seizure

By Paul Aiken

On November 16th, Executive Director Paul Aiken testified before the House Committee on Energy and Commerce's Subcommittee on Commerce, Trade, and Consumer Protection on the subject of Fair Use: Its Effects on Consumers and Industry. His comments that pertain to Google are reprinted here.

Search engine firms have discovered books; all of the major ones now have book digitization efforts under way. In early November, Microsoft announced an agreement with the British Library to scan 25 million pages from the library's collection. Those pages will be made available at MSN's Book Search site next year. Yahoo is also in the game, announcing last month that it's working with a group called the Open Content Alliance, which includes Adobe Systems, Hewlett-Packard, and the libraries of the University of California and the University of Toronto, to scan books that will be made available through Yahoo's search engine. Since that announcement, Microsoft has signed on to make the books accessible through its search engine as well. In building their databases of books, the Microsoft and Yahoo efforts are properly sticking to scanning works that are in the public domain or those for which they receive permission.

But the mother of all book scanning and storage initiatives is Google Library. Google is working with four major American libraries, the libraries of Harvard, Stanford, the University of Michigan and the New York Public Library, and one British library, Oxford University's Bodleian Library. Some of these libraries are offering Google only public domain books, but Michigan and reportedly Stanford are offering up works still protected by copyright.

Google seems to have figured something out: there's a demand for searching those books, a demand that warrants the investment of a reported \$200 million. It's a demand that Google is determined to satisfy, because Google, a sensible, profit-seeking enterprise, believes its investment will pay off in in-

If Google gets away with its vast database, Yahoo and Microsoft won't stand still. They'll make their own databases of copyrighted books, just to keep pace. Unlicensed medical, Civil War and Harry Potter databases would soon follow.

creased visitors to its site, and increased ad revenues. Google senses a competitive advantage in making copyrighted books searchable.

We bet Google is right. If books were digitized and searchable on the Internet, we bet Google could turn a good profit by allowing its legions of users to search that database. And what a mind-boggling database: an assemblage of the nation's copyrighted books, the result of the efforts and investments of hundreds of thousands of authors and thousands of publishers, served up in handy excerpts by Google's computers.

But here's the bad part. Google says that its copying of these books—that its scanning of countless copyrighted volumes, then using optical character recognition technology to digitize the text of those works to create files to assemble into a new, unimagin-

ably vast database, surely one of the largest databases ever assembled—that all of that copying, and use of these works, would be fair use, so it doesn't need a license from anyone for this copying. For good measure, it's handing over a digital copy to its partner libraries, and telling them it's OK to post the works to their websites. That, too, it appears, is to be considered fair use.

Since there's no license needed, in Google's view, Google doesn't have to give rights holders contractual assurances of the security of their database. Could a backup tape go astray from Google or one of its partner libraries, unleashing a couple hundred thousand copyrighted works onto the Internet? Sure seems possible. We're asked to trust that that's under control. The list of companies, meanwhile, that lose critical

In this way, Google could turn authors' and publishers' own works against them, commanding a big slice of e-book revenue for the indefinite future.

data grows daily. What successes do hackers have at breaking in to the sites of Google and its partner libraries? There'd be no contractual need to report this, so it would likely go unreported. Security experts tell us that most data losses to hackers go unreported, and we don't doubt it. No contract, no reporting, no control. "Trust us" security.

What about other companies that want to do the same thing? When the Guild filed suit against Google, we mentioned to reporters our concern that others would see the same business opportunity and join in. But if Google gets away with its vast database, Yahoo and Microsoft won't stand still. They'll make their own databases of copyrighted works, just to keep pace. They probably would be joined by Amazon, which has been investing heavily in its search engine, and has a strong interest in protecting its position in online bookselling.

So we might have four or more companies, each pursuing private gain, digitizing the stacks of libraries. We'd have to trust each of them, naturally, and no doubt their partner libraries, not to misplace backup tapes or let down their guard against hackers.

Specialized databases wouldn't be far behind. WebMD might want to digitize a couple of medical libraries for excerpting by its users. Fair use, naturally.

Veterinarians, chemists and electrical engineers have their needs and websites too. Harry Potter readers, science fiction fans and Civil War buffs wouldn't be far behind. All one needs is a scanner and a few hundred dollars worth of software to get going with a workable system. These digital databases would all be secure, not to worry. Trust us, but don't audit us.

What remedy would authors and publishers have if these databases are deemed to be fair use copies but one of them is hacked into or its collection of digital books otherwise finds its way onto the Internet? If we're fortunate, the negligent party would have substantial resources, but stating a claim against that entity might well be impossible. There's no license, so there's no breach of contract. We're postulating that the copy is a non-infringing fair use copy, so there'd be no remedy under copyright. And the defendant would have a strong argument that copyright law preempts any state law cause of action. Plaintiffs might well find themselves shut out.

What about uses by the partner libraries? The only contractual obligation imposed on libraries—at least in the sample available to us from the University of Michigan contract with Google—allows the University of Michigan to use the works at its website. No mention is made in the contract of limiting browsers to so-called fair use snippets. The contract also contemplates sharing the works with other academic libraries. The threat to the market for academic books couldn't be clearer or more direct. If Google and the University of Michigan are correct in their interpretation of fair use law, then profit-minded publishers and royalty-seeking authors would be wise to abandon that market.

What if the University of Michigan is wrong, and its uses overstep the bounds of fair use? Authors and publishers could just sue for damages, right? No, we'd probably be out of luck; as a state institution protected by the 11th Amendment, the University of Michigan is immune from damages claims under copyright law.

Fair Use & The Market for Online Delivery of Books

Recent developments make it appear likely that Google intends to leverage its interpretation of fair use into more than just ad revenue profits. In the past few weeks, there has been a spate of announcements, from Amazon, Random House and Google, of various schemes for selling and renting the right to view books online. Whether readers will accept these business models is anyone's guess, but at some point, someone will likely discover the equivalent of iTunes for books, and online book sales or rentals will take hold.

If Google can scan all copyrighted books into its databases as a fair use, then it may well establish its search engine as the dominant and unassailable portal to online books, the portal that readers and prospective buyers of online books would turn to first. It's not too much of a stretch to imagine that Google might do as any right-thinking corporation would: use that dominance to extract favorable terms, a high percentage of all proceeds derived from the sale or rental of books through its portal.

In this way, and the irony certainly won't be lost on the publishing industry, Google could turn authors' and publishers' own vast libraries of works against them, securing the upper hand for the indefinite digital future. All it takes is a couple of hundred million dollars, and an expansive view of fair use.

The Role of Licenses

Fortunately, it need not come to that. We don't believe the courts will share Google's radical, expansive and devastating view of the scope of fair use. At some point, we believe that Google will do the right thing, and look to a licensing solution for the use it wants to make of these millions of works. It's too early to discuss what such a license would look like, but its general outlines might be guessable. Revenues, in the form of some reasonable split of advertising income, could be paid to authors and publishers. Rights holders would have the right to review Google's security protocols, and Google would be obliged to contractually guarantee the security of its database. A negotiated license could pave the way for a *real* online library—something far beyond the excerpts Google intends to offer through its Google Library program. ♦

We've Moved

The Guild's offices in Manhattan have fallen victim to the residential real estate boom. As we write, the owner of our building on 28th Street is noisily converting the building to condominiums.

We're moving to new offices four blocks north of our former location. While those offices are being made ready, we'll be at temporary offices on 23rd Street. Our phone number and e-mail address will remain unchanged.

Authors Guild, 116 W. 23rd Street, New York, NY 10011, (212) 563-5904, staff@authorsguild.org

Symposium: Google, Authors & Publishers Face Off

A sell-out audience filled New York Public Library's Celeste Bartos Forum the evening of November 29, 2005, for a discussion of Google's library digitization program. The discussion was jointly sponsored by WIRED magazine and the NYPL as part of its "Live from the NYPL" fall series. The panelists were Allan Adler, vice president for Legal and Governmental Affairs at the Association of American Publishers (AAP), David Drummond, vice president and general counsel of Google, Lawrence Lessig, a professor at Stanford Law School, and the founder and chairman of Creative Commons, and Nick Taylor, president of the Authors Guild 2002–2006. Chris Anderson, editor-in-chief of WIRED, acted as moderator.

CHRIS ANDERSON: Tonight we have the challenge to deliver to you a "biblical moment." It just so happens the Bible's a book. It so happens we're in a library. And it so happens we're going to be talking about books. So, done.

There are about thirty-two million books out there. About three million of those are in print, maybe another three million of those are out of copyright, which means that they're generally older than 1922. The rest of them are in a strange, gray area, which is to say they're still in copyright but they're typically out of print. That means that there are very few ways to get them. Libraries are one way to get some of them, used bookstores a way to get some of them, but a huge amount of human knowledge is locked up in books that are largely inaccessible. We are now in the Google Age, where a generation is growing up believing that if something isn't on Google it really doesn't exist. And books are not playing as much of a role as publishers might like in that universe.

The effort to bring books into the electronic age, the Internet age, started in 1971 with the Gutenberg Project, which was actually volunteers keying in books that were in the public domain and redistributing them as e-books. In the last five years, an organization called the Internet Archives started doing some scanning of public domain books. Amazon started its own scanning process, which led to Search Inside the Book, I believe in 2003. Then in 2004, Google launched Google Prints. Google Prints was an effort to scan books that were out of copyright, in the public domain, and also books that were provided by the publishers, and make them available on Google. The text was searchable, it was readable, but you could also buy the book. In December of 2004, Google took the next step and announced the Google Print Library

Project in cooperation with five libraries: Stanford, Harvard, Oxford, the University of Michigan, and the New York Public Library. This included not just books that were out of copyright, but also books that were in copyright, but which publishers had agreed to include, and, in the case of some of the libraries, books in copyright that the publishers had not explicitly agreed to include. This was called public domain opt-in and opt-out.

Google presented each of these kinds of books—public domain, publisher permission, and publisher permission not explicitly granted—in three different ways. But the most important one, the one around which the lawsuit formed, was where the book is in copyright and the publisher has not explicitly given permission for it to be scanned and displayed by Google. What Google displays in this instance is a snippet, a very small amount of the text, often just a fragment of a sentence. That takes us to this year. In August, the complaints had started to come in from publishers and authors, and in September the first lawsuit came in. The Authors Guild filed suit claiming massive copyright violation. In October the publishers also filed a complaint. Google paused their scanning process for a while to discuss this. This month they restarted the scanning process, continuing mainly with the older books and those in the public domain. Subsequently, other companies have come in. Yahoo and Microsoft, along with Internet Archives and Larry Lessig's Creative Commons, have started something

called The Open Content Alliance, which is scanning and making available public domain books and those where the publishers have opted in. Today, to complicate things entirely, the Google Print Library Project has been renamed Google Book Search, not to be confused with Microsoft Book Search. So that's where we stand. There are three classes of books, Google is presenting the three in three different ways, and one of those ways has caused enough offense to trigger two lawsuits.

With us tonight to discuss all this are Allan Adler from the Association of American Publishers, Nick Taylor from the Authors Guild, David Drummond from Google, and Larry Lessig from Stanford Law School and Creative Commons. I'll start by asking Nick, who filed the first suit: What exactly offended you all the most?

NICK TAYLOR: What do we object to? We object to the appropriation of work that authors own without asking our permission. This is work that's owned. It's valuable. Works that are out of print are not necessarily going to be out of print forever. And it's just basically a rogue version of eminent domain, only without the compensation that government routinely gives when they take over private property for public use.

ANDERSON: What do you mean by appropriate?

TAYLOR: They have not asked authors who own the copyrights if they want their works to be included in

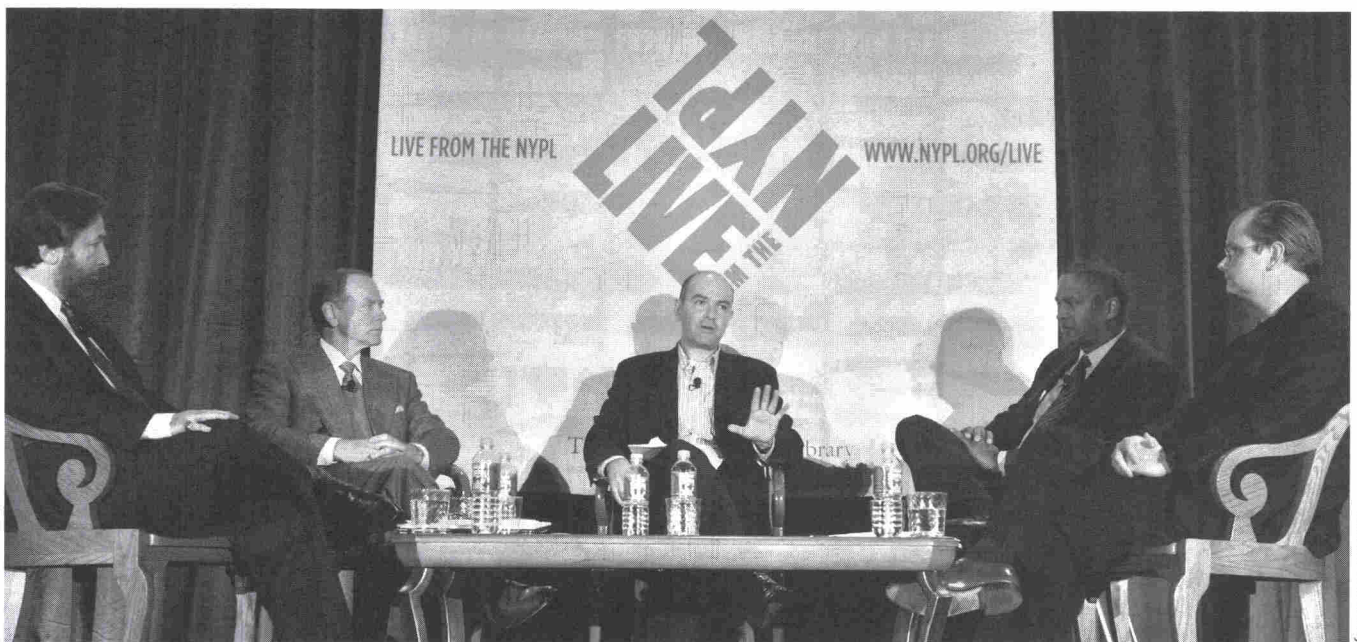


Photo: Peter Foley

Left to right: panelists Allan Adler, AAP, and Nick Taylor, Authors Guild; moderator Chris Anderson, WIRED; panelists David Drummond, Google, and Larry Lessig, Stanford and Creative Commons



Photo: Peter Foley

“Google is in the search business. It wants to provide access to all the world’s information. What we fail to understand as authors is why that value does not obtain to us in any way. Why is it simply being taken?”

—Nick Taylor, Authors Guild

Google Library or Google Book Search, as it’s now called.

ANDERSON: So you are equating inclusion in this project as stealing the work?

TAYLOR: Exactly.

ANDERSON: All right. The words are on the table.

DAVID DRUMMOND: Might I respond, too? Remember what we’re doing here. This is a program in which you will not be able to read in-copyright books through Google Book Search. The purpose of this program is to help you find them, to help you discover books. That’s a very different thing than saying that this is a substitute for actually buying the books and reading them. In fact, we are looking to direct you, once you’ve discovered that book, to the place you can find it. It’s very important to understand that distinction. The only thing you’d be able to see are some short snippets, very much like the snippets that you see with Google Web Search. So we believe very strongly that this is a fair use under copyright. When you have fair

use, you’re not required to ask permission because the purpose of copyright law is all about trying to increase the amount of creative action that’s going on in the society. And part of that is the incentive that it gives to authors to create those works. But equally important is the right for all of us to refer to those works, to comment upon them, to do reviews of them as in book reviews, etcetera, and to come up with services that help people locate and discover things.

So really this is all about discovery. And when you think about the power of this, it’s really amazing. This is the power for anyone in the world to discover that a book exists on some particular topic that may not be in their local library, or might not otherwise be accessible to that person. It’s the power to discover books that otherwise would not be discovered. There might be a case where the only copy of a book exists in a library somewhere, and perhaps the only way to prevent that book from falling completely into obscurity is to put it into a program like this. So the public benefit of this, we believe, is immense and very important. What this is not is Napster. Information does not want to be free. That’s very clear as to Google. But it does want to be found.

TAYLOR: This is all very fine and all very admirable. And it will, as you say, make information available to that fraction of the population of the world that has access to a computer and an Internet hookup. But it will also enormously increase the value of Google’s franchise. Google is in the search business. It wants to provide access to all the world’s information. What we fail to understand as authors is why that value does not obtain to us in any way. Why is it simply being taken?

LAWRENCE LESSIG: This is an extremely important point. On this stage you’ve got three lawyers, one real creator, and then an editor. But one real creator. And it’s extraordinarily compelling for the creator to say “This value is being created and why shouldn’t we share in it?” Because of course ultimately it is the author who writes the work that is useful to find through things like Google Search. I think that both sides need to confront that directly. Because I think that this is the heart of the question. And it is what makes this debate so important, because this is the fundamental question going on in copyright law right now. Should there be any uses of copyrighted works that are free? *Free*. Originally, until the Internet, and digital technology, there were all sorts of uses that were free. Free in the sense of not triggering copyright law. For example, read a book, or collect a library, or set up a used bookstore, or write a review of a book: None of those uses of creative work triggered copyright law because none of them produced a copy. Some uses were right at the

core of copyright law, like publishing a book, obviously, or distributing books in ways that compete directly with original rights that the copyright owner has: These are properly regulated within the scope of copyright law. And then our tradition had a thin sliver of exceptions called fair uses—uses which were technically triggering the rights of copyright but which the law said ought to remain free.

In the digital age, under the arguments that you all have advanced, there is no free use. In the digital age, every single use of creative work produces a copy. And your question is, well, every single use produces a copy, why shouldn't we then be able to exercise our power to get some money over all of these copies which are now technically within the scope of copyright law? And I think the answer is both, because historically copyright law has always recognized that there were uses that have to remain free. The Supreme Court said in *Sony*, copyright law "has never accorded the copyright owner complete control of all possible uses of his work," so used bookstores, libraries, all these people built on the value of copyrighted works but they didn't have to pay the copyright owner.

In my view, the most important reason for leaving some uses free is not so much because of the sort of cushy, liberal, Oh yeah, it's good to subsidize the poor—that's important, but that's a kind of Berkeley idea and I'm from Stanford. The real reason to worry about leaving some uses free is that if there aren't these free uses, then innovators cannot build upon the extraordinary work that's gone before in ways that radically change the world. If you think of the history of the Internet, it is just filled with outsiders discovering the next great innovation and building it. It wasn't AT&T that built the Internet, it was a student at Stanford with his supervisor that began to build the protocols to do it. It wasn't even AT&T that built the worldwide web or Microsoft, it was a Swiss researcher. It wasn't Swiss researchers who built the ability to do search, it was Stanford students again. The point is, it's always been outsiders. And if you give total control in the way that your theory entails, then we have a kind of capitalism by Soviet, where it's the big organizations that decide what the future of innovation looks like, rather than the competitive process, the competitive market, which has built so much of the great value that the Internet has delivered so far.

ALLAN ADLER: That's all very alarming, but it has nothing to do with Google. The fact of the matter is that we're talking about a pretty straightforward copyright scenario. Google is essentially a one-trick pony. It's a hell of a trick, but it is just a search engine. Google sells advertising in connection with the opera-

tion of its search engine. In order to keep that fresh appeal to advertisers, to continue to sell advertising in that context, Google has to constantly come up with new things to search for. Hence, Google is able to say that if they get satellite images, they can allow people to search their neighborhoods. If they can get hold of old television programs, they can allow people to search through the video stream of those programs. I mean, hell, if they could get access to your children's room they could search the socks drawer, if they wanted to. But the point is that, in this context, in order to conduct the searches they want to conduct, they are making full copies in their entirety of all of these books and compiling for themselves internally the world's largest digital library of books in the public domain and books in copyright. For the latter, they're doing so without the permission of the copyright owner, to the extent that they have gone beyond the initial agreement they had with the publishing community, which was what the original Google Print for Publishers Program was about.

ANDERSON: Could I interject for a second so we can get some understanding of exactly where the harm is. This is what we're talking about here. These are the books for which the publishers have not given permission. There's no advertising on this page and the content is too short to be useful. So I'd like to know where you're losing money in this scenario?

ADLER: Well, first of all, one of the most important things, which you keep glossing over, is they are making copies of all of these books in their entirety, and they are saving them to a database that they will consider to be Google's proprietary database. They are loading them on Google's servers, where Google will be able to use this material for whatever business purpose it chooses. At the moment, as far as we know, it chooses only to use them for the purpose of showing these so-called snippets of information in response to queries that users of their search engine make. But that may not be all that they're doing. Even as they do that, however, what they are chiefly doing is directly promoting their search engine. They are a for-profit company, which makes 99 percent of their revenue from selling advertising in connection with the operation of that search engine. If they are going to directly promote it through the use of valuable content, intellectual property created by others, those others at least should have the right to have permission asked, if not also to share in a bit of the revenue.

LESSIG: Do they also have to pay for used bookstores? Should used bookstores have to pay authors when they sell their works?

ADLER: Used bookstores fall under the first sale doctrine. That's the battle that I'm sure many authors regret was lost, but it was lost nearly one hundred years ago in a Supreme Court decision.

LESSIG: Right, because the principle there was not that every time value is created it must be shared. The principle was that there are limits to what the scope of copyright law grants in a monopoly to the original author.

ADLER: No, actually the principle there was that when you are talking about a physical copy that embodies the literary work that is the copyrighted property, the law of property encourages physical transfer because part of the value of physical property is in being able to transfer possession and ownership from one party to another. That's part of what gives it value. So what the Court said about the first sale doctrine was, once a literary work has been embodied in a physical copy and that copy has been lawfully disposed of, the copyright owner has nothing to say about what happens to that particular copy. That doesn't mean, however, that somebody is allowed to take that copy, copy it in its entirety and use that copy to further its business interest.

DRUMMOND: It seems to me there are a number of myths being promulgated here about what copyright law says and what fair use says. I think if you hear some of these arguments, you believe that there's no such thing as a fair use, which is kind of what Larry was getting at here. A cursory reading of some cases shows that there are situations where it's OK to make a full copy of something. What do you think allows you to tape a TV show to watch it later on your VCR? You're making a full copy of something. There's this notion that you can't be a commercial use and a fair use. Wrong again. The Supreme Court's been fairly clear about that. I think it was the *Campbell v. Acuff-Rose* case that talked about this. And there was a 2 Live Crew song where the use was held to be fair use.

ADLER: Because it was a parody of the original copyrighted work.

DRUMMOND: But clearly it was a commercial use. There's this notion that, well, what they're doing now is perfectly fine, but someday they're going to do something really bad. To us that suggests not that much faith in the copyright law. We have a program, we've designed the service to be a fair use one, to be a service that promotes a significant public good that spurs creativity in the society and in the world, and one that does not harm publishers or authors. So it seems to us that the moment anyone, Google or anyone else, starts

to do things that have an actual harm, then copyright law is very well designed to deal with that. It's very hard to understand what exactly is the harm being created here. If anything, this program might help.

ADLER: Let me explain the harm to you, David, because we do have faith in copyright law. That's why we went to court. The court is going to apply copyright law, and we believe the court will find that what

"What we're talking about in the library portion of Google Book Search is . . . an electronic card catalog. What's amazing is that no one would have suggested that it is illegal to create a library card catalog in the analog world. To do it well and to do it in the digital world, as Larry was saying, requires a copy."

—David Drummond, Google

Google is doing is not fair use. But you ask this question: What's the harm? The harm is that Google, which is a for-profit company, is doing this to directly promote its for-profit operation, taking away the opportunity from the people who generated this valuable content to exploit that content for the very same reasons and to have some benefits accrue to themselves. Why couldn't publishers license this use to Google? Clearly, the companies that are participating in OCA [Open Content Alliance] are willing to license copyrighted material. Clearly, Microsoft, in its announcement of its book search service, is willing to license copyrighted material.

DRUMMOND: With a service that will allow you to read the book, which we have as well.

ADLER: You started with that process but you took a left turn with the library project. And what you haven't been able to do to this day is explain to your publisher partners what the significance of that publisher partnership agreement is, in light of what you're doing in the library project.

DRUMMOND: Well, it's just a misrepresentation to suggest that we somehow created a program that we were going to stick with forever. As you know, we leave it to the publisher to decide how much of the content to show. What we're talking about in the library portion of Google Book Search is something entirely different. It is a location tool. It is an electronic card catalog. No one would have suggested that it is illegal to create a library card catalog in the analog world. To do it well and to do it in the digital world, as Larry was saying, requires a copy. The ultimate use of it is indistinguishable from a library card catalog. It helps people find things. But it just seems like it would be a tragedy if you wanted to come into a library and look up a book and in order to find it you have to pay a toll to somebody.

TAYLOR: If you want to create a library card catalog, why don't you just scan the card catalogs of the libraries rather than their entire content?

DRUMMOND: Because, through lots of creativity and the fact that we have a flexible copyright law in this country, software programs have been able to come up with really interesting ways in which you can create a much better card catalog, because people can actually find things through key words.

LESSIG: In the RIAA [Recording Industry Association of America] lawsuits and the Grokster case and the Napster case, at least the copyright owners were asserting a right that they believed they needed to assert in order to defend their business against losses. What you've said is you think you should assert this right because what you want to do is to be able to get a kind of revenue that right now you don't get at all. So it's about taking part of the value of something that's creative here, not about protecting yourself against losses produced by this new technology. That's—

ADLER: Of course it's about that, Larry. What you're essentially saying is that authors and publishers should be penalized for being slow to come to the idea that Google, with all of its technology people, not surprisingly found more quickly: That there is a tremendous value in the content of published books, particularly if you unbundle that content.

LESSIG: Right. But if we give you the total right over how innovation happens, you will always be slow. That's the point. It's because they have the right that this was built. The second thing is, I think it is right, as David says, that you're promulgating all sorts of misconceptions about copyright law here. The president of your organization, Pat Schroeder, published in the Washington Times the following: "Our laws say if you

want to copy someone's work you must get their permission." Now, you're a lawyer. Isn't that wrong? Isn't that absolutely false as a statement of copyright law? Because section 107 of the Copyright Act says if it is a fair use it is not an infringement to copy a particular work? Isn't that what the law says?

ADLER: It's a broad rhetorical flourish, for which the former congresswoman is famous.

LESSIG: It's false, right? False.

ADLER: I'm not going to respond to that.

LESSIG: I know in Washington, you call false statements "rhetoric," but it's just false, isn't it?

ADLER: You want to talk about false statements, though, Larry. You keep putting forward this notion that as long as works are under copyright and the people who hold the rights to those works try to exploit them as the law allows them to do, that somehow creativity is at a dead end, it's stifled.

LESSIG: Where did I say that?

ADLER: You say that whenever you talk about the information commons. You said before that control by the copyright owners of their works is stifling creativity by the people who want to create and build on top of what they created.

LESSIG: Actually, that's not what I said.

ADLER: The fact of the matter is copyright does not apply to ideas; it doesn't apply to facts. People should consider all the copyrighted work that's out there as part of that pool of material, along with works in the public domain, that they can build on. You want to take the position that the only way they can build upon it is if it's absolutely free of any control by the people who hold the rights.

LESSIG: This is the Washington view of the world, that it's only one or the other. Binary thinking. My view has never been that we have to eliminate copyright protection. My only claim tonight was that if you controlled everything, which is what your principle entails—that every single use produces a copy, so every single use ought to be subject to your control—then we will get less innovation and development. Then we lose what copyright law has always established, which has been a balance between control and free access. I totally believe that there are copyrights that ought to be protected. I don't support people's right to pirate. I stood here last year with Jeff Tweedy and said it was wrong for people to use peer-to-peer services to take other people's music. I totally believe that copyright needs to be protected. It just should not

Google Tramples on Authors' Rights

BY DANIEL HOFFMAN

No doubt, many centuries ago, bards in the mountains of Serbia, confronted by scribes with quill pens, cups of ox blood, and sheepskins on which to transcribe into fixed versions their ever-improvised 50,000-line epics, protested loudly.

So did the historians whose hand-scripted chronicles of the rise and fall of empires were suddenly set in newfangled movable type and reproduced in many copies over which they had no control. Technology, ever changing, has unanticipated effects on the products of authorship.

This is true today, now that the Internet has made possible the digitizing of printed texts so that they are available to the fingertips of anyone with a computer. This is what Google has set out to do, rendering in digital form all the books it can. The University of Michigan Library already has agreed to let its books be digitized. Stanford, Harvard, Oxford and the New York Public Library have also agreed, but only for uncopyrighted work. Authors of these works, however, are in a different case from Serbian bards and Renaissance annalists, for contemporary writings, unlike oral epics and handwritten histories, are under the legal protection of copyright. This grants authors rights of ownership in what they have created and published.

The Authors Guild, which is suing Google, maintains that Google has clearly invaded authors' rights by digitizing books from those libraries without securing permission. Google says that its processes are protected under the law by the proviso of "fair use"—normally meaning reproduction of an excerpt (but not the entirety) in a new creative work, such as in a book review, for an educational purpose.

Google says it offered authors the chance to opt out of this digitizing, but I, as one of the three plaintiffs in the Authors Guild suit, was given no infor-

mation as to how the opting-out was to be done—to whom I should have written, phoned, e-mailed or sent a notarized snail-mail letter. Nor was any address provided.

But even had it been, I'd have ignored the information, for it's not my obligation to tell the Nabobs of Digitization to lay off my books. Under the law, they are obliged to ask my permission to transform my poems and essays into electrical impulses.

This is no mere legal nitpickery. Published works today represent the writer's investment of talent, time, research, often painstaking labor, and the author should be entitled to income from his or her creation. Some people may think writers are already richly rewarded. We read of huge advances paid to the authors of bestsellers. But only a few blockbuster authors get those monster payments that threaten to bankrupt their publishers. The rest of us, as the poet James Dickey once said, "scuffle for the scraps." A survey of its 8,000 members by the Authors Guild revealed the average annual income of writers to be less than \$10,000. Hardly a living.

So why is Google googling our works? It must be there's money in it. Google is supported by advertising, and if they can claim that Google is the repository of the accumulated knowledge and literature of all civilization, won't the firm attract many more advertisers? We authors, whose work can be read and, in many cases, reproduced by the touch of a key, won't see five cents of this income. And to the extent that that income is based on illegal appropriation of our writings, neither should Google.

None of us is on principle opposed to the dissemination of knowledge. But we also uphold a cognate principle: the just recompense of the creators of the works disseminated. If some scheme akin to the royalties we receive for the sale of our printed works, and for the inclusion of excerpts in anthologies and textbooks, could be devised for their being Googled, we'd certainly welcome it. Thus far, though, Google's response on November 30 to the Authors Guild suit didn't put such fair play on the table. Now the discovery phase of the legal process will follow.

In a juster, finer world, rights would be acknowledged and contracts signed in fairness and friendship. I'll drink to that, and hope that others concerned will lift their glasses too. ♦

Daniel Hoffman is a poet, critic and essayist, and a longtime member of the Authors Guild Council. His most recent book is *Makes You Stop and Think: Sonnets* (New York: Braziller, 2005). He has been a Guild member since 1969.

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become an extreme, which it has never been in our tradition. And that's what your theory entails.

ADLER: You set up a straw man by saying that's what publishers and authors believe. Publishers and authors rely on fair use in the same way as other users of third-party copyrighted works do. Publishers and authors have never called for the elimination of fair use, and publishers and authors have always acknowledged that fair use applies in the digital environment as it did in the analog environment. What we have also said, however, is that fair use may have a different calculus in that environment, because as Congress has acknowledged, as the Supreme Court has acknowledged, in a digitally networked world, the risk of unauthorized reproduction and distribution can instantly destroy the market for a work, a possibility that could never occur before in the history of copyright.

LESSIG: We totally agree about that. Fair use needs a new calculation in the digital age; it needs to take into account that risk precisely. But it also needs to take into account the fact that in the analog age there are all sorts of uses free from the control of the copyright owner. Yet in the digital age, under the theory you're advancing, there are no free uses. All that's being argued about here is, What should the scope of fair use be? Should it include a system that enables people to search to identify and discover works that the world is oblivious to?

ANDERSON: Can we explore what the differences are between the publishers' interests and the authors' interests? We described the potential harm as being the opportunity costs of revenue that Google gets but authors and publishers don't, and the potential costs of something scary Google might do in the future. I presume the notion of this entire project is to bring more readers to authors, to get a broader readership overall. Where do you see the problem in that?

TAYLOR: Once again, the problem is very simple. It's the appropriation of material they don't own for a commercial purpose. None of us wants to be invisible on the Internet. We recognize how suicidal that would be. We all want to be exposed to Internet searches. The point of this is not the value of what Google is doing and it's not the exposure it's bringing to authors, we think that's a wonderful thing. The principle here is, we want to control our material. Of course we do, we created it, we own it. And under the copyright law, that's the way it is. Why should Google control it? Why should Google just take it over—and then begin to make even more money by attracting the eyeballs that allow it to sell the advertisements that have made it a hundred billion dollar business?



Photo: Peter Foley

"I don't support people's right to pirate. . . . I totally believe that copyright needs to be protected. It just should not become an extreme, which it has never been in our tradition."

—Larry Lessig, Creative Commons

ANDERSON: One of the things I'm trying to understand is the difference between the publishers, who are in the business of publishing books, and the authors, some of whom are in it for the money, and others who are in it for the readership or for other incentives. It seems to me your interests and their interests are not entirely alike.

TAYLOR: Authors and publishers have a long history of not always agreeing on everything. But in this case we certainly do. Once again, the exposure is certainly valuable. The ability to search and find a book that one might need for reference is certainly valuable. The issue here is control. It's the appropriation of material that they don't own for a purpose that is, however altruistic and lofty and wonderful, nevertheless a commercial enterprise.

ADLER: There's a great irony in this discussion, particularly when Larry talks about our desire for control. It's like you say that publishers and authors were always being labeled somehow as Luddites because we still continue to make a product that is largely the

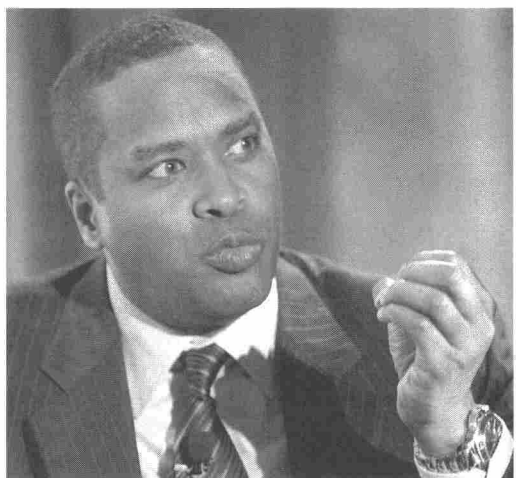


Photo: Peter Foley

“What we’re doing with Google Book Search is the exact same thing that we do with Google Web Search. If a webmaster doesn’t want to be crawled then they can call us up, or there’s a piece of code they can put on their website and we’ll respect that. We’re doing the same thing here.”

—David Drummond

same as what we’ve been making for the past four hundred years, ink on paper bound. But guess what? That’s not because we’re slow on technology, it’s because we talk with consumers. We’ve tried to move the book into the digital environment, and we’ve found that for a variety of reasons many consumers still want to see books printed in the traditional way. The irony, though, is when you talk about control, you seem to want to limit authors and publishers to only being able to sell the book outright. That’s the way they can exploit what they’ve created. Only sell the book outright. But if Google wants to unbundle the book, if Google wants to be able to use the database, and market the database in a variety of different ways in which database materials can be marketed, that’s all right. But why shouldn’t the authors get the benefit of doing that too? It’s a new market created by technology. Is it only the people who create the technology who get the ben-

efit of that market? Especially when the value in that market is not the technology alone but the content that the technology manipulates?

DRUMMOND: I’ve never seen any argument as to how the Google Book Search takes away any opportunities from authors or publishers to license their content to anybody.

ADLER: OK. It’s really not all that complicated. You copied all of these works in their entirety and then came to the rights holders and said, Look, if you really don’t want your work in our database you can opt out. You can pull it out. And that’s the default rule that you think copyright laws should operate under in the digital age. Think of what that means. This doesn’t just apply to books: It would apply to motion pictures, to software, to music, to quilt patterns, to anything that could be copyrighted. If that were the default, it means that the people who hold the rights, the people who created the work or purchased the rights from the creators, would have to go around the world stopping everybody from using their works by telling them explicitly, “We don’t want you to use it.” The default position that you’ve outlined would be, “Anyone should be able to use it until the rights holder tells them they can’t.”

ANDERSON: But what Google has said is that so long as their use is fair use, then they are granting an opt-out provision. That’s very different from saying that Google is saying—

ADLER: But we disagree that it’s fair use.

LESSIG: I understand that, but let me clarify what you’re suggesting Google is saying, which is that companies like Google should have the right to go out and commit copyright infringement until somebody tells them to stop. That’s not Google’s position. Their position is, if it’s fair use, then they should be allowed to do it without permission. They’ve given an extra option to the authors that says even though under fair use they have this right, they’ll remove something from the index if the author doesn’t want it.

ADLER: I’m suggesting that they’re not quite that generous, that if they really believed it’s fair use they wouldn’t need to offer an opt-out.

DRUMMOND: What you’re missing is that we operate the world’s largest search engine.

ADLER: Oh, I’m not missing that at all.

DRUMMOND: What we’re doing with Google Book Search is the exact same thing that we do with Google Web Search. If a webmaster doesn’t want to be crawled,

then they can call us up, or there's a piece of code they can put on their website and we'll respect that. We're doing the same thing here. We're not doing this because we have some vision of "opt out" of copyright law. We don't believe we are legally required to offer this opt-out. But we're doing it so as to be consistent with our web search.

ADLER: That's very important, because that's exactly the point. You're talking about taking one model—which exists online for web searches precisely because that is automated technology talking to automated technology—and applying it to very different circumstances. The situation that you have with web searching is, it's not fair use, but rather implied consent. When somebody puts a website up on the web, they want traffic, they want people to come there. That's the only reason they put a website there.

DRUMMOND: Do you think that content that's put up on the Internet is entitled to less copyright protection than analog content?

ADLER: No, it's a different form.

DRUMMOND: What you're saying is that it's an implied license.

ADLER: It's a different form, an implied license, with the ability of the website owner to protect information that it doesn't want collected by your web crawlers, either by putting it behind the firewall or by using robot text so that your web crawlers will see a sign that says, "You are not authorized to collect it, so leave it alone." What you're saying, however, is that you should be able to take anything that was not already put into a digital format and placed online by the rights holder and go ahead and digitize it and put it online yourself, and apply the online rules to it.

DRUMMOND: No, we have robot TXT in the form of "send us a list of things you don't want copied." It's precisely the same thing. And if afterwards you see something, let us know about that. It's precisely the same thing.

ADLER: You're saying it's precisely the same thing.

DRUMMOND: Yes.

ADLER: What I'm saying to you is it shouldn't be. There is nothing that says that the rules that have grown up around search engines in order to make them grow and prosper, to make their particular functions—

DRUMMOND: Right. Which is great, because if your way of looking at this prevails there will be no more search engines.



Photo: Peter Foley

"You're talking about taking one model—which exists online for web searches . . . and applying it to very different circumstances. The situation that you have with web searching is not fair use, but rather implied consent. When somebody puts a website up on the web, they want traffic, they want people to come there. That's the only reason they put a website there."

—Allan Adler

ADLER: On the contrary.

DRUMMOND: Because those will be copyright violations as well.

ADLER: I think the courts will be perfectly capable of distinguishing why a set of rules that apply to automated searching online of websites should not necessarily apply to copyrighted works that previously were not online and were put online without the permission of the rights holder.

LESSIG: What I'm not understanding is your premise for this argument about a distinction. People put things on the web because they want people to get access to them.

ADLER: Do you disagree with that?

LESSIG: No, I don't disagree with that. What I disagree with is the negative implication that people publish books because they don't want people to get access to them.

ADLER: On the contrary, all I'm saying is people publish books and make a decision to use that format. After all, Larry, as much of a champion of the web as you are, I noticed in the past five years you published books. You didn't put all of your wisdom and ideas into blogs. You realized there was another format to reach the audience you want to reach. And you published books. And guess who you published them with? You published them with mainstream publishers. And if those publishers did not acquire the rights, or rather I should say, if those publishers *did* acquire electronic rights from you with respect to those books, it should be their decision whether those books go online, not Google's decision.

LESSIG: I would agree with you with respect to what should be conceived to be a copyright infringement. But when somebody published a book in 1910 or 1930, they wanted people to read that book, to get access to that book. I don't know of any author who ever wrote to libraries and said, Don't put this book in your card catalog or, You're violating my rights if you let people get access to this book. Nobody ever conceived of it like that because everybody understood historically there's a limited set of controls.

TAYLOR: But the library bought the book.

LESSIG: Absolutely the library bought the book. So here too, every one of these libraries bought these books, and there's an index that they have. It's just making an index for the 21st century, that's all this debate is about.

ANDERSON: Maybe there's a little twist on this. It's my understanding that the library sends the book to Google, which scans the book and sends the digital file back to the library. Google has assured us that it will respect copyright and it won't put advertising on that sort of thing. But what about the library? What might the library do with that digital file? Could it, for instance, buy a single copy of the book for its entire network of libraries? What are the restrictions on its use?

LESSIG: Well, I would be on their side in this debate if Stanford library were saying it was going to take the scan that Google did and basically make it available for everybody to read books online. That would be wrong. That would be a copyright violation, absolutely no doubt about it. And so the question isn't whether we're replacing physical books with digital work. The question is whether we're using digital works to get

access to these kinds of books. Now, the big attention to this project is that, as Pat Schroeder said in an article in Salon, they're rich. They're rich. Look at him [points to David Drummond]: He's rich. [Laughter] This company is rich. So we ought to run out there and grab all the money from them that we can.

This is the thing I'm most worried about. I'm most worried that you guys will settle with this rich company, you'll settle. And what that will mean is that people who are not rich, libraries or universities or other people who want to engage in the same kind of freedom to copy and to build indexes in exactly this way can't, because you've imposed a tax on this particular kind of use. And you've made it harder for the next Google to come along and to displace Google. So I understand why it's attractive. I understand why "Here's the money, let's find a way to get the money." But the point to think about is how this stifles opportunities for others in other places.

TAYLOR: You always talk about creativity, Larry, as if creativity would come to a halt if Internet searches or Google searches were somehow not available. Fair use allows me, as an author, to find however I can, all material that might go into a book and—to use Google's term—use snippets in assembling another sort of work, a transformative work. As you know, authors are doing that all over the country. And some of them are using Internet searches and some of them are searching libraries and some of them are interviewing people; they're doing all kinds of things. And yet creativity is not stopped at all. The number of books keeps increasing. A hundred fifty thousand books were published last year, more than anybody can possibly read. The fact of the matter is that creativity is not halted, and it's not going to be halted. I just don't think that argument holds water.

LESSIG: That's right, Nick, as far as it goes. But I think you're missing one step in the process. If you're coming up with that history or whatever it is you're assembling as part of your creativity, one of the things that is very important on the front end is discovery. What this project is allowing people to do is enhance the ability to create new works, because you're going to find things you otherwise couldn't have found. That's why this is so important. It would be a tragedy if you said, well, you can't use these tools we've devised to do it, to build this better catalog, this better discovery device.

TAYLOR: None of us disagrees with that. I don't know an author who doesn't have Google on his or her desktop if he or she uses a computer. That's not in dispute. What is in dispute is the appropriation of material.

ADLER: And what is in dispute in respect to that is

Google's presumption in telling an author or a publisher what's good for them. People are entitled in the marketplace to do their own thing for themselves. It may be bull-headed, it may be shortsighted, but that's part of what being a property owner is about, the freedom to use the property. And for Google to come along and simply preach, Well, it's good for you, we're telling you this is going to benefit you—if it benefits people they will know well enough to opt in. If they choose not to opt in, obviously they have a different view.

LESSIG: If The Wall Street Journal were here I think they'd accuse you of copyright infringement because what you've just done is directly copy what they just said in their, I think, outrageous editorial criticizing Google Print. This is their argument. It's property, and you know you should ask permission before you take the property. Now of course we've already agreed, I think, that the question in this case is not about the "property," it's about whether this is fair use. But the point The Wall Street Journal misses is that copyright is the most inefficient property system ever invented by man, because there is no way to know who to ask permission to clear these rights, because we have no system of registration, we have no system of recording, we have no list of copyright owners. The Wall Street Journal says it might be difficult to go out and ask for permission. It's not difficult; it's impossible. So if you set up a regime that says you've got to ask permission before you index these books, then there simply won't be an index.

As a teacher, let me tell you the consequence of that. I asked a student to collect for me all the speeches of Congressman Kastenmeier, one of the architects of the 1976 Copyright Act. He served in Congress from 1959 until about 1991. The student came back to me and said that, surprisingly, Congressman Kastenmeier surprisingly never gave a speech in Congress before 1985.

If there is not this index, then there is an extraordinary amount of human knowledge that's lost. Because the way we think about knowledge today is to access it digitally. You can sit here and you can say, "All we're doing is asking for a little piece of the pie." But if you ask for a little piece of the pie in this context, what that will do is make it extraordinarily difficult for this kind of access to be produced. And if you don't produce this access, there's an extraordinary amount of knowledge that you will be shutting off. You'll be shutting off access to it in a way that doesn't advance the interest of your publishers and certainly doesn't advance the interests of authors.

ADLER: First of all, we agree with you that there is this vast body of material, largely published between 1923 and, say, prior to 1970 before the ISBN system

came into effect, much of which people now can't necessarily identify with the rights holders. There's a proceeding at the U.S. Copyright Office underway to engage in rule making and to ultimately legislate a recommendation to address that issue. What we object to is for Google to simply decide on its own, "We can't wait until that issue gets resolved. So what we're going to do is simply treat that material as if it's out there available to us to exploit the value of, regardless of whether we can contact the copyright owner or not." When you say, Larry, that it's impossible to contact the copyright owner, isn't that what the Google Print for Publishers program was exactly about? And isn't it the

"Copyright is the most inefficient property system ever invented by man, because there is no way to know who to ask permission to clear these rights, because we have no system of registration, we have no system of recording, we have no list of copyright owners. The Wall Street Journal says it might be difficult to go out and ask for permission. It's not difficult; it's impossible."

—Larry Lessig

fact that Microsoft has said its book search program will contact copyright owners? Amazon.com, for Search Inside the Book and for the two new programs that they've announced for next year, have said they will contact the copyright owners. Clearly technology allows that, it's not impossible to do.

LESSIG: I didn't say it was impossible to contact all copyright owners. I'm one, they can contact me right here. That's not the claim. The claim is there's an extraordinary number they can't contact. Now you say, you're right, the Copyright Office is thinking about the orphan works problem and Congress might get

around to thinking about the orphan works problem, but we don't have 'til the 22nd century to solve this problem. The point is that this knowledge is going to be lost, especially in the context of work that is literally on a form of media that will disappear by the time they work out these particular kinds of problems, for example films or recordings. That is the harm.

ADLER: Well, we don't have 'til the 22nd century, but we certainly have more time than having to do it by Google's next quarterly filing.

ANDERSON: In the minutes we have remaining, I want to include the audience in this as well, so let me start taking questions.

Q: It seems that a lot of questions center on the fact that Google is creating private property out of those books. What if Google were to join something like the Open Content Alliance and in exchange make sure that they would apply a creative common license to work created by their membership?

ADLER: The AAP spent much of this year chasing Google to initiate a conversation about trying to reach a mutual accommodation in this area. Part of that involved trying to recognize the scale of the project that Google has taken on and to see if there are ways in which we could help them with the shortcuts that they wanted, to scan a large volume of books while at the same time preserving the legitimate rights of publishers and authors. If Google were to join the Online Content Alliance and follow the six rules that the OCA has set up, we would probably applaud them in the same way we did Yahoo in the creation of the alliance itself.

Q: I have two questions. The first one is, has Google begun to track any of the sales through used bookstores or other ads that come up when people search for a book? My second question is, you've talked about American fair use copyright law. Is international law similar?

DRUMMOND: On the first question, it's very early in the program, and in any event we send users to go buy the book somewhere else. So we wouldn't necessarily have that data. On the second question, about international copyright law, I probably should defer to Larry since he teaches it.

ADLER: The answer to the question is that UK law and the copyright law that governs the members of the European Union do not have a fair use doctrine like the United States does. As a result, I think Google has acknowledged that with respect to operations of this

kind in Europe, it is going to have to deal differently with works that are still in copyright.

DRUMMOND: Let me also say, on the question about the increase in sales that is likely to result from this: It's true that Amazon.com has recorded that as a result of its Search Inside the Book programs there have been increased sales of certain books. But remember, Amazon.com is a bookseller. Google is not a bookseller and it's just as likely, frankly, that when people make inquiries using Google's search engine and they come up with references to books, they are just as likely to come to this fine institution to look up those references in books in the library as they are to buy them.

LESSIG: This is a den of piracy right here—a library. [Laughter]

DRUMMOND: Both of those questions went to the issue of whether or not this is likely to increase sales, and I believe the implication was, to the benefit of the publishers and the authors of the book. All I'm suggesting to you is if you're going to look it up in the library, as good as that is, it does not necessarily provide any additional funds.

ADLER: It's not as good as it could be for the publisher.

Q: There's been all this rhetoric about information that is being lost, but I would like to remind you that the Library of Congress and the Bodleian Library both have key word and category searches for all the information, and that can be found free without the help of Google. Google never needed to do this in the first place, because THOMAS, which is the Library of Congress's professional search service, has often found me all the books that I have needed. I have used it to buy used copies of books or gone to the New York Public Library and borrowed books. At the National Archives, they also store film, and they're in the process of restoring films. So the idea that Google needs to be saving the world's manuscripts and saving the world's motion pictures is just disgusting. Google does not need to be saving the world from anything.

LESSIG: It is true that category searches are usually pretty good. But we should recognize that categories themselves might be the sort of thing that people want to be researching over time. So at the Stanford Law School we started our own thing, like the Dewey Decimal System, in the 1950s to talk about law. The category "homosexual" is under criminal pathology.

Q: It's also under several other categories.

LESSIG: Not in the Stanford system.

Q: Not under the Stanford system, but when you go under THOMAS, the Library of Congress system, it is.

LESSIG: But the point is—

Q: And anyone who files a copyright will know that because it is filed under THOMAS.

LESSIG: Right. And it's a great site. But what I'm saying is if you want to be able to see how the view of categories has changed, how our understanding of various subjects have changed, I think categories is a bad way—

Q: It's completely unnecessary.

LESSIG: Really?

Q: Yes.

LESSIG: I understand people have a view of what good research is and what bad research is. I do too, but I don't think we ought to be imposing that through law, through a copyright system.

Q: I'm concerned about the future of libraries with regard to all this. I'm not talking about large, institutional libraries that tend to be relatively well funded, but if Google becomes such a powerful search engine, what's in it for smaller libraries in the long run if nobody else wants to use anything else besides Google?

DRUMMOND: I love my local library. I would continue to go there regardless. For one thing, I want to actually look at books, I want to check them out. I want to buy them in bookstores. So I don't think what we're doing has any real impact on libraries. Local libraries serve a purpose entirely independent of what we're talking about here and it's a great purpose and they do it very well.

ANDERSON: I think on one of your services you actually do link to the public library on the search.

DRUMMOND: That's right.

Q: I'm a wildy unheralded writer. [Applause] And when I sit here and listen to Google say this and an attorney say that and the Publishers Association say the other, I have a feeling that I'm watching a clash among rhinoceri and I'm a chipmunk caught in that sandwich. What is at issue here is not abstractions, which we've heard a good deal about, but some nasty stuff that's actually going on in the real world. I went online recently and found that one of the most celebrated companies, in league with one of the planet's biggest publishers, has put online about twenty pieces that I've written, and it says at the bottom, "reprinted by permission," which is bull, because I'm the copyright owner and I registered every one of those copyrights.

My point is that when I hear Google's assurances of this or all these abstractions, I don't trust you, because I don't want to be a chipmunk caught in a rhino sandwich. That's what I think is happening and that's why I think the man from the Authors Guild is concerned about the future. In the real world, writers' works are being stolen now.

TAYLOR: There's nothing to disagree with there. [Laughter] Just applaud. [Applause].

Q: My first question is addressed to the publishers and authors. You keep alluding to "if they ask for permission," but which is more important, permission or compensation? Because by your tone it seems like if they ask your permission, you would give it to them for free and then we wouldn't have this problem.

ADLER: Speaking for the members of the AAP, I can't answer that question because that's up to each individual publisher to decide. But I would suspect that given the recognition that there often are deals involving li-

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For one thing, I want to actually
look at books, I want to check them out.
I want to buy them in bookstores.
So I don't think what we're doing has
any real impact on libraries."*

—David Drummond

censes that don't necessarily require fees, the importance of recognizing the need for permission and acknowledging that through a license is probably paramount to both publishers and authors regardless of whether or not they decide they want to charge a fee.

TAYLOR: We've seen individual musicians seek new revenue streams within the paradigms created by the digital world, whether it's the ability to advertise their work by way of a website or something like that. So compensation is also important.

Q: My second question goes to that point. The transaction costs of Google being able to do what they seek to do are immense, and all that they're asking from the

publishers and authors is that you simply contact them and tell them that you would prefer that your work were not included in this project. So the only cost to the authors, to the publishers, is the cost of opting out. How can you argue that the cost of making a phone call is too much? You're well aware of what you've published or what you've written, you don't have any discovery costs, you only have the cost of making a phone call to Google and saying I don't want these works included and they won't be included and there's no infringement. So how do you justify the immense cost for a great public benefit versus a very small cost for a very small amount of compensation?

ADLER: Because as I said earlier, the framework for copyright's exercise of rights, and indeed for exercising rights in a patent, which are very important to Google because their business is built on their patents, is not built on an opt-out, it's built on an opt-in. If every publisher and every author has to go to Google to say "Don't use my work" in order to prevent them from copying the work in its entirety and putting it into the database, then eventually they will have to do the same thing with Microsoft and Yahoo and any other entity and any other user of the works around the world who says, "If Google can have that default then why can't we?"

Q: Right. But again the cost is six phone calls or an unlimited amount of discovery.

ADLER: Six phone calls? What if every search engine at every university in every country around the world said, "If Google can operate in reliance on that default, so can we."

Q: But that's not what they're asking. If it's a fair use—

ADLER: But it isn't fair use. They believe it is. We believe it isn't.

Q: I'm Steven Johnson. I'm actually an Authors Guild member who has not up until this point supported the Authors Guild claims against Google. But something that Allan was saying struck a chord in me that made me think about it from a different angle. I'd be curious in particular to hear what Larry has to say about it, which is, it seems to me that up to now we have our definition of fair use optimized around the idea of reading as a primary kind of value that you're getting. So we all agree that if Google sat there and enabled us to read entire works of copyrighted material, that that would be an abuse of fair use and we wouldn't accept that. But when you're searching, as opposed to reading, I think that the unit is not necessarily the snippet that you get at the end of the process, but the unit in which the value is the knowledge that you are search-

ing the entire work. If you were simply searching snippets, then I would think that you would be able to say OK, clearly that's fair use. But because Google has the entirety of the document behind the scene somewhere, and because you know as a searcher that you're get-

"If every publisher and every author has to go to Google to say 'Don't use my work' in order to prevent them from copying the work in its entirety and putting it into the database, then eventually they will have to do the same thing with Microsoft and Yahoo . . . and any other user of the works around the world who says, 'If Google can have that default then why can't we?'"

—Allan Adler

ting the entirety of that as something you're exploring—even if you only see snippets at the end of that process—doesn't that seem closer to the abuse case than when we just focus on what you see at the end of the process?

LESSIG: I don't see it that way. Let me start with where I think we begin to get off track. Again, I don't think that the right to read is a fair use; it's a free use. The right to read your latest book, *How Everything Bad Is Good for You*, is a free use not a fair use. What's happened is, because everything digital involves making a copy, now every time we engage in any use we have to try to justify it under the fair use rubric, which was not designed—as Allan acknowledges and I think we would acknowledge—to deal with this radically different world. I would agree with you that what in fact is happening is that there's a very complicated search going on, scanning a whole bunch of words that have been extracted and index points maintained. The facts about those extracted words aren't the underlying work anymore, that's just an abstraction from the work, and the thing that's produced doesn't interfere with the underlying interest that I think the copyright

was granted to secure, namely to buy and produce and to make money from books and movies and whatever derivative works you want to make out of it. There is no substitution with that underlying work, and that's the core of the analysis that turns it into fair use, not use that says I'm allowed to violate somebody's copyright so long as I'm not told to stop but a fair use. If it is a fair use then I think Google should be allowed to do this, libraries should be allowed to do it, anybody should be allowed to.

ADLER: Larry, when you invoke the freedom to read in the new technology your argument proves too much, because when you have services that go online—for example, The Wall Street Journal Online—you are not free to read unless you subscribe. You are not free to read Salon unless you subscribe. Are you denying those creators, those publishers, the opportunity to exploit that business model simply because you're saying reading is unaffected by copyright?

LESSIG: No.

ADLER: In the online world, reading is based on the public display of the work, and people pay to license that right. When you think about database research services like LexisNexis, they wouldn't exist under your view that the freedom to read, simply reading, is unaffected by copyright.

LESSIG: All I'm saying is that before the digital technologies there was a wide range of free uses. After digital technologies, for exactly the reasons you've said, there are no free uses. There are only fair uses and licensed uses. Now, we haven't got a clear robust sense of what you think fair uses are, and my concern is, I think, in the end, if the theory is, "If there's value then we have a right to it," then there's no fair use. My only point is you constructed a permission system where in order to get access you seem to need some kind of permission through some kind of license. And the infrastructure that you have to build to support that system of permission that's watching every single use and every single context and taxing wherever there's use in a way that is consistent with this regime changes dramatically the balance that existed before.

ADLER: The problem is, you say, "You don't understand what I think is fair use." What I don't understand is what you think are legitimate licensed uses. You seem to think some licensing is OK but other licensing is not OK. And undoubtedly there is some licensing that is abusive, and that's the type of licensing that should be rejected not as a matter of law but in the marketplace.

LESSIG: Can we both agree that some licenses are

good and some licenses are bad? But I think some uses should be free.

ADLER: And some uses *are* free.

LESSIG: Oh yeah. Which?

ADLER: Well, we obviously disagree with respect to this one particular issue.

Q: This is a question either for Mr. Lessig or Mr. Drummond. The whole discussion tonight on the legal issue has been about making the indexes and whether copying for that purpose is or is not a fair use. But there's

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—Larry Lessig

another aspect of the library project and the digitization of copyrighted material in the library project that is of significant concern to publishers, and that is the distribution of that digital copy back to the library, and I'd appreciate either Mr. Drummond or Mr. Lessig to comment on the legal authority for that distribution.

DRUMMOND: I don't want to get into this in detail, but I think that basically the overall use of this is a fair use. In our arrangements with the libraries, they've assured us that they will use it in a way that's consistent with fair use. I think it's too bad we don't have someone from one of the libraries here, but I think preservation, for instance, is a very important thing for them. But this is overall a fair use, whether it's using Google or it's with the libraries, in our view.

ADLER: It is fair to say, though, that you have some concern about the possibility that libraries may use this material in ways that are inconsistent with copyright laws, because in your contract agreement with

the University of Michigan you have an indemnification provision that specifically excludes indemnifying the university if they are sued in connection with the use of the digital copy that you will be giving them.

DRUMMOND: Well, we would think that you would actually like the fact that people were thinking about the potential for misuse.

ADLER: We'd like it even better if you didn't just give them the digital copies.

DRUMMOND: I understand that you'd like that. I understand that you don't want fair use to exist anymore. But I think that the idea here is that we obviously thought about this issue and we think that it is proper to work with our library partners in this way.

ANDERSON: Would any of the gentlemen like to speak to that? [Addressed to several NYPL representatives offstage.]

DAVID FERRIERO*: If you go to the University of Michigan university site you will find a copy of the Google agreement and it's pretty specific about what the library can and can't do with that content. In terms of sharing it, or re-use of it, any kind of value added, any kind of activities are pretty well controlled. So concerns about sharing this content in a way that's going to let small college libraries especially—as has been described to me by some of the publishers—being able to eliminate the library and depend on the copy of the file from one of the partners compensating for the library, it's not going to happen based on the agreement that we have with Google.

Q: I've got a question for the authors and publishers representatives here which is, I hear copy and misappropriation or appropriation over and over again, and yet it seems that the notion of copyright gets to expand with the technology so that the author's right to control copying gets larger and larger as technology changes, yet I don't hear the corresponding expansion in the public's right to access or fair use in all of the possibilities that the new technology should give to the public at the same time to preserve the balance. How is it that copyright has so perfectly struck the notion of copy in its 100-year history and yet the notion of fair use doesn't get those same expansions?

ADLER: Well, I would respond to that by saying there's a difference between what's called ephemeral or temporary copies that are created, for example, when you send an e-mail—things that occur automati-

cally, mechanically if you will as part of the process—and what Google is doing. There has been some grappling with the law in the Digital Millennium Copyright Act that was enacted in 1998 about how to deal with those kinds of copies. But what we're talking about here are not copies that are created automatically and inherently because we're dealing with digital technology. Google could be very well standing there at a photocopying machine doing what it's doing, copying these works in its entirety. It's deliberate copying, it is not the inevitable result of a technological operation, it is simply part of a business plan.

Q: What they're showing us is just the snippets, like the fair use quotations that authors rely upon in their work.

ADLER: But in order to get there they have to create their own private digital library of all of these works.

Q: I think we heard that the copyright law will serve to go after them if they start to misuse that. If we found that Google employees were using that to substitute for their own purchases of books I would be the first one to join you in a lawsuit against them.

ADLER: Copyright law talks about the reproduction right as a right of the copyright owner that is exclusive of distribution and display. In other words, the reproduction right isn't only violated in instances where the copy that is made without authorization under the law is also distributed. Making the copy itself is what is illegal. And if you're going to have an organization like Google—

LESSIG: There you go with that word again.

ADLER: What, illegal?

LESSIG: Making a copy itself is "illegal." No. If it's a fair use, it's not illegal.

ADLER: Right. But we've already posited that we're arguing that it's not a fair use. So the argument again is that they are copying these works in their entirety, creating a database, in essence a digital library of their own and basically what people who are sympathetic to Google are saying is, "Well, it's OK as long as they don't use it for this purpose and that purpose. What's the harm in them creating that digital library as their proprietary database?" The answer is, they don't have the right to do that. And if they do it, and they are seen as having the right to do it, anyone else can do it too.

LESSIG: For most of the history of the copyright law in the United States, copyright did not protect an exclusive right to copy. That was not brought into the law until 1909. When it was brought into the law, no-

*Andrew W. Mellon Director and Chief Executive of the Research Libraries at the New York Public Library.

body was thinking about copying snippets on pieces of paper; they were thinking about publishers. They were thinking about printing presses. They were thinking about entities that would have commercial access to machines that made copies. And all of the problems we're talking about here are because that commercial activity has become democratized. We all have machines that make copies. Copies are as natural as breathing in the digital world. One very sensible way to begin to think about how to re-strike the balance is to ask the question whether we should go back to the way copyright law was for most of the history of copyright law, which is not to grant an exclusive right to copy. As Ernie Miller and Joan Feigenbaum have written, there's a way of protecting the interest of what copyright owners properly need protected without this kind of accidental fact that because digital machines copy in order to breathe, every single breath has to be regulated by the law of copyright. And so we could imagine this federally protected right to distribute, right to engage in commercial activities around the creative work, right to engage in commercial derivatives of the work—those rights are the core of what a copyright regime needs to protect. It would be at the core of what I think copyright law ought to be protecting without making it that we have to worry about whether every cache violates a copyright law or whether every computer, every time it's turned on, has to call up somebody to get permission or a license.

ADLER: But again, in this instance we're not talking about the copying that digital technology does to breathe. We're talking about copying that could be done with other copying media. The only difference here is that Google happens to be a search engine operation that naturally does its copying in the most ex-

pedient and efficient way, which is through digital copying.

LESSIG: You might not be as extreme as the copyright extremists are here, even though I think you're more extreme than you should be. But let's be clear. The EU, for example, has explicitly stated that it is defending the absolute right to control every single copy in all these places you say they shouldn't control. That's what they believe the copyright law grants copyright control over. Every single instance—every breath in the digital age—must be licensed. That's their view and that's the extreme view that I'm happy to see you don't adopt, but there are few on that side of the table who don't adopt that sort of extremism.

ANDERSON: Please join me in thanking our panel. Good night. ♦

Readers who have been following the Judith Miller case closely may be interested in a panel discussion presented at the Media Law Resource Center's Annual Dinner in November, "A Discussion on the Reporter's Privilege." Participants included Judith Miller, Matt Cooper and Congressman Mike Pence, author and cosponsor of the Free Flow of Information Act. The full transcript can be downloaded at: www.medialaw.org/Template.cfm?Section=Articles_and_Reports1, and selecting the first listing for 2005, titled: MLRC Dinner Transcript: Terry Moran Moderates Panel on the Reporter's Privilege; Matt Cooper, Judith Miller, Jim Taricani, Congressman Pence (Nov. 2005)

Along Publishers Row

Continued from page 2

Doctorow teaches creative writing at New York University. He said of his students, "Some of them come out of the programs and they're technically very deft. And within a year or two of graduating from here, at least three or four of them publish their first novels. But they're sort of domesticated, these books. Timid. They don't take on the world."

Doctorow talked about his new book with PW: "I think I discovered in *Ragtime* that a period can be as much a framework for a book as a place; think of this as a temporary equivalent of Yoknapatawpha County, focused on one event that went on for several months and created a kind of floating world."

Doctorow added: "In historical terms, you could think of it as a sequel to *Gone With the Wind*."

HOT: PW called it an amazing feat: **Robert Jordan's** *Knife of Dreams*, the 11th in a fantasy series, hit No. 1 on the hardback bestseller list. The publisher claims that more than 12 million copies of the series have been sold.

FISH OR FOUL? Is that a children's picture book you just paid \$16.99 for or is it an advertisement for Saks Fifth Avenue? *Cashmere If You Can*, from HarperCollins, is about a family of Mongolian goats that live on the roof of Saks's Manhattan store. The idea for the book came from a marketing executive, and Saks owns the copyright. The book goes on sale nationwide in January.

The New York Times noted that the book world "has not always been hospitable to such commercialization. Working that closely with a sponsor is viewed as compromising the work's artistic or literary aspirations or sully the integrity of the

reading experience. . . ." Saks and the publisher have already agreed to produce another children's book for next year's holiday season.

PREDICTION: **Warren Adler**, a 77-year-old novelist, told The New York Times that he believes portable electronic readers will soon do to paper books what the Walkman and iPod did to the boom box. He said, "Print publishing has had a great 500-year run, but the print book is morphing into the screen book."

Adler is the author of 27 novels, including *The War of the Roses*. He's self-publishing his 28th, *Death of a Washington Madame*, electronically and e-mailing it free, a chapter at a time, to anyone who wants it. "The main thing," he said, "is give readers a new book for free, and they might go back and buy some of the former books."

Adler said that for \$295—plus a fee for each book sold—self-publishing services will register a copyright and put a book into an electronic format that can be sold as an e-book or printed out. For \$1,000 or so, services will send out news releases, contact reviewers and offer the book to stores and online vendors like Amazon.com.

Adler said, "The big publishing houses just don't get it." He has begun to sell all his past novels on flash memory cards, readable on e-book players.

OH: **Rebecca West** once said, "Nobody ever wrote a good book simply by collecting a number of accurate facts and valid ideas."

TREND: Where does Simon & Schuster's new imprint, Simon Spotlight Entertainment, find its authors? Executive editor **Tricia Boczkowski** signed up comedian **Tommy Chong** at the Comedy Arts Festival in Aspen, Colo.

"Ninety percent of our authors are first-time authors, and most of

them have platformed in other media," **Jennifer Bergstrom**, the publisher, told The New York Times. The imprint is an attempt to reach a young audience by tapping into pop culture currents. "The thing that impresses me most about our editors is that they understand it's not all about the book," Bergstrom said. "It's about the money you can make from that book."

S&S chief **Jack Romanos** said, "Most of our adult imprints went after the market on a title-by-title basis. But this group came in and proposed a guerrilla movement to find content and match it to the audience."

Other imprints chasing the same readers include Penguin's Plume, Random House's Three Rivers Press, Harlequin's Red Dress Ink and S&S's Downtown Press.

If you can't get booked on **Jon Stewart's** Daily Show, don't bother them.

LONG RUN: Last November, after 136 weeks, *The Da Vinci Code* fell off The New York Times bestseller list, and the Times thought that was news. The publication date for the paperback may be determined by the release of the movie version in May.

AIRE: For 11 years, **Donna Seaman**, an editor at Booklist, has been host of a radio show, *Open Books*, in Chicago. She has a new book of her interviews with 32 authors entitled *Writers on the Air: Conversations About Books*.

Sandra Cisneros, author of *The House on Mango Street* and *Caramelo*, told Seaman, "For me, because I was trained as a poet, writing is about naming things and itemizing. So I got in the habit of making lists . . . and there is a certain pleasure in doing so. You know, naming all the things that are in my mother's living room, naming them all, it's jammed-packed with things. . . . I would find

myself complaining in my journal about how crowded my bedroom was with stuff, and that's what I borrowed from later. . . . I just went to my journal and there it was."

NEW WORDS: A paperback, *The Deeper Meaning of Liff*, is described as a "dictionary of things there aren't any words for yet—but there ought to be." The authors are **Douglas Adams**, author of *The Hitchhiker's Guide*, and **John Lloyd**.

Samples include:

Hewish (adjective): In a mood to swipe at vegetation with a stick.

Kabwum (noun): The cutesy humming noise you make as you go to kiss someone on the cheek.

Sketty (verb): The apparently self-propelled little dance a beer glass performs in its own puddle.

RETURN: Almost 40 years after it was first published, **Truman Capote's** *In Cold Blood* was back on the bestseller list. In an interview with the late **George Plimpton**, Capote defended the nonfiction novel. He said, "It seems to me that most contemporary novelists, especially the American and the French, are too subjective, mesmerized by private demons; they're enraptured by their navels, and confined by a view that ends with their own toes."

BETTER THAN SEX: **Ellen Gilchrist** of Fayetteville, Ark., is the author of 22 books—novels, collections of essays, short stories and novellas. *Victory Over Japan* won the National Book Award.

Her new book is entitled *The Writing Life*. In it, she wrote, "Why do I come back to the typewriter so headily each morning? Because it feels good. The brain is easily addicted to feeling good and nothing on earth, with the exception of great sex, feels as good as having written well and truly in the morning. Actually, it is better than sex because you control the whole activity and

the afterglow can last for years if the work is published and other people profit from it. The lasting pleasure is not in their praise but in your knowledge that you have contributed something of value to the culture from which you derive your being."

TEAM WORK: You probably thought that picture books for children these days are written mostly by celebrities like **Madonna**. Not so.

A new version of *Jack and the Beanstalk* was written on television by a "team" of young people who were competing to become **Martha Stewart's** apprentice.

The day after the show, a large advertisement for the book appeared in *The New York Times* and the book had a special rack in front at my local Borders. Fast workers, weren't they?

HOT COPY: In 1923, **Virginia and Leonard Woolf**, at their Hogarth Press, printed 460 copies of **T. S. Eliot's** *The Waste Land*. Last fall one copy, signed by the author, sold at auction in London for more than \$58,000.

DEPICTED: A new book, *Writers*, is made up of photographs by **Nancy Crampton**. She has specialized in authors for many years. Most of the famous, many with dogs, are presented alongside comments about writing.

A dapper **James Salter**, sitting on his lawn in Sagaponack, N.Y., is quoted: "I'm not the first person who feels that it's the writer's true occupation to travel. In a certain sense, a writer is an exile, an outsider, always reporting on things, and it is part of his life to keep on the move. Travel is natural."

WHAT COUNTS: A quote from **Arnold Bennett**: "The foundation of good fiction is character-creating and nothing else. . . . Style counts,

plot counts; originality of outlook counts. But none of these counts anything like so much as the convincingness of the characters. If the characters are real the novel will have a chance; if they are not, oblivion will be its portion."

ANYTHING GOES: Some bookstore managers and teachers were upset by a young-adult novel about a party where oral sex was to be the entertainment. Now another writer, **Chris Lynch**, author of *Freewill*, has written *Inexcusable*, a Y-A novel about date rape. It's told from the point of view of the accused boy.

Gabrielle Zervin has written a Y-A novel called *Elsewhere* about where people go when they die.

IDEA MAN: Brit **Colin Wilson**, 74, wrote *The Outsider* in 1956 and was declared a major existentialist thinker. His new book is *Dreaming to Some Purpose*.

He told *The New York Times*, "I'm basically a writer of ideas, and the English aren't interested in ideas. The English, I'm afraid, are totally brainless. If you're a writer of ideas like **Sartre** or **Foucault** or **Derrida**, then the general French public knows your name, whereas here in England, their equivalent in the world of philosophy wouldn't be known."

MEMORIAL: The first **Ernest Hemingway** Festival was held in late September in Sun Valley, where the author liked to hunt and where he wrote much of *For Whom the Bell Tolls*. There were lectures and panel discussions and tours of the author's haunts.

BUSY WORDMAN: Between 1959 and 1974, **Harry Patterson** wrote 35 thrillers. Pseudonyms included Jack Higgins, James Graham, Martin Fallon and Hugh Marlow. PW reported that almost all of the books were bestsellers. Patterson is still

cranking them out. Jack Higgins's *Without Mercy* was published last fall.

INVESTOR: **Jim Bildner**, 51, created a grocery chain and ran a technology consulting company. Now, according to *The Boston Globe*, he is devoting himself to the Literary Ventures Fund. The fund will make small investments—and own part of—promising novels, nonfiction works and poetry series. LVF might, for example, pay for editing or a marketing consultant in return for a piece of the action.

Globe columnist **Alex Beam** wrote, "If one out of 10 investments pays off big, you get rich. In this case, the LVF gets rich, as any gains will be plowed back into the non-profit for reinvestment in future projects." Bildner is investing \$250,000 of his own money.

Beam ended his column with, "Three years from now, [Bildner]’ll either look very smart or a little naïve. But he will have made a lot of writers happy."

GULP: The late **James Jones** (*From Here to Eternity*) once said: "Writing without publishing is like eating without swallowing."

INSPIRATION: **R. A. Salvatore's** *Two Swords* (*Forgotten Realms: Hunters Blades Trilogy*) is a mass paperback bestseller.

The author told PW: "I think school beat the reading out of me, mostly by giving me books I found irrelevant and just plain boring. My love for literature began anew in 1978, my freshman year of college, when, during a tremendous blizzard, I escaped to Middle Earth for an adventure with Bilbo Baggins. Nothing's ever been the same since."

WINNER: **John McKay**, who works at Microsoft, won the 23rd annual Bulwer-Lytton Fiction Contest for the worst opening sentence (in

In Memoriam

Brian Boylan
John Caruso
Larry Collins
Jean Cothran
Thomas Curley
John Eaton
Dennis Flanagan
Lawrence Flanagan
Margaret Halsey
Robert Hendrickson
George W. Herald
Max Hunn
Shirley King
Janet Leigh
Irving Litvag
Dennis Lynds
Frank MacShane
Ralph Martin
Michael Noonan
M. Scott Peck
William Peet
Gertrude Samuels
Stan Sauerhaft
George Scheer
Allegra Stewart
A. E. Van Vogt
Martha McKeen Welch
Catherine Woolley

memory of "It was a dark and stormy night . . .").

McKay's entry: "As he stared at her ample bosom, he daydreamed of the dual Stromberg carburetors in his vintage Triumph Spitfire, highly functional yet pleasingly formed, perched prominently on top of the intake manifold, aching for experienced hands, the small knurled caps of the oil dampeners begging to be inspected and adjusted as described in chapter seven of the shop manual."

OUT: At the end of the year, **Michael V. Korda**, 72, bowed out as editor in chief of S&S trade books, a job he had held since 1968. He planned

to continue editing a few authors, including **David McCullough**, **Larry McMurtry** and **Mary Higgins Clark**.

The author of several books of fiction and nonfiction, Korda is at work on a biography of **Dwight D. Eisenhower** and a history of the Battle of Britain.

SHAMED: **John Fowles** (see Deaths) wrote in *The Journals: Volume I: 1948–1965*: "I think there is a deep shame, a humiliation, in being a novelist. Deep inside us crouches a man on a ragged carpet; and the real world rides by."

NO EXCUSES: **David Balducci's** *Hour Game* is a bestseller. PW took the following quote from an essay Balducci wrote about the 10 years he spent writing from 10 p.m. to 3 a.m. while working full time as a lawyer.

Balducci wrote, "There is no perfect time to write, there is only the perfect love of writing; meaning that when you write, life is perfect. To a person who truly loves to tell stories, no excuse will avail. The idea of wanting to write but being unable to find the time would make absolutely no sense to someone who truly loves to write."

MEETING MARQUEZ: **Edith Grossman** is a translator for **Gabriel Garcia Marquez**, among others. PW asked her if she ever hung out with the Nobel Prize winner.

Grossman said, "Yes, and he calls me Edit [pronounced AY-deet]. Like most Spanish speakers he doesn't do the *th* at the end of my name. He's a casual man, never in a shirt and tie, usually in a guayabera. Once I get over the amazement of being in the same room with one of the greatest living writers, I find him lovely and charming and very funny. I have a wonderful time. And he's not pompous, even though every time I see him, still, I want to run up and ask for his autograph."

ROLE PLAYING: In her introduction to *The Collected Stories of Eudora Welty*, the author wrote, "I have been told, both in approval and in accusation, that I seem to love all my characters. What I do in writing of any character is to try to enter into the mind, heart, and skin of a human being who is not myself."

FAMILY TRADE: **Jesse Kellerman** is the son of best-selling novelists **Jonathan** and **Faye Kellerman**. The heir's first novel, *Sunstroke*, will be published in January.

Jesse's father told PW that being the son of famous writers "closed more doors for Jesse than it opened. Neither of our publishers wanted to read his manuscript, and he had to find his own agent."

SORRY: **John Irving** complained to The Washington Post Book World about **Marianne Wiggins's** review of his latest novel, *Until I Find You*.

PW said Book World made an apology that included: "Had we known that Irving had dedicated one of his earlier books to Marianne Wiggins's ex-husband, **Salman Rushdie**, and had we known that Irving and Wiggins had socialized with each other in the past, we would not have made the assignment."

BUSY PENS: **Danielle Steel** published her 65th novel, *Toxic Bachelors*, in October. That was her third in 2005. The other two were *Miracle* and *Impossible*.

Sandra Brown published her 69th novel since 1981. The title is *Chill Factor*.

SELL, SELL, SELL: The **Judith Regan** imprint of HarperCollins had its own winter catalog with an illustration of the editor herself "wearing a white dress shirt and little else while stretched across a pile of books," The New York Times reported. One of her recent best-selling books was

How to Make Love Like a Porn Star by **Jenna Jameson**.

A spokesman told the Times that the catalog "was Ms. Regan's effort to 'make fun of herself.'" "In doing so," commented Times reporter **Edward Wyatt**, "she may have plenty of company."

THE END: *Light from Heaven*, by **Jan Karon**, is the ninth and last in a series of novels set in the fictional town of Mitford, N.C.

The author told PW there would be no more because, "I just didn't have anything of vital importance to say. I had told the story." More than 20 million copies of the series are in print. Karon added, "Any ending is about timing. It all depends on where you stop the clock. We stop the clock at a happy place."

HAVING FUN: **Kelly Link**, 35, is the author of a short story collection, *Stranger Things Happen*, and a new book, *Magic for Beginners*. Both were published by Small Beer Press, which is what Link and her husband, **Gavin Grant**, call their publishing venture.

Link told PW: "We had two goals. One was to break even; the other was to make artifacts that looked as much as possible like real books. . . . The design and making of the books was the most fun . . . putting covers together, choosing a font. . . . We get to do whatever we want."

The first book's printing of 2,000 sold out and is now in its fifth printing.

CHANGE: When women attending the Book Expo convention in New York didn't like the jacket on **Rick Moody's** new novel, *The Diviners*, the publisher, Little, Brown, had it redesigned.

Michael Pietsch, the publisher, explained to The New York Times, "The decision came completely out of the response, particularly the response of women booksellers. The

novel is almost entirely peopled by women, women in business and women in the film industry, and it is aimed at women readers. The fact that women were not responding meant that it was a fundamental error."

The image of a barbarian-type warrior on a mountain peak was made smaller.

TREND? **Paul Anderson's** first novel, *Hunger's Brides*, was the fattest book of the season. It has 1,360 pages, thicker than Manhattan's telephone directory, and weighs four pounds, nine ounces. The story is about **Sor Juana Ines de la Cruz**, a 17th-century Mexican nun and poet.

Other big books of recent years include **Michel Faber's** *Crimson Petal and the White* (848 pages), **Neal Stephenson's** *Quicksilver* (944 pages) and **Vikram Seth's** *Suitable Boy* (1,349 pages).

IT'S EASY: **Chip Kidd** writes in his book, *Chip Kidd*: "One of the great advantages to designing book covers is that you don't even have to have an idea, much less a thought, ever, in your head. That is the author's job."

Kidd and his Manhattan apartment were the subject of a major article in The New York Times, which said in a headline: "He put 'famous' and 'dust jacket designer' in the same sentence." Kidd's apartment is full of Batman artifacts. He told the Times, "Who among us, especially in New York, has not dreamt of this? We want to be whispered of, talked about, regarded in awe, perhaps even feared."

AVAST! **William Grimes**, in a Critic's Notebook column in The New York Times, observed: "Readers have been served a double helping of pirate books in the last couple of months for reasons that defy analysis."

Grimes then discusses seven

new books that are concerned with pirates. Perhaps the most curious is *Fan-Tan* by the late actor **Marlon Brando** and **Donald Cammell**. Grimes says, "It's a vanity production, in which a Brando-like figure stumbles aimlessly, speaking a strangely contemporary language, as he embarks on a search for plunder in the China Sea and has exotic *Last Tango* sex with a dragon lady straight out of Charlie Chan."

GIRL POWER: Novelist **Louise Erdrich** has four daughters ranging in age from four to 21. She also has an adopted daughter who is 29, but they have been estranged for years. Erdrich's latest novel is *The Painted Drum*.

Erdrich explained to PW, "It's not all from life. I do make things up." Then she added: "As I see each of my daughters go through their development, I think they are the most wise, giving, often the most self-sacrificing, the most incredible girls. I just marvel. I wish the world was run according to the principles nine-year-old, 10-year-old, 11-year-old girls have within them. It's just an age thing—their wisdom, their kindness, their thought for other people."

"I guess I wanted to write a book about the heroism of young girls."

TAX MAN COMETH: The Associated Press reported that the MacDowell Colony in Peterborough, N.H., may lose its tax-exempt status. The town's Board of Selectmen said it would owe \$156,000 annually. Founded in 1907, the colony has served as a refuge for thousands of writers, including **Thornton Wilder**, **Alice Sebold** and **Jonathan Franzen**. There are 32 studios on 450 acres of woods and fields.

WHY?: That writers' bible, *The Elements of Style* by **E. B. White** and **William Strunk Jr.**, is out in a new edition with illustrations by **Maira**

Kalman, the chic children's book illustrator and New Yorker cover artist. Isn't that a bit like dressing up your trusted expert plumber in the latest Armani?

CUTE: For 17 years, **Marilyn Stasio** has written the column about mystery novels for The New York Times Book Review. Inspired by 15 new crime novels with a chick-lit flavor, Stasio remembered hearing an editor say that would-be authors should retool their unsold novels as mysteries. The editor said, "That's what I've been telling my romance authors to do because the mystery has a built-in structure. This solves your plot problems by giving you a simple formula to follow, but it still allows you to develop your heroine and get your romance into the story."

Stasio goes on: "Adding a mystery component does more than give a bubble-headed form a sturdier narrative structure. By challenging the flighty heroine to solve a crime, it offers her the chance both to prove her character and fire up her sex life. At the same time, by substituting wholesome boy-girl sex—or, as the authors would have it, romance—for the subliminal eroticism of violence that drives the traditional crime novel, the chick-lit mystery burns its own identifying brand on the form."

HA, HA: **John Steinbeck** once said, "Writers are a little below clowns and a little above trained seals. God help the world if writers ever took control."

OUT LOUD: Last October, National Read Aloud Day (you missed it?) was celebrated in New York City by a 12-hour marathon reading called "The Book That Changed My Life." Some of the works that provided excerpts were **Kay Thompson's** *Eloise* books, **A. A. Milne's** *Winnie the Pooh*, **P. D. Eastman's** *Go, Dog, Go!*, **Oscar**

Wilde's *The Happy Prince*, **Betty Smith's** *A Tree Grows in Brooklyn* and *My Brother Sam Is Dead* by **James Lincoln Collier** and **Christopher Collier**.

ANOTHER VAMPIRE: **Douglas Clegg's** new novel is *The Priest of Blood*. The author told PW, "Vampires, to me, are a metaphor for the dangers and allure of immortality. . . . And I used the historical moment of the 12th, 13th centuries because it reflects our own current world—we are still going to the Holy Land for war, for example. It was the most liberating experience as a writer I've ever had—I recreated the world as my world, as my view, as my sense of shadow and light. I want the reader's imagination to race when he or she reads *The Priest of Blood*."

OVERVIEW: Author and critic **Matthew J. Bruccoli** is on the faculty at the University of South Carolina. He delivered a paper at a conference in Oslo entitled "The Profession of Authorship in 21st Century America." Here are a few quotes:

"My position is that bestseller lists—which began in America in 1885—are pernicious and should be abolished because they substitute fashion for individual judgment."

"In this century writers have become a necessary nuisance. The process of publishing excludes authors unless they are needed to peddle books. National Book Award winner **Mary Lee Settle** has elegantly observed that 'a whole industry depends on us and treats us like shit.'"

"There used to be the shared conviction that the author's job was to write masterpieces and that the publisher's job was to publish masterpieces. I have known editors and publishers who believed it. They are all dead."

"Publishers have always insisted that books sell by word-of-mouth—not by advertising. In 2004 that

means getting on television. Not only does the author have to write well: now he is expected to sell himself and his book."

After a discussion of new technologies, Brucoli said, "Publication is the essential act of authorship. The ways in which new and old literary works are produced and published will change in the 21st century. So will the profession of authorship in America. The only certainty is that writers will go on writing."

LAST WORDS: **Mary Lee Settle**, who provided the zesty quote above, died last October (see Deaths below). Novelist **George Garrett** wrote an e-mail account of one of the memorial services held for her. It included the following:

"A nurse, who had been with her in the Hospice House at the end, told how Mary Lee suddenly awakened and seemed, for a moment, confused. 'Is this heaven?' she asked. 'No, ma'm,' the nurse said, 'not just yet.'"

BIG SELLER: Second only to *Harry Potter and the Half-Blood Prince*, the best-selling book in the summer and fall was **Kevin Trudeau's** *Natural Cures They Don't Want You to Know About*. More than three million copies of the self-published book have been sold since August of 2004.

The book was described by The New York Times as "570 pages of Mr. Trudeau's musings on how natural therapies, diet and lifestyle can help people free themselves from illness and disease." It is sold on late-night infomercials on TV for \$30 a copy.

The author, 42, is not a scientist or doctor. The Times says he has served two years in federal prison for credit-card fraud. The Federal Trade Commission has barred him from selling products through infomercials. *Natural Cures* gets around that rule because books are

protected as free speech under the First Amendment.

The New York State Consumer Protection Board has issued a statement warning that the book is full of "empty promises." The book also directs readers to Trudeau's subscription-based website for more information. On the site, subscriptions are offered for \$9.95 a month or \$499 for life.

PICTURE MAKER: **Ed Young** is the author and illustrator of many books for children. His latest is *Beyond the Great Mountains: A Visual Poem About China*.

Young told PW: "One of my missions is to introduce children, appropriately, to different kinds of art, especially to abstract art. I have never stopped being a student. In each of my books, I have looked for a teacher to give me inspiration, and for this book it was **Matisse**."

ADVICE: **Jeanne Bice** sold 15,000 copies of her memoir, *Pull Yourself Up by Your Bra Straps: And Other Quacker Wisdom*, in just eight minutes on QVC, a TV shopping channel. Bice told The New York Times, "I could have sold a lot more, but I didn't know if I could sign that many."

Bice, 66, is the founder of Quacker Factory, a maker of sweaters and tunics and elastic-waist pants decorated with sequins and rhinestones in nautical, floral or holiday motifs. The clothes are best-sellers on the shopping channel. "I wanted to be on Oprah," Bice said. "I asked a friend 'How do I get on Oprah?' and he said, 'Write a book.'" Bice is waiting for an invitation.

HAUNTED: **Bret Easton Ellis's** new novel is *Lunar Park*. He told **Katie Couric** on the *Today* show that the novel was "an homage to **Stephen King** and all the books I liked like that when I was a boy. . . . I wanted to write a haunted house book, a

genre book, a supernatural thriller."

Earlier books, *Less Than Zero* and *American Psycho*, created a stir. Critic **Roger Rosenblatt** wrote in The New York Times Book Review that *American Psycho* shouldn't have been published at all, and **John Irving** called Rosenblatt's essay "prissy enough to please **Jesse Helms**."

BASED ON LIFE: **Libby Bray** is author of *A Great and Terrible Beauty*, a children's fiction bestseller. Bray told PW that several of the characters in her novel were based on people she has known in life.

Bray said, "Kartic was the name of a guy I had a massive crush on in Austin, Texas. We waited tables together, and I was so smitten with him that every time he spoke I was sure he'd said something like, 'Will you marry me and bear from your loins our beautiful, wild-maned, full-lipped children?' when actually he'd only said, 'Uh, could you take the bread to table A-4 now?'"

CHECK IT OUT: CopyGuard is the name of a new software program designed to detect plagiarism before publication. **John Barrie**, chief executive of iParadigms, the company that developed the program with LexisNexis, told The New York Times, "We take digital fingerprints of individual documents and compare them to the digital fingerprints of existing documents."

Barrie said that CopyGuard would have caught disputed passages in works by historians **Stephen Ambrose** and **Doris Kearns Goodwin**.

The company would not divulge the price of the service, which draws on LexisNexis's database of more than six billion documents and several years of web pages collected by iParadigm.

HAZARD: **Charles C. Mann** is the author of *1491: New Revelations of the Americas Before Columbus*. To re-

search his book, Mann traveled widely. He told The New York Times, "I learned three things about Amazonian termites. There's a whole lot of them, they're extremely fast, and they bite."

DUMPED: **Rachel Kahan**, a senior editor at Putnam, wrote an essay for PW about the pain of being dumped by a successful author (unnamed) who had become a close friend.

"If I love a book," Kahan wrote, "I've always had some love for the author."

When this author-friend left for another publisher, Kahan's boss told her "this is what happens if you get personally involved with your authors. It will break your heart. Live and learn."

Kahan wrote, "She was right of course. . . . but is that really why I became an editor? Books are created with passion and must be published with passion even if that passion leads to heartbreak."

PLOWMAN-POET: Smithsonian Magazine marked its 35th anniversary and named writer-farmer **Wendell Berry**, 71, one of 35 Americans "who made a difference."

Berry believes "that small farms and farm communities are as vital to our liberties now as they were in Jefferson's days." He has worked his Kentucky farm, plowing his land with horses, for 40 years and produced poetry, fiction (a novel, *Remembering*), short stories (*The Wild Birds*), nonfiction (*The Unsettling of America*) and 14 essays in *Home Economics*.

Berry told the Smithsonian, "I realize every day how extremely fortunate I've been as a writer to live where my imagination took root. . . . Part of the reason for writing all those essays is my struggle never to quit, to never utter those awful words 'it's inevitable.' You know, if you subtracted the Gospels and the Constitution and the Declaration of

Independence from my work, there wouldn't be very much left."

MEMOIR: **J. R. Moehringer**, a Los Angeles Times reporter, won a 2000 Pulitzer Prize for feature writing. Agent **Mort Janklow** got him a contract for a memoir. The title is *The Tender Bar*.

Moehringer grew up in Manhasset, Long Island, and spent much of his childhood in Dickens, a bar. The heavy drinkers who peopled the Dickens made an indelible impression, and Moehringer, researching his book, looked them up. He told The New York Times, "They were guys I still revere, still kind of fear. I'd always been a kid in their presence. In many cases, their story is the most valuable thing they own." He also interviewed his mother about his violent father and asked her "to relive very frightening and difficult days. I had to relive them with her."

Moehringer said, "The American memoir is always about escape. **Thoreau** is escaping civilization. **Henry Adams** is escaping from history."

"It was ennobling," Moehringer said, "to discover that my sense of the bar as a focal point in my life had precedent. In Walden, Thoreau had the pond and felt as if the pond had chosen him as much as he had chosen it. For better or worse, the bar was my pond. And often for much worse."

The Tattered Bookstore in Denver held a signing for Moehringer. It was followed by a reception at a nearby bar that changed its name to Dickens for the evening.

GENRE SHIFT: **S. E. Hinton's** *The Outsiders*, a novel about gangs in Tulsa, Okla., was published when the author was 17. Issued in 1967, the book has sold 14 million copies—400,000 of them last year. Its success was boosted by the 1983 **Francis Ford Coppola** film, which

starred **Tom Cruise**, **Matt Dillon** and **Emilio Estevez**.

After years of writing for teenagers, Hinton published *Hawkes Harbor*, her first adult novel, last year. The New York Times said, "Ms. Hinton attributed the bad reviews to the fact that readers were not expecting a vampire book."

Her next novel will be a suspense story about an Oklahoma man who goes to Los Angeles, becomes wealthy and returns to his hometown. Hinton said, "As soon as he gets there, weird things happen." There are strange lights. A black panther is sighted. "I just make it up as it happens," Hinton said.

AIMING HIGH: **Bob Spitz** is author of a 900-page biography, *The Beatles*. He told PW, "I felt the Beatles deserved a biography. I used as my models authors like **Robert Caro**, **Neil Gabler** and **David McCullough**, and I say that with all humility. I always saw the book as a work of history, as well as a cultural biography."

NO FICTION: **John Berendt's** *Midnight in the Garden of Good and Evil* came out in 1994 and sold 2.7 million hardcover copies. It was on the bestseller list for 217 weeks, a record for hardcover nonfiction.

His latest book, published in the fall, is *The City of Falling Angels*.

Midnight stirred some controversy because the author admitted that "I have taken certain storytelling liberties, particularly having to do with the timing of events." In the new book, he says, "All the people in it are real and are identified by their real names. There are no composite characters." Berendt told The New York Times, "I'm not going through that again."

The main event in *Midnight* was a murder that occurred halfway through. The main event in the new book is a fire that destroys a theater in Venice. It provides the opening.

Berendt says that the scene reads as if he were there "because I researched it so heavily that I was able to describe it as if I were there. But since I wasn't going to be doing the same thing I did the first time, I absolutely said I came three days later. So I didn't take those liberties this time."

Berendt hit it big writing about Savannah. This latest book on Venice is a bestseller. PW says that New York City, where Berendt has lived for 44 years, will be the subject of his next book.

BIG LEAP: **Anita Shreve's** *Light on Snow* is a paperback bestseller, as have been several of her novels. Shreve started out as a journalist and wrote two nonfiction books, *Remaking Motherhood* and *Women Together*, before she began writing fiction.

Shreve told PW that writing stories and novels gave her "the rush of freedom that I could make it up."

ABOUT A HOUSE: **Robert Hicks**, 54, was a music publisher in Franklin, Tenn., when he was asked to join a board in charge of restoring a house on the Carnton Plantation to its 1864 condition. The house had been owned by **Carrie McGavock**, who had turned it into a private hospital during the Civil War and used some of her land as a burial ground for 1,481 Confederate soldiers.

After the restoration was complete Hicks asked himself, "Well, how can I ensure that people will come after all this?" And he decided to write a book, *The Widow of the South*, which became a bestseller. The New York Times described the book as "Hicks's 404-page advertisement" for the plantation house and property. The title of the article was "First the House, Then the Pot-boiler."

HELPER: **Alice Provinsen** and her late husband, **Martin**, illustrated many books, including *The Golden*

Bible for Children: The New Testament. Their *The Glorious Flight* won a Caldecott.

Now Provinsen has produced an account of the late 18th century Yukon gold rush entitled *Klondike Gold*. She told PW, "Working on this and other books, I'm not ever really alone. I always feel as though Martin is looking over my shoulder, telling me what I should do over—and letting me know what works and is good."

DUELING QUOTES: **Zadie Smith's** third novel, *On Beauty*, hit the best-seller lists, but the author told The Guardian of London, "I refuse to do any television and I won't do anything which makes my life abnormal."

Smith's comments about the media ("I won't be made a freak!") haven't endeared her to the British press. A writer in London's *The Independent* wrote, "It's funny that Zadie loathes being recognized so much because in the new issue of *British Vogue* . . . she's gritted her teeth and consented to be photographed for a fashion spread in a clinging halter-necked satin evening gown with flowers in her hair."

PLEASE: In an essay on the state of the novel, **Willa Cather** complained about the growing amount of graphic descriptions of sex and then added, "Can one imagine anything more terrible than the story of *Romeo and Juliet* rewritten in prose by **D. H. Lawrence**?"

UNICORN: Another celebrity has written a picture book for children. **Carson Kressley**, one of the stars of television's *Queer Eye*, has turned out *You're Different and That's Super*. It's about ponies, and one of them sprouts a horn.

Kressley, who grew up around ponies, told PW that the book was "a little semi-autobiographical." He said, "The book celebrates diversity

and lets people know that the things they think are a curse can sometimes be a blessing."

HONORED: **Philip Roth's** *American Pastoral* is set in Newark, N.J., where he grew up, and the town has planted a street sign in his honor. In the ceremony, held in the Weequahic Branch Library, the Newark Star-Ledger reported that Roth referred to the Nobel Prize ceremony when he said, "Today, Newark is my Stockholm, and that plaque is my prize."

ROMANCE LOVER: **Stephanie Laurens's** new paperback bestseller is *A Fire Passion*. The cancer-research scientist told PW that she had been a fan of romance novels from the age of 13.

Laurens said, "I decided to write one—something I had always had a hankering to do. To my surprise, being one of those people who always have craft projects lying around unfinished for years, I actually finished the book—mainly, I suspect, because I wanted to know the end. But there it was—and it didn't seem too bad." That manuscript was published as *Tangled Reins* in 1992.

HAPPY ENDING? **Kurt Vonnegut's** collection of nonfiction essays about politics and art, *A Man Without a Country*, made the bestseller list. The New York Times reported that the success of the book was aided by Vonnegut's appearances on the **Jon Stewart** and **Bill Maher** television shows.

When a reporter from The Los Angeles Times asked the 82-year-old author why he had produced this new book, Vonnegut said, "I didn't mean to live so long; it was a graceless thing to do. But what am I going to do with myself? This is what I do."

He told the Associated Press that the attention was a nice glass of champagne "at the end of a life."

ALL ALONE: **Frank McCourt's** new memoir is *Teacher Man*. He told PW that the one thing a writer needs most is: "Isolation. It takes so much time to develop something. You need to waste a lot of time. I'm an exception to all the rules because I started so late in life. For me it's time and isolation. So that's why I get up so early [5 a.m.] in the morning. You have to."

REPLACEMENT: When her house and everything in it burned, **Kathryn Gursky** of Los Alamos, N.M., lost her 2,300-book library. She is a former librarian.

The house was rebuilt, and on her birthday in September, Gursky's husband gave her the complete collection of the Penguin Classics Library, 1,082 books, sold by Amazon.com for nearly \$8,000. Gursky told *The New York Times*, "I like to reread books, and I like to own books I can go back and reread." She added, "I don't sneer at paperbacks. They'll outlast me, and that's really all I care about." The Gurskys do not have a television set.

WITNESS: **Michael Crichton** is the author of 13 novels, four nonfiction books and numerous screenplays. Because of his novel *State of Fear*, a thriller about the environment that denies that human activities contribute to global warming, Crichton was asked to testify before a Senate committee on Environment and Public Works.

The invitation came from Senator **James M. Inhofe**, who, according to *The New York Times*, calls global warming "the greatest hoax ever perpetrated on the American people." Inhofe said he had made *State of Fear* "required reading for this committee."

The Natural Resources Defense Council said the book was "more silly than scary." The Brookings Institute said it was "notable mainly for its nuttiness." And the Union of

Concerned Scientists said, *State of Fear* "does not reflect scientific fact."

SERMONS: **Frederick Buechner's** new book is *Secrets in the Dark*, a collection of his sermons. He is an ordained Presbyterian minister. The prolific author has written many novels (*Lion Country*, *Love Feast*, *A Long Day's Dying*) and works of non-fiction (*Wishful Thinking: A Theological ABC*, *The Alphabet of Grace*).

Buechner told PW, "Sadly, I haven't written much of anything but letters in the last three years. All the books I have started don't seem to get beyond forty or fifty pages. I'm in my 80th year, so maybe I just don't have the same energy as before. But I hate to think I've said all I have to say."

TWICE-TOLD: HarperCollins was forced to publish two editions of *Tete-a-Tete* by **Hazel Rowley** because of objections from **Jean-Paul Sartre's** adopted daughter. The book was written with the cooperation of **Simone de Beauvoir's** adopted daughter, who gave Rowley access to Sartre's unpublished letters. **Arlette Elkaim-Sartre**, who controls Sartre's estate, demanded some of the material be removed.

According to *The New York Times*, when Sartre and de Beauvoir began their affair in 1929, Sartre "proposed that each would have 'contingent' relations, meaning they would sleep with others and that would be completely 'transparent,' meaning they would tell each other everything."

The more strict copyright laws in England brought about the decision to publish two different versions of Rowley's book. The one in Europe has no quotes from Sartre's letters. The North American version has some of the disputed material and paraphrases other parts.

REMEMBERING: **Robert Hughes**, art critic at *Time* magazine for 32

years and a best-selling author, is writing his memoirs. The first volume will be about his growing up in Australia. Publication is scheduled for 2006. There is no title yet.

OOPS! **Graham Taylor**, a clergyman, is the author of *Shadowmancer*, a Y-A novel about witches and the war against evil. He was giving a talk to 12-year-olds at a school in Truro in southwest England when he said that Harry Potter was gay and the villains were "wimps." Teachers halted the talk and asked him to leave.

The *New York Times* reported that Taylor said he was only joking about a line from a British television comedy: "As for Harry Potter, well, he's not the only gay in the village."

OLD JOKE: A penthouse apartment in Manhattan was the setting for a book party for **Studs Terkel's** *And They All Sang: Adventures of an Eclectic Disc Jockey*, a collection of radio interviews with musicians. Literary guests included **Oliver Sacks**, **Victor Navasky**, **Lewis Lapham**, **Jimmy Breslin** and **Calvin Trillin**.

The *New York Times* gossip columnist **Campbell Robertson** quoted a joke the guest of honor told: "You remember Jacques, the Seven Ages of Man?" He was referring to **Shakespeare's** *As You Like It*, but Terkel said that there were really only three ages: "Youth, middle age and 'You look great!'" Terkel is 93.

TV VISIT: **Amy Tan's** new novel is *Saving Fish from Drowning*. She appeared on NBC-TV's *Today* show to talk about it. The book is set in Burma, a place where the repressive government has created what Tan called a "hopeless situation." She said that writers were not allowed into the country so, to do her research, she visited Burma as an adviser to a children's television program, which is one of her jobs these days.

Asked if she was still performing with a rock band that includes **Stephen King** and **Dave Barry**, Tan admitted that she was but added, "I have to quit. I'm ruining my reputation."

ART-FULL CRIMES: **Jonathan Santlofer** is an artist who writes mysteries about the art world. His third and latest is *The Killing Art*. It includes a real-life historical episode when a group of Abstract Expressionist artists got together in April of 1950.

The author told The New York Times that he started his research with "a very romanticized view of the period," but quickly found that "in fact it was filled with competition and jealousy."

Hedda Sterne, the only female painter included in the group, said, "Fame and success broke us up." She told the author that "she sat back and watched men drink and compete and have heart attacks and die." Several painters like **Jackson Pollock**, **Franz Kline** and **Hans Hofmann** are characters in the book, but they don't do any of the killing. That's left up to the fictional folks.

OOPS: In The New York Times article about the National Book Awards Finalists, it was announced that the award for lifetime contributions to American literature would go to **Normal** (sic) **Mailer**. In recent years the Times has done a good job of ridding itself of typos, but surely the Mailer they were citing was not Normal at all. Norman?

At the ceremony, after an ornate introduction by Toni Morrison, Mailer said, "The serious novel may be in serious decline." Its purpose, he said, is "to enter one's life, even alter it," but too often such works are in opposition to "the needs of the marketplace."

COVER UP: In an essay about book jackets in The New Yorker, which

mentions a new book entitled *By Its Cover*, **John Updike** wrote: "Publishing forms a minor branch of the entertainment industry, and book design is increasingly a matter of fashion—that is attention-getting. In the visual clamor of a bookstore, the important thing is to be different; a whisper becomes a shout, and the ugly becomes beautiful if it attracts attention."

HOT COPY: First, **Periel Aschenbrand** thought up a few words and printed them on a T-shirt: *The Only Bush I Trust Is My Own*. Then she wrote a book and used the same words as her title. The book, according to The New York Times, is written "in the manner of a female **Howard Stern**. Like a Stern broadcast, Ms. Aschenbrand's narrative is both random and unsavoryly compelling."

The author appears, looking very much like a Flemish artist's Eve, on the book's jacket with certain parts covered only by the title and her name atop a fig leaf.

BIG LEAP: With an appearance on **Oprah Winfrey's** show, **James Frey's** memoir, *A Million Little Pieces*, jumped to No. 1 on the paperback nonfiction list. It was first published in 2003. The New York Times said the book "opens with the author wanted in three states, missing some front teeth and splattered with a Technicolor mixture of spit, snot, urine, vomit and blood."

In an interview in The New York Observer, Frey dumped on **Dave Eggers**, **David Foster Wallace** and "**Jonathan Safran** whatever-his-name." He also said, "I love boxing. Writers aren't like that anymore. They're all these guys who have . . . master's degrees and are so 'sophisticated' and 'educated.'"

On another program, Oprah showed again that a guest appearance on her show sells books. **Terry McMillan**, author of *The Interrup-*

tion of Everything, and her ex-husband, Jonathan Plummer, were there to talk about their bitter divorce. He is 23 years younger than McMillan and the inspiration for her 1996 book, *How Stella Got Her Groove Back*. The author said her young husband's excessive mirror time had gotten on her nerves. Turned out he was gay. A brief mention of McMillan's novels was enough to send sales booming.

BURNED: A cottage outside Moscow, where **Aleksandr Solzhenitsyn** wrote *The Gulag Archipelago*, was destroyed by fire. Rare photographs and writings were in the house, but The Guardian of London said it was unclear how many of the author's papers were stored there. Solzhenitsyn won the 1970 Nobel in literature.

SAFE: In The New York Times Magazine, in an article about the aftermath of Hurricane Katrina, **Michael Lewis** described the looting that followed the storm and then wrote, "Of all the stores in town, none looked so well preserved as the bookshops. No one loots literature."

IN GERMANY: **Morgan Entrekin**, publisher of Grove/Atlantic, attended the Frankfurt Book Fair and told The New York Times that the parties are the real business. He said, "It's the chance to rub shoulders with these really intelligent writers and publishers, and to talk about books that you care deeply about. That's the reason you're in this field. You forget that sometimes in New York because of the overwhelming business-ness of it."

But there are deals too. An authorized biography of **Warren Buffett**, by **Alice Schroeder**, was sold to Random House's Bantam Dell for \$7 million.

BUSY: After years of covering politics in Washington, D.C., **Liz Car-**

penter went back to Texas, where she palled around with her friend **Lady Bird Johnson** and wrote several books.

Carpenter told The Houston Chronicle, "I think the keys to success are sharing and having a generous heart and a sense of humor. . . . I'm 84 years old and still earning my own living. . . . I want to keep on writing as long as I can and sell my words."

RUNNING: Kinky Friedman, who writes mystery novels about a character called Kinky Friedman, spent the fall running for the job of Texas governor. He campaigned in a T-shirt that said, "Kinky 2006. Why the Hell Not?" He said that if he wins, the first thing he will do is demand a recount. The newsletter for the Texas Institute of Letters commented: "It might be interesting to be able to say, 'Our governor is Kinky.'"

SPOOFED: Chris Elliott, comedian, actor and satirist, published his first novel, *The Shroud of the Thwacker*, in October. Shortly afterward, he agreed to a financial settlement with **Paul Guinan**, the creator of a robot named Boilerplate, a character in Guinan's *Heartbreakers Meet Boilerplate*, published in July. Guinan was considering legal action for the "fairly blatant and quite unauthorized" lifting of a copyrighted character.

Elliott told The New York Times that he thought Boilerplate was some sort of 19th century spoof, not a post-modern, post-dated parody of a hoax. "It was an innocent mistake, and I felt like such an idiot. . . . I think it's really kind of funny. The whole thing about this book is that I did almost no research for it, and the one little bit of research I did I got wrong."

GOOD NEWS HURTS: Mary Gait-skill, nominated for the National

Book Award for her second novel, *Veronica*, was a teen age runaway. She worked selling flowers on the street, performing as a stripper in bars, and making crafts. She told The New York Times, "I had really wanted adventure." She kept journals.

Eventually she returned home and graduated from the University of Michigan, where she won the Hopwood award for writing in 1981.

When she heard about the National Book Award nomination she said, "I couldn't eat, my stomach was so upset. Some people react to good stress bodily the way they react to bad. I went to bed that evening and had nightmares." *Veronica* didn't win. *Europe Center*, a novel by **William T. Vollman**, took the fiction prize.

LAUGH: Jonathan Franzen said, "I don't trust a writer who is never funny, and I take it as an unfailingly bad sign if a book I'm writing fails to achieve comedy early on."

BLOG TO NOVEL: Gary Benchley, *Rock Star* is a novel by **Paul Ford**, a Brooklyn-based "web geek." The New York Times described the book as "an edited and expanded version of Benchley's serialized rock chronicles [on a blog]—a sort of Dickens-esque flourish for the digital age." He's also an editor and webmaster for Harper's magazine and contributes to NPR.

Ford, 31, said in an interview, "I honestly never expected that anyone would let me be a writer. . . . The thing is, rock stars like Gary can be young, but as a writer—when I was 22, I looked around at the other writers, and I thought, 'Ah, that's something you do after you know something.'" Then he added, "Not that I know anything now."

ENCORE: Lauren Weisberger turned an 11-month job as **Anna Wintour's** assistant at Vogue into

about \$4 million in a book and movie deal. That first novel, about the fashion world, was *The Devil Wears Prada*. It's being made into a movie starring **Meryl Streep** as the editor.

Weisberger told The New York Times that she had grown up a compulsive reader. By the time she was eight, she had read all the young adult books in her small-town Pennsylvania library and moved on to **Judith Krantz** and **Danielle Steel**. "I was drawn to glittery books."

Her second novel is *Everyone Worth Knowing*. Reviewers were not kind. The Times called it "fatuous, clunky." USA Today called it "lackluster imitation," and Entertainment Weekly said it was "ho-hum rehash."

Weisberger said, "I don't know why writing literature is seen as a loftier goal than writing books that people really can read on a beach or a plane. I love trying to capture that realistic-sounding dialogue. I love trying to write about different things I'm actually going through and that my friends are going through."

WAGES OF SIN: After I. Lewis Libby, Jr., Vice President **Dick Cheney's** chief of staff, was indicted, a copy of a novel he wrote in 1996, *The Apprentice: A Novel*, drew a bid of \$2,400, and unsigned copies were on sale for \$700. The Associated Press reported that Libby's publisher then leaped into action and published 25,000 more copies to meet bookstore demand. The novel is set in Japan in 1903.

JOB CHANGES, NEW TITLES*

Celina Spiegel and **Julie Grau**, editors of the Riverhead imprint at Penguin, have moved to Doubleday Broadway, part of Random House, where they will create a new imprint.

Eden Ross Lipson of The New York Times Book Review has retired. Deputy editor **Julie Just** is now in charge of children's book reviews.

Alicia Brooks, formerly an editor at Picador, is an agent at Rights Unlimited.

Jackie Cantor of Bantam Dell has become executive editor at Berkley, acquiring both fiction and nonfiction.

Inigo Thomas, a former columnist at Slate, is an editor at Penguin Press.

Daniel Slager, an editor at Harcourt Trade, has been named editor in chief at Milkweed Editions.

David Highfill, formerly at Putnam, is executive editor at William Morrow.

Marcy Posner, who had her own agency, is now director of foreign rights at Sterling Lord Literistic.

Brooke Lindner, formerly with Modern Publishing, is an editor at Simon Spotlight.

Sarah Payne is an editorial assistant at McElderry Books, Simon & Schuster.

Annik LaFarge is publishing director at Bloomsbury, where she will edit four to six titles a year.

DEATHS

David C. Anderson, 62, died September 15 in Manhattan. The New York Times journalist was author of *Children of Special Value: Interracial Adoption in America* (1971), *Crimes of Justice* (1988), *Crime and the Politics of Hysteria* (1995) and *Sensible Justice* (1998).

Wayne C. Booth, 84, died October 10 in Chicago. A longtime faculty member at the University of Chicago, Booth was the author of *The Rhetoric of Fiction* (1961), *A Rhetoric of Irony* (1974) and *The Company We Keep: An Ethics of Fiction* (1988). A memoir, *My Many Selves*, is scheduled for publication in 2006.

Urie Bronfenbrenner, 88, died

September 25 in Ithaca, N.Y. He was the coauthor of *Two Worlds of Childhood: U.S. and U.S.S.R.* (1970), author of *The Ecology of Human Development* (1979), and editor of *Making Human Beings Human* (2005).

Stanley Burnshaw, 99, died September 16 on Martha's Vineyard. He was a poet, critic, translator, editor, publisher and novelist. He was the author of *Andre Spire and His Poetry* (1933), *The Revolt of the Cats in Paradise* (1945), *Robert Frost Himself* (1966), *Caged in an Animal's Mind* (1963) and a trilogy of novels, *The Refusers*, in 1981.

Emile Capouya, 80, died October 13 in East Meredith, N.Y. The essayist, critic and publisher was the author of *In the Sparrow Hills* (1993) and a novella, *The Rising of the Moon* (2003).

Marshall Claggett, 89, died October 21 in Princeton, N.J. He was the author of *Greek Science in Antiquity* (1955). His five-volume *Archimedes in the Middle Ages* began to be published in 1964. The first volume of *Ancient Egyptian Science: A Source Book* appeared in 1989.

Gordon A. Craig, 91, died October 30 in Portola Valley, Calif. The former Stanford professor was the author of *The Politics of the Prussian Army, 1640-1945* (1955), *From Bismarck to Adenauer* (1965), *Germany, 1866-1945* (1978) and *The Germans* (1982).

Vine Deloria, Jr., 72, died November 13 in Golden, Colo. He was the author of *We Talk, You Listen: New Tribes, New Turf* (1970), *God Is Red* (1973), *Behind the Trail of Broken Treaties* (1974) and *The Metaphysics of Modern Existence* (1979).

Benjamin DeMott, 81, died September 29 in Worthington, Mass. He was author of more than a dozen books, including *The Imperial Middle: Why Americans Can't Think Straight About Class* (1990), *The Trouble with Friendship: Why Americans Can't Think Straight About Race* (1995), *Killer Woman Blues: Why Americans*

Can't Think Straight About Gender and Power (2000). He also wrote two novels, *The Body's Cage* (1959) and *A Married Man* (1968).

Peter F. Drucker, 95, died November 11 in Claremont, Calif. The political economist wrote more than 30 books, including *The End of Economic Man* (1938), *The Future of Industrial Man* (1942) and *The Concept of the Corporation* (1946).

John Fowles, 79, died November 5 in Lyme Regis, England. He was the author of *The Collector*, *The Magus*, *The French Lieutenant's Woman* (1969) and *The Ebony Tower* (1974).

Robert W. Funk, 79, died September 3 in Santa Rosa, Calif. He was the author of *The Five Gospels: The Search for the Authentic Words of Jesus* (1993) and *The Acts of Jesus: The Search for the Authentic Deeds of Jesus* (1998).

Sidney Geist, 91, died October 18 in Manhattan. He was a sculptor and author of *Brancusi: A Study of the Sculpture* (1968) and *Interpreting Cezanne* (1988).

Alvin M. Josephy, Jr., 90, died October 16 in Greenwich, Conn. He wrote more than a dozen books about American Indians, including *The Patriot Chiefs* (1961), *The Nez Perce Indians and the Opening of the Northwest* (1965) and *Now That the Buffalo's Gone* (1982).

Endre Marton, 95, died November 1 in Manhattan. The journalist was author of *The Forbidden Sky* (1971).

Barrington Moore, Jr., 92, died October 16 in Cambridge, Mass. He was the author of *Soviet Politics: The Dilemma of Power* (1950), *Social Origins of Dictatorship and Democracy* (1966), *Moral Aspects of Economic Growth and Other Essays* (1998) and *Moral Purity and Persecution in History* (2000).

Toni Trent Parker, 58, died September 15 in Stamford, Conn. She was the author of six children's picture books, including *Sienna's Scrapbook* (2005).

M. Scott Peck, 69, died September 25 in Warren, Conn. Dr. Peck was the author of *The Road Less Traveled* (1978), *Further Along the Road Less Traveled* (1993), *The Road Less Traveled and Beyond* (1997), which together have sold five million copies. He also wrote *A Bed by the Window* (1990), *People of the Lie* (1983) and *The Different Drum* (1987).

Paul Roazen, 69, died November 3 in Cambridge, Mass. He was the author of *Brother Animal: The Story of Freud and Trausk* (1969), *Freud and his Followers* (1979) and *How Freud Worked: First-Hand Accounts of Patients* (1995).

Mary Lee Settle, 87, died September 27 in Charlottesville, Va. She was the author of 22 books, including "The Beulah Quintet," novels published between 1958 and 1982.

Other books are *Know Nothing* (1960), *Prisons* (1973) and *The Killing Ground* (1982). She won the National Book Award for *Blood Tie* (1978). Her most recent, *Spanish Recognitions* (2004), is a travel memoir.

Joseph Thorndike, 92, died November 22 in Harwich, Mass. An editor at *Life*, *Horizon* and *American Heritage* magazines, he wrote several books, including *The Very Rich: A History of Wealth* (1976) and *The Coast: A Journey Down the Atlantic Shore* (1993).

Alan Truscott, 80, died September 4 in the Adirondacks. The bridge expert was the author of: *The Great Bridge Scandal*, *The Bidding Dictionary*, *Bridge from First Principles*, *Master Bridge by Question and Answer*, and *The New York Times Bridge Book: An Anecdotal History of the Develop-*

ment, Personalities, and Strategies of the World's Most Popular Card Game.

Martha McKeen Welch, 91, died November 19 in Bedford, N.Y. The author, photographer, inventor and illustrator was the author of seven books for children, including *Saucy* (1968), *Pudding and Pie* (1968), *Just Like Puppies* (1969) and *Will That Wake Mother?*

David Westheimer, 88, died November 8 in Los Angeles. He was the author of several novels, including *Von Ryan's Express*, which became a movie starring Frank Sinatra. Other books included *Summer on the Water*, *The Magic Fallacy* (1950), *My Sweet Charlie* (1965) and *Von Ryan's Return* (1980). He also wrote *Sitting It Out: A World War II POW Memoir* (1992) and a book of poems, *The Great Wounded Bird* (2000). ♦

BULLETIN BOARD

The annual Literary Contest of the Pacific Northwest Writers Association (PNWA) has 11 entry categories, each with a cash prize of \$600. Finalists' work will be made available to agents and editors, and first place winners will attend the Agents and Editors Breakfast at the PNWA Summer Conference in Seattle in July 2006. Entries must be postmarked by **February 22, 2006**. Visit pnwa.org for submission details or contact PNWA at (425) 673-2665 or pnwa@pnwa.org.

Binghamton University is offering its annual John Gardner Fiction Book Award for a novel or collection of fiction published in 2005 with a minimum press run of 500 copies. Winners will receive a cash prize of \$1,000, participate in an awards ceremony, and give a reading at the university. The winner will be announced in *Poets & Writers* magazine. Submit an application form and three copies of each book by **March 1, 2006** to Maria Mazziotti Gillan, Director, Creative Writing Program, Binghamton University, PO Box 6000, Binghamton, NY 13902-6000. For more information, visit english.binghamton.edu/cwpro or call (607) 777-2713.

The American Literary Translators Association is offering its National Translation Award for a translation

of literature from any language into English that has been published in the United States by an American publisher in the previous year. The award carries a cash prize of \$2,500. Nomination is by publishers only. The deadline is **March 31, 2006**. Dr. Eileen Rice Tollett, Executive Director, American Literary Translators Association, Box 830688, MC 35, Mail Station, Richardson, TX 75083. For more information, visit www.literarytranslators.org, call (972) 883-2093, or e-mail ert@utdallas.edu.

The Susan B. Anthony Institute for Gender and Women's Studies at the University of Rochester is offering its annual Janet Heidinger Kafka prize for fiction by an American woman. Entries must be submitted by publishers in behalf of authors who are citizens of the United States, and whose work was published in 2005. Winners will receive a cash prize of \$5,000. Submissions must be book-length works of prose fiction, including novels, short story collections, and experimental fiction, and received by **March 31, 2006**. For more information, visit www.rochester.edu/College/WST and click on "about SBAI," or contact Professor Susan Gustafson, Director, Susan B. Anthony Institute, 538 Lattimore Hall, University of Rochester, Rochester, NY 14627. (585) 275-8318.

The Paterson Fiction Prize at Passaic County Community College Poetry Center is awarded for the best novel or collection of short fiction published in 2005. The winner will receive a cash prize of \$1,000, participate in the awards ceremony, and give a reading at the Poetry Center. All books entered in the competition

will be donated to the Poetry Center Library at PCCC. For more information or for submission requirements, contact Maria Mazziotti Gillan, Executive Director, Poetry Center, One College Boulevard, Paterson, NJ 07505. (973) 684-6555, mgillan@pccc.edu. Submissions must be postmarked **April 1, 2006**. ♦

M E M B E R S M A K E N E W S

Joan Didion received the 2005 National Book Award for Nonfiction for *The Year of Magical Thinking*. **E. L. Doctorow** was a finalist in the Fiction category for *The March*. John Ashbery's *Where Shall I Wander* was a finalist for Poetry, and **Walter Dean Myers** was a finalist in the Young People's Literature category for *Autobiography of My Dead Brother*. The awards were presented on November 16 at the 56th National Book Awards Dinner in New York City.

Kathi Appelt won the Writers' League of Texas's 2005 Teddy Children's Book Award for her short work, *Miss Lady Bird's Wildflowers*. **Anne Bustard** was a finalist for her book *Buddy*, as was **Elaine Scott** for *Poles Apart*. **Jennifer J. Stewart** was a finalist for the award for her long work, *Close Encounters of a Third World Kind*. **Thomas Zigal** won the 2005 Violet Crown Book Award in fiction for his book *The White League*, and **Susan P. Baker** was a finalist in the fiction category for her book *Death of a Prince*. The awards were presented at the governor's mansion on October 29 during the Texas Book Festival.

On November 13, the Creative Arts Temple, based in Los Angeles, California, presented **Fern Field Brooks** with its Lifetime Achievement Award.

Harold Camner won the First Annual MiPo Literary Award in 2004 for his book of poetry, *36 Minutes to Yeehaw Junction*. The award, presented by MiPOesias, an online poetry magazine, is titled "The Coat Hanger Award."

Jane Chance was awarded the 2005 prize for Best Essay by the Society for Medieval Feminist Scholarship. The winning essay first appeared in *Listening to Heloise: The Voice of a Twelfth-Century Woman*, ed. Bonnie Wheeler (St. Martin's Press, 2000). A book edited by Chance, *Tolkien and the Medievalist*, won the Best Book Prize for Scholarship on the Inklings for the second year in a row. The award was presented by the Mythopoeic Society.

Denise Chávez was awarded the third annual Luis Leal Award for Distinction in Chicano/Latino Literature, presented by the University of California, Santa

Barbara, and the Santa Barbara Book & Author Festival. The award, named after a professor of Chicano Studies at UCSB, recognizes writing about the Chicano/Latino experience in the United States and carries an award of \$1,500.

The American Horticulture Society and Junior Master Gardener Program recently recognized 40 books in their first Growing Good Kids—Excellence in Children's Literature Awards program. Three of the books were written and illustrated by **Lynne Cherry**: *The Great Kapok Tree*, *How Groundhog's Garden Grew*, and *The Shaman's Apprentice* (coauthored with Mark Plotkin).

Barbara DeMarco-Barrett won the 2005 Outstanding Book Award in the Service/Self-help category for *Pen on Fire*. The award was presented by the American Society of Journalists and Authors in April, 2005 at their annual conference in New York City.

Malka Drucker was awarded the 2005 PEN Southwest Book Award in the nonfiction category for *White Fire: A Portrait of Women Spiritual Leaders in America*. She was honored at a ceremony on October 22 and will receive a \$500 prize.

Writer's Digest has added **Loree Lough** to their distinguished faculty. Lough, a teacher for 15 years and author of 52 books, dozens of short stories, and over 2,000 published articles, will teach several classes through their Writers Online Workshops.

C. M. Mayo won the First Place (Gold) Lowell Thomas Travel Journalism Award for Best Personal Comment, 2005 for her essay "The Essential Francisco Sosa or, Picadou's Mexico City." The essay appeared in the fall 2004 issue of *Creative Fiction*. This is Mayo's third Lowell Thomas Award.

ESPN adapted **Bill McWilliam's** first book, *A Return to Glory: The Untold Story of Honor, Dishonor and Triumph at the United States Military Academy, 1950-53*, for an ESPN Original Entertainment movie, which aired on December 10, 2005.

Bill Mitchell has filed for Congress as a Democrat in Florida District 9 (Tampa Bay). He is the author of

Employee Fringe and Welfare Benefit Plans and the Estate and Retirement Planning Answer Book.

Josephine "Joi" Nobisso was the Children's Book Council's featured "Meet the Author" from November 15 to December 15.

Lee Pfeiffer (and Dave Worrall), authors of *The Essential James Bond*, have launched a magazine dedicated to movies of the 1960s and 1970s. The magazine, *Cinema Retro*, will be published three times a year and feature articles by actors, writers, producers and directors.

Staton Rabin's first book, *Betsy and the Emperor*, will be made into a film starring Al Pacino as Napoleon Bonaparte. The movie, *The Monster of Longwood*, will be directed by Patrice Chéreau (*Queen Margot*). Rabin's second work for young adults, *Black Powder*, was published in November 2005.

Albert Russo's new book, *The Crowded World of Solitude, Volume 1*, received an honorable mention in the 2005 Annual Writer's Digest International Self-Published Book Awards.

Donna Seaman was a featured guest at the Writers and Readers Ball on October 29, a benefit for the Chicago radio station WLUP. She was also the subject of a Chicago Sun-Times article about her *Open Books* radio show and her new book, derived from the show, *Writers on the Air: Conversations About Books*.

Kathleen Sharp's film documentary, *The Last Mogul*, which was based on her 2004 book, *Mr. and Mrs. Hollywood: Edie and Lew Wasserman and Their Entertainment Empire*, recently played at a number of film festivals. *The Last Mogul* was distributed by ThinkFilms.

Suzan Sherman was awarded first place in the David Dornstein Memorial Creative Writing Contest for Young Adult Writers, sponsored by the Coalition for the Advancement of Jewish Education, for a short story on a Jewish theme. Sherman received a cash prize for her story, "My Hidden Children."

Nancy Rubin Stuart was named a 2005 William Randolph Hearst Fellow at the American Antiquarian Society.

James Alexander Thom's novel, *Follow the River*, was the first book chosen for the West Virginia Library Commission and Center for the Book's inaugural "One Book, One West Virginia" statewide book discussion program.

On August 22, 2005, the Federation of Women Veterans in Finland awarded **June Willenz** the Cross of Merit, in recognition of her outstanding activity and leadership in the World Veterans Federation. Willenz has served as chairperson of the WVF's Standing Committee on Women since 1984 and is the author of *Women Veterans: America's Forgotten Heroines* and *Dialogue on the Draft*. ♦

Opening Lines

Continued from page 5

on the Internet and posted a satellite photo of Antarctica and several notes about a bogus archaeological dig—and immediately received a slew of hits and queries. Over the next several months he tinkered further, then launched the polished multichannel site @lantistv, in October 2000. He opened the site to subscribers and soon had more than 40,000. Over the next two years, as the site offered fictional news updates, imaginative background information, and breaking reports on the imaginary dig, @lantistv attracted more than two million users. However, with no major publisher eager to purchase the book on which the site was based, Greanias had to settle for its publication as an e-book through Amazon. When the e-book was released in April 2002, Greanias simply pressed "send"

on a single e-mail advising all his subscribers of its existence. And *Raising Atlantis* rapidly became one of the best-selling e-books of the year.

"You have to understand," Greanias says, "this book was dead, dead, dead. This is a book that was turned down by every publisher twice—and by Simon & Schuster *three times*." Which made it all the more surprising and satisfying when Simon & Schuster, given the sales success of the e-book and in belated response to the manuscript, approached Greanias with a two-book deal. *Raising Atlantis* was published in paperback in August 2005 to brisk sales. The sequel, *The Atlantis Prophecy*, will be published in July 2006.

"Anyone looking at this book would see a novel that landed on the Barnes & Noble bestsellers' list in its very first week," Greanias considers. "But it had taken years and years. That's what no one understands. This book was over and gone. It really was the lost continent of Atlantis. But it just goes to show: You just never know." ♦

BOOKS BY MEMBERS

David A. Adler: *Joe Louis: America's Fighter*; **Karl Albrecht:** *Social Intelligence: The New Science of Success*; **Jonathan Ames:** *I Love You More Than You Know*; **Kathi Appelt:** *Merry Christmas, Merry Crow*;

Kate Banks: *Friends of the Heart: Amici del Cuore*; **Lynne Barasch:** *Ask Albert Einstein*; **Margaret Bechard:** *Spacer and Rat*; **Sheryll Bellman:** *America's Greatest Delis: Recipes and Traditions from Coast to Coast*; *Through the Shopping Glass: A Century of New York Christmas Windows*; **Wendell Berry:** *The Way of Ignorance: and Other Essays*; **Andrew Blauner (Ed.):** *Coach: 25 Writers Reflect on People Who Made a Difference*; **Lenore Blegvad:** *Kitty and Mr. Kipling: Neighbors in Vermont*; **Philana Marie Boles:** *In the Paint; Little Divas*; **Fred Bortz:** *Beyond Jupiter: The Story of Planetary Astronomer Heidi Hammel*; **Kathleen Long Bostrom:** *Finding Calm in the Chaos: Christian Devotions for Busy Women*; *Josie's Gift*; *The Day Scooter Died*; **Marlene Targ Brill:** *Veteran's Day*; *Bronco Charlie and the Pony Express*; *Alzheimer's Disease*; *Lung Cancer*; *Illinois*; **Carolyn Burke:** *Lee Miller: A Life*; **Jeff Byles:** *Rubble: Unearthing the History of Demolition*;

Meg Cabot: *Size 12 Is Not Fat*; **Howard Camner:** *Cheating the Sphinx (Collected Poems)*; **Lori Marie Carlson (Ed.):** *Moccasin Thunder: American Indian Stories for Today*; **Judith Caseley:** *In Style with Grandma Antoinette*; **Jane Chance (Co-Ed.):** *Tolkien and the Invention of Myth*; *Tolkien's Modern Middle Ages*; **Phyllis Chesler:** *The Death of Feminism: What's Next in the Struggle for Women's Freedom*; **Nancy J. Cohen:** *Dead Roots*; **Clifford D. Conner:** *A People's History of Science: Miners, Midwives and "Low Mechanics"*; **Christine Conrad:** *Mademoiselle Benoir*; **Susan Cooper:** *The Magician's Boy*;

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Pat Samples: *Body Odyssey: Lessons from the Bones and Belly*; **Alex Sanchez:** *Rainbow Road*; **Esmeralda Santiago:** *A Doll for Navidades*; **Leda Schubert:** *Here Comes Darrell*; **Donna Seaman:** *Writers on the Air: Conversations About Books*; **Vikram Seth:** *Two Lives*; **Sherry Shahan:** *Cool Cats Counting*; **Margaret Shauers:** *Manhattan Mysteries*; **Dyan Sheldon:** *Planet Janet in Orbit*; **Sidney Sheldon:** *The Other Side of Me: A Memoir*; **Seymour Shubin:** *The Man from Yesterday*; **Joseph Slate:** *What Star Is This?*; **Richard Slotkin:** *Lost Battalions: The Great War and the Crisis of American Nationality*; **Lorraine C. Smith:** *Exploring Content: Reading for Academic Suc-*

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Linda Vieira: *The Mighty Mississippi: The Life and Times of America's Greatest River*;

Walter Wangerin, Jr.: *Jesus: A Novel*; **Richard Watson:** *In the Dark Cave*; **Scott Weidensaul:** *Return to Wild America: A Yearlong Search for the Continent's Natural Soul*; **Robert S. Weiss:** *The Experience of Retirement*; **Martha Wells:** *The Gate of Gods: Book Three of the Fall of Ile-Rien*; **David Wolman:** *A Left-Hand Turn Around the World: Chasing the Mystery and Meaning of All Things Southpaw*; **Nancy Wood:** *How the Tiny People Grew Tall*;

Harriet Ziefert: *Mommy, I Want to Sleep in Your Bed!*; *The Biggest Job of All* ♦

Legal Watch

Continued from page 11

publicity, resulting in an "unchaste" portrayal of her. In response, Simmons made a motion to dismiss the case for failure to state a cause of action.

The Supreme Court denied Simmons's motion to dismiss on the defamation claims, but agreed to dismiss the invasion of privacy claims. The court noted that statements can be libelous if they "tend to expose a person to hatred, contempt or aversion or to induce an evil or unsavory opinion of her in the minds of a substantial number of the community." In this instance, the court noted that featuring old photographs of Ward while Simmons commented on his long history of sexual promiscuity may be reasonably susceptible to a libelous meaning. The court further noted that the repeated use of Ward's photos during the documentary, particularly the "24-hour whore" segment, could lead a reasonable viewer to conclude that Ward regularly made herself available to Simmons for casual sexual encounters, despite the fact that Ward was never mentioned by name or other identifying information, and, as such, the court could not dismiss the libel charge. Likewise, the court found that a reason-

able inference could be drawn from the use of the photos in the documentary that Ward was unchaste, and thus could not dismiss the slander claim.

The court rejected Simmons's defense that a defamatory meaning could not be inferred from the use of the photographs because the "24-hour whore" segment focused on Simmons's conduct only. While the court admitted this section did exclusively discuss Simmons's own sexual promiscuity, it also found that the photographs of Ward gave credence to the inference that she had been part of these promiscuous activities.

The court also rejected Simmons's argument that the complaint should be dismissed because Ward admitted to having a previous romantic relationship with him, which would make the allegedly defamatory references true. The court further noted that while Ward admitted to having a romantic relationship with Simmons, she never confirmed having a sexual relationship with him, which would have to be proved before the truth defense could be invoked.

In regard to the right to privacy claim, the New York statute allows actions for damages to be brought by "any person whose name . . . is used within this state for advertising purposes or for the purposes of trade without the written consent [of such person]." The court noted that a person's name is used for advertising purposes if it appears in a publication that, taken in its entirety, was distributed as an advertise-

ment or solicitation for patronage of a particular product or service. Here the court granted Simmons's motion to dismiss because the use of the Ward photos in the documentary did not constitute a use for advertising or trade purposes.

At this point, Simmons is compelled to answer the complaint and the suit will proceed as to the defamation claims.

—Michael Gross
Staff Attorney

From the President

Continued from page 4

transformed, but as companies struggled to create more attractive e-book technologies, we seemed to have the gift of a little time, at least.

And then along came Google. So far, none of the operations pushing writers' content onto the Internet had had the temerity to simply deny the laws of copyright. But none of them had the ambition, the clout, and the resources of Google. And none of them thought they had as much to lose by acknowledging a comprehensive set of copyright protections. So Google threw the law out the window when it entered into agreements to scan the collections of five major research libraries and make them searchable on the Internet. Two of the libraries, fortunately—the New York Public Library and Oxford's Bodleian Library—were more restrained. They are limiting Google's scanning to books in the public domain, on which copyright protections have expired. Stanford and Harvard have played it close to the vest, though there are reports that Stanford will allow scanning of works still protected by copyright. The University of Michigan is the lone exception in forthrightly declaring that it would allow scanning of books protected by copyright. Not coincidentally, it is also the only one that is state-owned and thus not liable to be sued for damages. The Guild sued Google last September for massive copyright infringement, and a group of publishers followed a month later. We believe the goal of making books searchable online is a good one and would help extend the world's access to knowledge. We also believe that authors have an absolute right to share in the increased value to Google that our content is creating.

And so we move ahead, always trying to discern the future of print amid our many new challenges and opportunities. This letter is my valedictory. I just want

to add that I have never believed so strongly in an organization as I believe in the Authors Guild, and I've never been as proud as when serving an organization that knows exactly what its members need and how to advocate for their well-being. That knowledge will continue after you elect your next president, and so will this Guild's work, and for that we should all be proud and grateful. Thanks for allowing me the opportunity to work for you. ♦

Legal Services Scorecard

From September 21 through December 21, 2005, the Authors Guild Legal Service Department handled 226 legal inquiries. Included were:

- 19 book contract reviews
- 4 agency contract reviews
- 5 reversion of rights inquiries
- 25 inquiries on copyright law, including infringement, registration, duration and fair use
- 18 inquiries regarding securing permissions and privacy releases
- 1 electronic rights query
- 1 First Amendment inquiry
- 153 other inquiries (including literary estates, contract disputes, periodical and multimedia contracts, movie and television options, Internet piracy, liability insurance, finding an agent, and attorney

Letters

Continued from page 2

making a selection, offering suggestions, reading revisions, responding, and editing until the manuscript was finished. We published the book in hardcover; got it reviewed widely and favorably, including in *The New York Times Book Review*, *Chicago Tribune* and *The Philadelphia Inquirer*; and sold the paperback rights to Pocket Books.

Soon thereafter, Oscar won the Rome Prize from the

American Academy and Institute of Arts and Letters—an award that he says changed his life.

It's true that Oscar pitched in and helped us pack up his review copies. We were young then—and so was our publishing house. Persea Books wasn't distributed by W. W. Norton, as it is today, and we didn't have a publicity staff. With the help of a part-time assistant, Michael Braziller and I did everything ourselves. We started Persea in 1975 out of our love of literature, of words, and out of our deep respect for writers. We had endless personal energy to give, if not an advertising budget.

We launched Oscar Hijuelos's first book and his career. We've kept his novel continuously in print—and visible—for 22 years. And Harriet Wasserman, that “newly acquired literary agent” he refers to in the interview? I introduced him to her.

It's understandable when an author leaves one publisher to be better paid by another. What I don't understand is Oscar's bitterness. I'm saddened, too, because we shared an exciting time together and were once friends.

I note that he is “at a loss” about what to advise young writers, “the climate in the publishing world these days being so much less kindly to serious, aspiring writers than it used to be.” The answer is to do what he himself did: try a small press.

Karen Braziller
Co-founder and Editorial Director,
Persea Books, New York, NY

Mr. Hijuelos responds: Ms Braziller is entitled to be proud of Persea, but what she refers to as my ‘bitterness’ involves professional matters that could have been easily resolved, the details of which I will not go into here, out of respect for their privacy and reputation.

I was very sorry to see Oscar Hijuelos's experience with Persea Books and Karen Braziller summed up as “low advances and disadvantageous royalties,” as well as “zero promotion” in The Authors Guild Interview, Fall 2005 issue. By definition, a small press doesn't have the money or clout of a major house; but there are other compensations. They can risk publishing an unknown author and they can go into territory where a major publisher will not go. Mr. Hijuelos doesn't mention if he submitted his first novel, *Our House in the Last World*, to other publishers, and what kind of response he received. He says, toward the end of his interview, that “having been around when few Hispanics were being published in the mainstream press . . . the mainstream houses are (now) receptive to

young Latino authors in a way unheard of 20 years before.” Perhaps it's not surprising that in 1980, only a small press had the courage to publish an unknown Latino author of obvious literary gifts.

Like Mr. Hijuelos, I have published with major houses (Knopf, Hyperion, Scholastic) as well as Persea Books. Unlike Mr. Hijuelos, I regard my publishing experience with Persea as one of my most satisfying. Yes, the advances were low. I compiled four anthologies for Persea and the advance for each covered a fraction of my time and work. My contract, however, was fair and my royalty rates were competitive. Best of all, I received the kind of editorial attention which, as Mr. Hijuelos observes, has almost disappeared today—“The kind of tender loving care that used to exist, when one would spend hours, if not days, going over manuscripts with editors . . .” Karen Braziller's “tender loving care” to the anthologies we worked on together paid off. The books received honors in the young adult field, have been widely adopted in classrooms, are in print 12 years later, and still bring in royalties.

My experience with Knopf Books for Young Readers provides an interesting contrast. Although I had the privilege of working with an outstanding editor, of the five books I published with them, four almost immediately went out of print. Three of the books had poor initial sales. Knopf backed away from the controversial nature of one novel, in spite of excellent reviews and recognition from teachers and librarians. It, too, rapidly went out of print, only to be brought back to life years later by Persea.

I was most disturbed at Mr. Hijuelos's statement that “since no agent was involved, and as my knowledge of the business was very limited, it (publishing with Persea) seemed a perfectly reasonable route to go.” He implies that Persea and Karen Braziller took advantage of his inexperience. During years of working with Karen Braziller, I've never known her to be anything but fair and honest in her dealings with writers, as well as devoted to a high standard of literary excellence. She has published books that would never otherwise have seen the light of day. I am very grateful to her and proud of my association with Persea Books. She's an example of integrity in publishing at a time when, as Mr. Hijuelos rightly laments, “the emphasis seems to have shifted gradually to a less literary and more commercial, market-oriented way of publishing.” It's a shame that Mr. Hijuelos has chosen to disparage the house that took a chance on him when he was young and unknown.

Anne Mazer
Ithaca, NY

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I can relate to the letter in the Fall 2005 Bulletin written by Chester Aaron, he nearing the age of 83 and I having already passed 85. Yes, I've shared his experience of doors seeming to close at main-line New York publishers and agents. I must say, however, that I have no grievance or complaint.

For one thing, those folks in New York are powered mostly by money. After all, that is what makes them "main line." On the other hand, publishers of quality are located in many other places with an entirely different set of values—which I find more compatible with the perspectives of age, when money doesn't mean so much anymore.

Michael Frome
Port Washington, WI

In your Summer 2005 issue, in the panel on publicity (p. 31), Beth Dickey says that a quarter-page ad in the Atlanta Journal Constitution was \$75,000.

That was such an absurd number, so unrealistic, that I decided to call the AJC and ask how much a quarter-page book ad costs.

I was told that weekdays it's under \$11,000, and weekends it's \$14,000. And that, mind you, is list price. All kinds of deals are available.

Most books don't get a quarter-page ad anywhere anyway, so the entire mention was beside the point, and misleading too.

Curt Leviant
Edison, NJ

Good sleuthing. Wish we'd done it first. Ed.

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