RULES, BRITTANIA!:
The Long Reach of Commonwealth Libel Laws
Roy Blount's Semi-rural Take on Urban Dictionary
Reading for Points: Schools Embrace Accelerated Reader
The Authors Guild Interview: Jennifer Egan
Thanks in large part to the Authors Guild's advice and guidance, I was able to get my copyright returned from one publisher, and my second book, Lives Across Time, a study of 76 children from birth to 30 years of age, was published last December.

After attending one of your seminars in San Francisco, and weighing the advantages and disadvantages of an agent and trade publisher versus Xlibris, I went the latter route. My next book, Reluctant Warriors: Israelis Suspended Between Rome and Jerusalem, about soldiers in the Intifada, will be published by Xlibris. I will let you know how the new book fares.

Nathan Szaflenber
Berkeley, CA

I am working on a book that involves much research, to be titled Roanoke River: Mother of America. So many of my footnote entries have been attributed to www.

The Guild encourages members to write to the Bulletin. Letters should be sent to "Letters to the Editor," The Authors Guild, 31 East 32nd Street, 7th Floor, New York, NY 10016. They can also be faxed to (212) 364-5363, 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.

Internet sites that I have, in the back of the book, following the bibliography, made a section titled "Internetography." Have I coined a new word? It seems logical to me. The prefix biblio means from books; computer Internet sites are not books. As far as I know, the various style books have not addressed this issue. It seems to me that the Authors Guild would be a logical forum to address this question. Comments, please.

Mathew J. Bowyer
Roanoke, VA

In One on One: A Conversation with William Zinsser [Spring 2006], you mentioned that we have been repeatedly lied to, and no one cares. Unfortunately that is true, but not the complete truth. People do not realize how they are being lied to, and they are not being informed. Considering all the writers who know about

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When a publisher hits with a subject that sells—diet book, Jesus, chick lit, painful memoirs—the competition piles on. The latest hot idea is an anthology made up of first-person confessional essays by writers who tackle intimate topics and let it all hang out.


Other titles include Maybe Baby: 28 Writers Tell the Truth About Skepticism, Infertility, Baby Lust, Childlessness, Ambivalence and How They Made the Biggest Decision of Their Lives; Roar Softly and Carry a Great Lipstick: 28 Women Writers on Life, Sex and Survival; Because I Said So: 33 Mothers Write about Children, Sex, Men, Aging, Faith, Race and Themselves.

Don't those titles look like the cover blurbs on most women's magazines these days?

As for the opposite sex, Sally Wofford-Girand, an agent, told The Times, "Most of the ones aimed at men pretty much fail miserably."

Does this indicate that there really is a difference between the sexes?

GET BUSY: Alan Bennett—British author, playwright and actor—has published a memoir, Untold Stories. He says, "A writer is only a writer when writing. The rest is marking time. And your published books and plays don't count; they only prove that you were a writer yesterday but not today, not now."

DUO: Douglas Preston and Lincoln Child are authors of the best-selling Book of the Dead.

PW reported that the two men met when Preston, publications manager at the American Museum of Natural History, was writing Dinosaurs in the Attic. Child was his editor at St. Martin's.

Preston gave Child a midnight tour of the museum,

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Overheard

"In the U.K., everything's presumed to be false. So if you write something down, we always presume it's a lie unless you can prove it to the contrary."

—Mark Stephens, Authors Guild Foundation Symposium on Libel Law in the British Commonwealth September 25, 2006

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About the Cover

Jordan Worley is an illustrator and comic book artist who is currently studying illustration at Parsons.
From the President

BY ROY BLOUNT JR.

When I sat down to write this, "Today's Word," which I receive daily from Wordsmith.org, was auctor-ial: "pertaining to an author;" from the Latin for author, auctor, from augere (to create).

The "Urban Word of the Day," which I receive daily from Urbandictionary.com, was "Third Joke." Since this is my third presidential column, I thought I'd better click on that too:

A "Third Joke" is when someone says something funny, someone else feels the need to follow it with something that may or may not also be funny, and then a third person, trying to keep up, follows with a third quip, which by this point is most definitely no longer funny.

It is important for others at this point to call "Third Joke" out loud to point out the third individual's social error, to embarrass them for killing the funny.

A truly unskilled individual can Third Joke on the second quip.

Doesn't apply, because I am only one person. Furthermore, as an author I travel in a highly skilled crowd, who can often push a joke to the third level without running it into the ground. Furthermore, I know how many r's there are in embarrass. (At the moment I do, having checked in an actual book-bound dictionary. Embarrass, I mean embarrass, is one of the three or four common words I have to look up every time.)

Old and semi-rural though I be, Urbandictionary.com doesn't intimidate me. ("Rap on, rap on, drop a 16 on us, Pres-daddy," you may be shouting, but I know my limitations. That first line is an inappropriately heroic singlet, and the second doesn't hop.) In fact the last time I looked, my definition of Alligator arm was number one, with five thumbs up and none down. My sports-related definition of tweak has attracted no thumbs one way or the other. In fact it looks a little forlorn in 16th place amidst various drug-, computer- or sex-related alternatives. But I know it's right because the example I cite is from The New York Times.

Urbandictionary.com is not like the Times. It specializes in cutting-edge slang terms that you aren't likely to find in print media. Anybody in the world can submit an entry, and if it isn't rejected by the latitudinarian editors (you can volunteer to be one of those), it will appear on the site. There, anybody can vote for or against it by clicking on the appropriate thumb-icon, and it will be ranked according to its approval/disapproval index to date. The myriad entries are alphabetical and browsable in various ways, so if you hear your children use a term that they picked up somewhere (in the gutter, perhaps, or on Urban-}

"Rap on, rap on, drop a 16 on us, Pres-daddy," you may be shouting, but I know my limitations.

dictionary.com), you should be able to find it. Whether you will have the nerve, then, to discuss it with them is another matter. Many of the sexual practices defined on Urbandictionary.com are what I would call nasty. I like to think they are also largely on the part of the young male author. The definitions of political terms and figures are often scurrilous, but rationality tends to rise in the ratings—more so maybe than in actual political campaigns. The last time I looked both liberal and conservative were defined sensibly, if defensively, atop lots of stupid flaming. The entry on America is interesting in this regard.

But let us focus on our professional interests. Here's what you see when you go to author:

1. author [23 up, 3 down]
   n) The writer, one who writes. The source.
   "I am the author of this definition."

This may strike you as a tad self-referential. But the author, known to Urbandictionary.com as Kung-fu Jesus, follows with a shout-out to Dickens as the author of Oliver Twist. And if you click on Kung-fu Jesus himself, you find a polymath. He (I assume maleness from the surname) is credited with 213 number-one definitions and 999 others, including knock over, bourgeoise, slap and tickle, e-gazump, ja-fake-an ("person who pretends to be a Jamaican"), could of, edutainment, peasan, towel lifting, birds and the bees, moon, politically incorrect, hippo farmer, petit morte (he might want to check

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Opening Lines

The Practical Writer

BY NICHOLAS WEINSTOCK

Among the many possible jobs to which sensible grown-ups devote their lives, writing a book has to be among the most romantic, ambitious, and—all things considered—self-indulgent. What, other than wild ego, could explain the impulse to labor for years on a potentially unsalable item whose price (even it sells, when divided among those years) is a pittance? How, other than hubris, to justify the creation of an illogical media product that costs twice as much as movies, that requires consumers to physically carry it around for weeks, and that relies on the phenomenon of total strangers investing their faith and effort in you? For many writers, writing a book is a luxury and a leap of faith that they feel they can’t afford, and as a result remains an ambition unfulfilled.

Jenny Allen spent three decades being practical. The daughter of a lifelong executive at Reader’s Digest, she wrote her first article when she was 17 years old (for—right on time—Seventeen magazine) and has been diligently working her way through the magazine world ever since. “Busting out of the work-for-hire thing is extremely hard for me,” Allen, now 50, reflects. “I’m very, very reticent when it comes to not being a good girl, and not doing work I’m getting paid for. Basically, I have an endless masochistic ability to do work that’s not fun.”

Armed with this outlook, Allen marched pragmatically forward, and ever sideways, from magazine to magazine. She was an intern at BusinessWeek, an editor at Mademoiselle, a reporter for Life. She helped launch the New York Daily News’ famous but short-lived afternoon newspaper, wrote columns for The New York Times, penned profiles for New York Magazine. In 1983 she married Pulitzer Prize-winning cartoonist and author Jules Feiffer, had a daughter, and added a column in Child magazine to her repertoire. A few years later, another daughter appeared, and any notions she might have entertained about eventually writing a book went out the window.

“A book sounded hard,” she says. “And long. And like a lot of pages. Magazine writing allowed me to spend more time ‘running the corporation’ here—being with my kids and around my family. But the main thing, for me, was always the question of making things up. Giving yourself the permission to make things up: that’s hard for me. I never really thought I had that permission.”

However, somewhere between writing special editions of Life, traveling to research profiles on women for RealSimple, and redrafting pieces for Good Housekeeping, Allen started to act on her creative impulses. She began performing stand-up comedy, a pursuit that she had abandoned shortly after graduating from Yale and joining a comedy troupe. She began to have ideas for fiction pieces, and even cowrote a screenplay, but her day-to-day writing continued to be consistently salaried and manageably short-term.

And for the first time in her life, it began to wear on her.

“The thing is that working for magazines, although it may not necessarily seem like it, is ridiculously labor-intensive,” Allen reflects. The appeal of magazine work is its efficiency and productivity, yet each sensible-sounding assignment almost inevitably sprawls into an impractical amount of work.

“I’ll give you my latest example,” Allen recounts. “A few weeks ago, a magazine—let’s just call it a start-up magazine for women—called me to ask if I’d write a personal essay about what I like to do in January and February for their winter issue. What they wanted, they said, was my unique voice, my personal angle. So I took the assignment and wrote something that I actually liked: something idiosyncratic, something personal. And they e-mailed me right away and said, ‘We love it! We absolutely love it!’ Two weeks later, they asked me if I could take another pass at it. That’s the new expression: the old one used to be ‘run it through the typewriter again.’ They said, ‘The idea we have here is to make the piece a bit less personal: less what you like to do in January and Feb, and more suggestions for what others might like to do.’ And that’s how it goes with magazines. Before you know it, you’ve spent so much time on doing and redoing the piece that the money’s gone, the rest of your life is gone, and you have this little piece that’s not quite what you

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Off-List Books Score No Points with Students

BY DEBORAH J. LIGHTFOOT

"I bought this book for my daughter, but since it wasn’t on the AR book list at school, she never got around to reading it."

*Magyk: Septimus Heap, Book One,* by Angie Sage, was the book not read. An online reviewer posted that comment in 2005, shortly after *Magyk’s* publication.

The reviewer’s remark troubled me. It was the second time I had heard the mysterious “AR book list” blamed for a young reader’s rejection of a book.

The first instance involved work of my own. While visiting a clutch of elementary schools, I asked whether their libraries had (or would acquire) my book *Trail Fever,* a biography for readers nine and up. It complements fourth-grade history studies—one of the main reasons I wrote it.

“I’ll check,” said the librarian. Then, with an apologetic shake of her head: “It’s not on the AR list, so we won’t buy it for our library. The students don’t read books that aren’t AR books.” She added: “A lot of authors don’t know that.”

Being among the ignorant, I set out to uncover the all-powerful AR list. “AR,” I learned, is Accelerated Reader, a computer-based system for tracking reading in schools. It’s owned by Renaissance Learning, a company that sells assessment and monitoring programs for pre-K through 12th grade.

The company calls AR “reading management software.” Under the program, a student reads a book, then sits down at a computer to take a quiz about it. Correct answers earn points that the student redeems for rewards or prizes such as pencils, pizzas, candy bars, T-shirts, or special privileges.

AR’s website (www.renlearn.com/ar) says it offers 100,000 quizzes on library books and textbooks. Many thousands of books, however—classics and new titles—are not “AR books.” And there’s the rub. Students don’t earn points for reading non-AR books. They are motivated to reject the non-listed, thus passing up books they shouldn’t miss.

The AR program may further restrict a child’s reading through its system of awarding points. Chapter books earn more points than picture books; long novels get you oodles of points. The harder the book, the more points. To build their totals, students may choose books to read solely because of the number of points the selection is worth—never mind whether it’s the right book or even a readable book for that child.

AR has its critics. At www.frankserafini.com, Dr. Frank Serafini of the University of Nevada–Las Vegas argues against reading as an act “reduced to a thing students do to collect points.” He asks: “Why should we allow a commercial program to decide what books

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Deborah J. Lightfoot is the author of three books of history and biography, including *LH7 Ranch* (under the byline Deborah Lightfoot Sizemore), and has been a member of the Authors Guild since 1995. Her first young-adult novel, *Waterspell,* is now out with her agent. It’s long enough to score piles of AR points. Follow its fate at www.djilightfoot.com.

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From *Knuffle Bunny* to *Rabbit, Run*: An Accelerated Reader Sampler

The Accelerated Reader program offers quizzes and assigns points to more than 100,000 titles, including these:

*From Caterpillar to Butterfly* by Deborah Heiligman; 32 pages; 0.5 points

*Knuffle Bunny* by Mo Willems; 36 pages; 0.5 points

*William Steig by Jill C. Wheeler; 24 pages; 0.5 points

*Caleb’s Story* by Patricia MacLachlan; 116 pages; 2 points

*Mystery Ranch* by Gertrude Chandler Warner; 127 pages; 2 points

*Rabbit, Run* by John Updike; 320 pages; 16 points

*The House of the Seven Gables* by Nathaniel Hawthorne; 274 pages; 22 points

*Little Women* by Louisa May Alcott; 536 pages; 33 points
Some school libraries refuse to buy books not listed with Accelerated Reader.

"With the increase in usage and demand, the library now contains a larger and newer book collection."

With 60,000 schools—half the K–12 schools in the United States—embracing AR, writers may be more inclined to participate now and take sides later. I’m favoring the Serafini camp. “Children end up rushing through books,” he warns, “neglecting the aesthetic experience of reading, to get to the computer test to score points.” Agree though I do, I e-mailed Renaissance Learning (answers@renlearn.com) to ask how to get my book onto their list.

They instructed me to send two copies to the Title Selection Coordinator, Renaissance Learning, Inc., P.O. Box 8036, Wisconsin Rapids, WI 54494, with a cover letter describing the book’s awards, positive reviews, and distribution (whether it is available through major school library suppliers).

I complied, and recently (after six months) Trail Fever got its very own AR quiz, No. 102632. I checked the list for Magyk, too, and found that AR has caught up with the book’s popularity: Magyk is quiz No. 86518. Because Magyk has 10 times more words than my brief chapter book, it awards readers an attractive 18 points, against a mere 2 for Trail Fever. (The Hello, Goodbye WINDOW, like most picture books, rates half a point, and near the other end of the scale Moby Dick gets you a whopping 42 credits. The curious may search for their own titles at www.renlearn.com/store/quiz_home.asp.)

Will the daughter read Magyk, I wonder, now that her efforts will earn her pencils and candy? Can my easy two-point book compete with the more lucrative mega-tomes? Most of all, I wonder, whatever happened to “Reading is own reward?”

Virtual Content Creators Protect Their Fake Works

Can you steal something that exists only in a fake digital environment? Inhabitants of Second Life, a popular online virtual world, think so.

Within Second Life, users create their own virtual worlds and personas, called avatars, complete with spiffy wardrobes, cars, and houses full of possessions. Goods are paid for with a currency called Linden dollars, named after game creator Linden Lab. Over time, certain virtual game components have become so valuable that a currency exchange market emerged—gamers pay real dollars for the Linden dollars they need to trick out their avatars. Second Life has spawned its own creative class, which provide the masses with the gizmos and cultural artifacts they crave for their virtual spaces.

Recently, however, some users on Second Life have exploited a new open-source tool called Copybot to copy these commercially produced avatars and virtual objects. That didn’t sit well with a number of real-life vendors of fake creations, who have threatened to file complaints under the Digital Millennium Copyright Act. Second Life provides users with information on how to file such claims, and its instructions include a solicitous reminder that there is, indeed, a real world out there: “Your copyright in an item is determined in the real world, by real-world processes including the DMCA.”

In the short term, Linden is attempting to deal with the problem by shutting down the accounts of offenders. Longer term, however, Second Life wants to keep its dispute resolution system inside its virtual boundaries with a series of covenants that will lay out the norms and rules for participants—rules that might differ from real world copyright principles, and that it hopes will protect creators without shutting down the derivative nature of the gamers’ creative process. In that sense, the virtual world could lead the way for new licensing models in the real world.

But don’t hold your breath. Second Lifers’ ability to buy and sell digital goods with real, hard dollars probably means that rights disputes will sometimes spill out of the licenses and agreements that contain them. When reality-based money and livelihoods are involved, real-life courts and old-fashioned copyright law give content owners the best protection any kind of dollars can buy.

—David Curle
The Authors Guild Interview: JENNIFER EGAN

BY ISABEL HOWE

Jennifer Egan is the author of the novels Look At Me, The Invisible Circus and The Keep, as well as the collection Emerald City and Other Stories. She has written several cover stories and features for The New York Times Magazine and her short stories have been published in Zoetrope, Tin House and GQ. She was elected to the Authors Guild Council in February 2006.

Q: You've written three novels and a collection of short stories, articles for The New York Times Magazine, GQ and Salon.com, and your stories have appeared in literary magazines. Did you plan on working in all of these forms or did it just happen?

EGAN: Well, the stories and novels feel closely linked to me; I find stories a great, low-risk way to explore technical issues that later come into play in my novels. For example, I'd worked several times with first-person male points of view in stories, which I think made it easier to write from a double male point of view in The Keep. Sometimes the stories really bomb, and then I've only lost a couple of months. The journalism is more of a surprise, though when I was younger I fantasized about finding a way to quietly enter other people's lives and see what was going on—in other words, be nosy legitimately. I loved the idea of exiting entirely from my own world and entering a different one that I knew nothing about. But practically, the journalism came about because I was trying to research the New York modeling scene in order to write Look at Me, and I was getting no access whatsoever—modeling agencies didn't give a hoot about opening their doors to help out some unknown novelist. A friend at The New York Times Magazine asked me if I'd be interested in writing about models, and I wondered if saying I was from the Times might prompt a slightly different reaction from these agencies. And wouldn't you know, it did.

I don't consider myself a "real" journalist because I rarely come up with my own ideas and I just don't do it enough to have earned that title. But I love doing it, and it adds something to my life that wouldn't be there otherwise.

Q: Is it difficult to transition from one form to another, or a relief?

EGAN: I don't find it difficult, because the three are so different. I've worked on very few short stories in recent years, which bothers me. I worry that my choices are being affected by the fact that there are few markets for stories, magazine-wise, and little enthusiasm for them in the publishing world. On the other hand, I now have two little kids and can't do as many things simultaneously as I used to. As I'm doing the journalism, I often resent it and feel pessimistic about whether it will work out, and whether I will have ended up wasting all the time I've taken away from my fiction. But in retrospect I'm always glad I did it, and grateful for the experiences and thoughts my assignments leave me with. There's no question that where I feel most at home is in the middle of a novel, though, with very little else going on. That is the richest and most comfortable state for me.

Q: Do you consider your nonfiction work a way to support your fiction?

EGAN: Yes, both in the obvious financial sense and also in a much deeper sense: The nonfiction gets me out into the world, into milieux I would never otherwise experience, and that exposure very often winds up playing a critical role in my fiction. For example, in the past few years I've worked on a few stories for The New York Times Magazine that ended up being about the deep impact of the Internet on people's lives and ways of thinking. Not being much of an Internet person myself (I'm part of the last generation of people that grew up without PCs), this was fascinating to me. One story was about the secret online lives of closeted gay teenagers, and the other was about Internet dating and the ways in which it's changed the rituals and mores of courtship. The modes of thought those stories prompted in me ended up being critical to The Keep, which is a gothic novel that explores the question of whether technology has altered our notion of "reality."

Q: Can you talk a bit about your working methods? When you are writing an article, for instance, do you suspend your fiction work?

EGAN: Yes, I pretty much do one thing at a time right now. I work about three days a week at this point, because I feel strongly that with such a flexible job, I have the luxury of spending more time with my kids than I would if I worked for a corporation, and I want to take advantage of that while they're young, for all our sakes. My working methods are completely different...
for fiction and nonfiction. With fiction, I do a very fast first draft by hand, followed by endless revisions—also in longhand—which I make on the typed pages, and then enter my corrections. I never write a word of fiction on a word processor, it doesn’t work for me. I seem to need to not know quite what I’m doing as I write, and that effect is lost if I’m staring at typed words in front of me. With nonfiction, it’s almost exactly the opposite: I do months of research, reach a point where I’m boiling over with a sense of the shape and movement of the story, and then I sit down at the computer and write it. I usually don’t do many drafts of my journalism pieces, and I write almost nothing by hand, just tiny corrections once the story gets into galleys.

Q: What got you interested in the subject of your recent cover story for The New York Times Magazine about single women who choose to have children through artificial insemination?

EGAN: I know a few people who have done it, but, to tell you the truth, I wasn’t all that interested in that story when it was first presented to me, because it felt familiar and very much of my world. What got me interested were some aspects of the story I didn’t think of at first: the fact that scores of people have children who are half-siblings of each other; the fact that women are giving each other embryos; and the huge network that exists among many of these women, which has helped them work around the fact that there aren’t men in their lives, or at least men willing to be fathers. In other words, it was the strangeness of the story that caught my attention, the futuristic aspect of it, and the role of technology.

Q: Can you describe one or two unusual experiences you’ve had researching a story?

EGAN: In a way, it’s all unusual. I seem to have a certain chameleon-like quality that makes me gradually efface the more obtrusive aspects of my identity as I work on a story. I don’t mean this literally, but I feel like some part of me forgets who I am and what my own life consists of as I do my research. For example, when I wrote about young conservative Catholic seminarians planning to become priests, and spent a fair amount of time at a seminary surrounded by these men, someone pointed out that I was essentially dressed in clerical attire: black pants, a V-necked black sweater and a white T-shirt underneath. I’d been completely unaware of making those choices.

Likewise, when I worked on a story about homeless families in New York, I became pretty worn down by the process of spending hours standing in the winter cold outside the Emergency Assistance Unit, interviewing subjects and their ill, stressed children. I had a little boy of my own whom I wasn’t seeing enough of, I got sick, I lost my hat and scarf, and the day finally came when two different people asked me if I was a “client”—meaning another homeless person taking a break from the endless waiting inside the EAU. And that kind of thing seems to happen a lot.

Q: Your nonfiction essay subjects range from online dating to homeless teens. Do you find material for your fiction while working on these stories?

EGAN: Absolutely. The connection begins with my accepting a story assignment in the first place. Like I said, I don’t come up with my own ideas, unfortunately, but I need to feel a certain deep interest and excitement before I’ll accept an assignment. And I think that the excitement comes from a sense that I’m interested in exploring a topic for some other reason: because I think it will reveal things to me that feel urgent in some way. And that urgency usually connects to my fictional interests, and the material finds its way in there somehow.

Q: Have you ever had doubts about an article you agreed to write? Or found yourself in the middle of a novel asking, “What am I doing”?

EGAN: What you’ve just described is my almost constant state of mind, whether I’m writing fiction or nonfiction. I never really know what I’m doing. When I work on nonfiction, I’m plagued with a sense that I’m not getting the “real” story, that it’s just around the corner or out of sight; that my subjects or approach are wrong, and that I’m wasting time that should be spent on writing fiction. There’s a neurotic moment I often reach very near the end of my research when I suddenly feel that I have nothing; that my 30 to 50 hours of taped interviews are the wrong ones, and that

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In July, a federal district court in Florida granted the plaintiffs' motion for a preliminary injunction to prevent the Miami-Dade County Public School District from removing a children’s book about Cuba (and the rest of the series of which it is a part) from the shelves of the district’s school libraries. The decision affirmed the principle that deviation from a school district’s normal review policies is evidence that a governing board’s motives for removal are inappropriately political and may violate First Amendment protections.

The book, *Vamos a Cuba, or A Visit to Cuba* in the English language edition, is part of the “A Visit To” series of picture books designed to introduce four- to eight-year old readers to the land, people and culture of 20 countries.

The dispute began on April 4, 2006, when the parent of a student attending an elementary school in the district complained that the Cuba book should be removed from the entire district for portraying “a life in Cuba that does not exist.” Subjects covered in the book include terrain, landmarks, homes, cuisine, clothing, work, school, transportation, etc. The series follows the same basic formula for each book in the series.

The dispute moved through the school review process as follows:

- A School Materials Review Committee (SMRC) comprised of teachers, parents and librarians evaluated the book and eventually found it to be “scrupulously apolitical” and developmentally appropriate for the targeted age group. It voted seven to one to retain the book.
- The school board then considered but rejected a proposal to set aside the normal process for reviewing a book and remove it immediately. The board’s legal counsel had advised against bypassing the normal review process.
- Upon the complaining parent’s appeal of the SMRC decision to retain the book, a district-wide reviewing body considered the matter and decided to retain the book and series with no restrictions.

The superintendent affirmed the committee decision, but invited the complaining parent to appeal the matter to the school board, which he did.

- The school board’s attorney then issued a memorandum to the school board detailing the remaining steps in the appellate process, in which she warned that deviating from the district committee’s decision, given its extensive analysis and deliberation of the matter “will expose the Board to liability.” Notwithstanding this advice, at its June 14 meeting, the school board issued a final order to remove the book and entire series from every school library in the district, which was carried out immediately.

The Miami chapter of the ACLU and the Miami-Dade County Student Government Association filed an emergency motion for a temporary restraining order against the school board to prevent it from pursuing its final order.

On July 24, U.S. District Court Judge Alan S. Gold considered the plaintiffs’ motion. In deciding the merits of the complaint, the court relied on the authority and interpretation of a key Supreme Court ruling concerning First Amendment protection in public schools.

A decision specifically addressing the First Amendment implications of removing books from school libraries found a sharply divided court in Board of Education v. Pico, 457 U.S. 853 (1982). Justice Brennan’s opinion in Pico raised concerns that students’ First Amendment rights were “directly and sharply implicated” by the removal of books from school libraries, but his view represented a plurality rather than a majority of the justices, and as such was not binding precedent. Nevertheless, Judge Gold cited Justice Brennan’s recognition that school officials may not exercise discretion to remove books from library shelves “simply because they dislike the ideas contained in those books and seek by their removal to preclude what shall be orthodox in politics, nationalism, religion or other matters of opinion.”

Without case precedent in the 11th circuit interpreting the Pico ruling, Judge Gold looked to analogous rulings in the 5th, 3rd and 9th circuits. The survey revealed an adherence to Justice Brennan’s position that irregularity in procedures “may substantiate the existence of illegitimate motives” for removing books. Judge Gold saw such irregularity in the Miami-Dade County school board’s reversal (without addressing the substance) of its district committee’s findings; in the board’s disregard of its own legal counsel, and
most important in its decision to remove the book, and series, from the entire district.

In granting the plaintiffs’ request for injunctive relief, the court effectively ordered the school board to restore all of the books to the library shelves. In his summary, the judge cited a comment made during the public debates: “I fear we may become that which we constantly protest against . . . .” He also denied the contention that a court order amounted to “meddling with the affairs of a local school board,” asserting that “. . . it is the sworn obligation of this Court to preserve and protect [constitutional] rights from abridgement.”

—John Merchant
Legal Intern

**Trademark Treachery**

*Automotive Gold Inc. v. Volkswagen of America, Inc.*  
*U.S. Court of Appeals for the Ninth Circuit*

A federal appeals court decision clarified earlier decisions in holding that a “doctrine of aesthetic functionality,” which serves as a defense to trademark infringement, does not apply to the appropriation of company logotypes.

For more than 10 years, Automotive Gold Inc. had produced and sold automobile accessories, such as key chains and license plate covers, which bore the trademarks of various car manufacturers. While car manufacturers like Cadillac, Ford and Honda granted Auto Gold a license to produce the accessories bearing their trademarks, Volkswagen and Audi did not. Nonetheless, Auto Gold began featuring the trademarks of Volkswagen and Audi on their key chains and license plate covers in 1994 and 1997, respectively.

The U.S. District Court for the District of Arizona granted partial summary judgment in favor of Auto Gold after concluding that the doctrine of “aesthetic functionality” protected its use of both the Volkswagen and Audi registered trademarks. The doctrine is based on the idea that some visible design elements can be essential to the functionality of a product, and it would be unfair for trademark considerations to prevent competitors from adopting the same design elements, for example, a unique two-spring design for a traffic sign that is identified with its producer, but which competitors might want to adopt because it is essential to the function of the product. In this case, Auto Gold had argued that consumers simply liked the Volkswagen and Audi logos, without necessarily identifying them as coming from those companies; the argument was thus that the logos themselves were functional elements of the product and not protectable by trademark law.

On appeal, the U.S. Appeals Court reversed the decision of the district court. It concluded that the use of the logos by Auto Gold was not a functional feature within the meaning of the aesthetic functionality doctrine, and that the defense did not apply. It further agreed with Volkswagen’s and Audi’s counterclaims that the use of the logos by Auto Gold did indeed constitute trademark infringement, under a “likelihood of confusion” test. It held that the use of the logos was clearly intended to associate the products with the companies behind the logo, and that Auto Gold’s use of the logos without permission was thus infringement.

The court noted, however, that the case must be remanded for consideration of Auto Gold’s defenses, including a “First Sale” defense.

—Michael Gross
Staff Attorney

**Internet Celebrity Cleared on Defamation Charges**

*Anthony Dimeo III v. Tucker Max*  
*U.S. District Court, Eastern District of Pennsylvania*

Best-selling author and Internet blogger Tucker Max was recently sued for defamation by Anthony Dimeo, owner of Renamity, a publicity firm that describes itself as specializing in “VIP launch events and special events production.” On New Year’s Eve 2005, Renamity organized and hosted a New Year’s Eve party at Le Jardin, a restaurant located in the Philadelphia Art Alliance gallery. The price of admission was $100 a person, and included complimentary food and a open bar. Three hundred and twenty-five guests were expected to attend the four-hour affair. On the night of the event, however, twice as many people showed up as were expected. Party attendees became unruly when the alcohol and food ran out well before midnight, and police were called to disperse the angry crowd. The debacle made local news headlines and was discussed on a message board thread on tuckermax.com, a website owned and operated by Tucker Max. Several of the comments ridiculed Anthony Dimeo, the promoter, or expressed outright animosity toward him.

On March 10, 2006, Dimeo sued Max in Pennsylvania state court for defamation as well as for violating federal statutes regarding obscene or harassing
CENSORSHIP WATCH

Novelist Acquitted on Charge of Insulting Turkishness. On September 21, a Turkish court acquitted Turkish novelist Elif Shafak on charges of insulting Turkish national identity. Shafak’s novel, The Bastard of Istanbul, features Armenian characters who use phrases such as “Turkish butchers” and “genocide” and “slaughtered like sheep” in discussing the civil war between Armenians and Turks, an aggression sparked by the Russian invasion of the Ottoman Empire during World War I. Shafak, an assistant professor at the University of Arizona who gave birth to her first child only days before the trial, skipped the proceedings. She could have been sentenced to three years in jail. Last year, similar charges against novelist Orhan Pamuk were dropped.

—Anita Fore

Blog This! A Florida judge has ruled that statements posted to an ex-wife’s poison pen blog about her former husband amount to cyberstalking and on September 7 issued an order that the blog—http://rhoad warrior.blogspot.com—be taken down. The blogger, Kristen Rhoad, portrays her ex, Phil Haberman, as a cheater, an abuser and a malingerer. Others have wholeheartedly agreed. An article in the Dallas Observer gave him the nickname “G.I. Jerk” and the POW Network and former military coworkers have fingered him as a con artist. His allegedly fraudulent activities are the subject of widespread public discussion in cyberspace. Nevertheless, the Florida court declared that Rhoad’s blog—only one hit in the thousands that appear in an Internet search of the name “phil haberman” in combination with the words “fraud” or “liar” or “con”—meets the definition of cyberstalking. That wrongdoing is defined in Florida as “engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.” Although Rhoad is a California resident, Haberman was able to sue her in a Florida court. To date, Rhoad has refused to take down the blog and claims Florida authorities have threatened her with extradition and contempt of court charges.

—A. F.

Cross Out. NBC plans to air Madonna’s latest concert special during November sweeps, but has yet to announce whether it will edit out a controversial number during which the pop star hangs from a mirrored cross in a mock crucifixion. The program features select numbers from Madonna’s most recent tour, Confessions, which drew fire in Germany when officials decided to monitor the show. The cross is used as a set piece during her performance of her 1986 hit “Live To Tell.”

—A. F.

Prosecutor Backs Off MySpace Mom. Perhaps feeling the heat from media attention, a California prosecutor has abandoned his intention to ask a trial judge to restrict content on a MySpace.com website page created and maintained by the mother of an alleged murderer. During a September 15 court proceeding, Deputy District Attorney Amilcar “Butch” Ford told the court that he did not plan to file a motion to censor content on the MySpace page Laura Rangel created to support her daughter, 23-year old Laura Medina, and argue their side of the case.

The case alleges that in June 2004, Laura Medina, supposedly enraged by seeing her boyfriend with a new girlfriend at a local McDonald’s, jumped into her car and chased after the couple, who were riding in a car driven by another friend. Medina allegedly rammed into the other car during the 10-mile high-speed chase and the driver ultimately lost control and crashed, killing the 18-year-old believed to be the new girlfriend.

Medina was charged with second-degree murder and assault with a deadly weapon. She has been held in jail for more than two years on $2 million bail. Rangel has said she created the page on MySpace, a popular Internet site, as a way for friends and family to show their support for her daughter as she awaits trial. The page contains messages from the community of MySpace users, known as “friends” in the language of the website, as well as Rangel’s impassioned rebuttal of the case pending against her daughter, who is the mother of an eight-year old son. Also posted are pages from public documents, including the original police report and the transcript of the preliminary hearing, which Rangel has annotated to support her defense of Medina.

District Attorney Ford’s August 2006 rumblings that he planned to file a motion to force Rangel to censor content on the MySpace page—www.myspace .com/fairtrialforlauramedina—had captured the interest of free speech scholars and prompted much discussion. The dispute would have pitted the right to control the dissemination of information about an on-going murder trial against free speech rights on the Internet. Rangel makes no bones about the fact that she believes
the prosecution has been biased against her daughter. The MySpace page she created about a year ago has become a forum to air her grievances, including her belief that District Attorney Ford has overstepped his bounds and that her daughter is unlikely to be given a fair trial. Ford complained that the page could taint the trial, presumably by poisoning the jury pool or influencing other witnesses. The outcome of a decision on the threatened motion would very likely have reverberated throughout the Internet, where such sites as TheSmokingGun.com regularly post publicly available documents from pending criminal proceedings.

Laura Medina’s trial was scheduled for October 30.

—A. F.

Watch Your Mouth. Steven Howards spent three hours in a Colorado jail cell in June while waiting to post a $500 bond for his freedom. His arrest came after a Secret Service agent handcuffed and questioned him about statements he had delivered in a calm tone of voice, and at a distance of two feet, to Vice President Dick Cheney, who was attending a political event at an outdoor mall in Eagle County, about two hours west of Denver. Howards expressed his view that the vice president’s conduct and policy regarding Iraq was “reprehensible.” This was cause for arrest according to a Secret Service agent. A state judge eventually threw out the case, in which Eagle County District Attorney Mark Hurlbert, sought to prosecute Howards on a misdemeanor harassment charge. The matter did not stop there. On Tuesday, September 26, Howards filed a lawsuit in federal district court in Denver. The suit does not seek specific damages, but ultimately aims to test the limits of the First Amendment, the right of a person to freely express his or her opinion in public without undue interference, and the Fourth Amendment, which provides protection from unreasonable search and seizure.

—Stearns Broadhead

CONTRACTS Q&A

By Mark L. Levine

Q. Is there a commonly accepted definition of what kinds of publisher’s book sales are “high discount” and result in a lower royalty rate than the basic royalty rate I negotiate in my contract for sales at the publisher’s standard discount?

A. No one definition is accepted by everyone in publishing. Indeed, rather than using “high discount,” “deep discount” or a similar term in the publishing contract, the situation is generally handled in one of two ways. The preferable way for authors, which many publishers accept, is to add a sentence saying that the reduced royalty rate “does not apply to sales outside ordinary wholesale and retail book trade channels.” This does leave some ambiguity as to what “ordinary” channels (or “traditional” channels, a term sometimes used instead) are, an ambiguity that many people tend to overlook. If using this formulation, discuss with the publisher beforehand which of its customers or distribution channels fall outside the phrase’s ambit. This way, you will at least have a general understanding of whether sales to a K-Mart or Sam’s Club, for example, will result in regular or reduced royalties if that clause is included, and you can negotiate your contract intelligently.

More typically, a contract will specify the exact discount from the book’s suggested retail price that triggers the lower royalty rate(s). These should generally be 51 percent or 52 percent for hardcovers and trade paperbacks and 55 percent or 60 percent for mass-market paperbacks. Many publishers will accept these, although their preference for the hardcover discount will more likely be 50 percent. If agreeing to 50 percent, be particularly careful of the difference between a discount “of 50 percent or more” and a discount of “more than 50 percent” when negotiating your contract. To the extent your publisher sells its hardcovers at exactly a 50 percent discount, you will receive less money if your contract says the reduced royalty applies to sales at a “discount of 50 percent or more” instead of at a “discount of more than 50 percent.”

Q. My publisher is remaindering the trade paperback edition of my book but intends to keep the hardcover edition in print until all of its hardcover copies are sold. It is offering to sell me copies of the remaindered paperback (which retails for $35; the hardcover retails for $50) at $7 per copy. My contract doesn’t cover the situation. Is the price offered a reasonable one?

Continued on page 15
Authors Guild Lawyer Irwin Karp (1920-2006)

Irwin Karp, a fierce champion of authors’ rights, attorney for the Authors Guild and the Dramatists Guild for over 30 years, and a driving force behind a series of landmark copyright protection revisions, died June 21, at the age of 85, in Reno, Nevada. A memorial service was held October 20 at Columbia Law School, where Mr. Karp received his law degree in 1943, and where he had been a member of the editorial board of the Columbia Law Review.

Mr. Karp was born August 4, 1920, in New York City and was a graduate of City College. Following law school, he became an infantry officer in the U.S. Army, and served in the Battle of the Bulge, for which he earned a Bronze Star and a Purple Heart. In 1946, he joined the New York law firm of Hay, St. John, Abramson & Heilbron, and in 1953, began his long association with the Authors League, which he represented until 1986. Back then, says Herb Mitgang, Guild president from 1971 to 1975, “when the whole office consisted of two people, he carried the load. He also filed a lot of amicus briefs in First Amendment cases for the Guild and the League.”

Mr. Karp was revered among his peers for his tenacity and his legal brilliance—Marybeth Peters, Register of Copyrights, called him “a monumental figure in the field of copyright”—and as fondly remembered for his “suffer no fools” disposition.

“Irwin Karp cast a long, occasionally cranky shadow,” recalled Jane C. Ginsburg, Morton L. Janklow Professor of Literary and Artistic Property Law at Columbia Law School. “When I began practicing copyright law . . . in the early days of the 1976 Copyright Act, Irwin was a legend. No one knew the copyright law more intimately. Irwin understood the law not only in the way any good copyright lawyer should, but also as an insider, as a vigorous participant in the seemingly endless process of copyright law revision that finally yielded the 1976 Copyright Act. . . .

“Irwin’s passion for authors’ rights, and his equally passionate expression of his advocacy, evoked awe. And in some quarters, ire. But that is something Irwin frequently returned; generations of copyright lawyers and lobbyists learned to shed thin skins in the laser blasts of Irwin’s derision . . . Suitably girded, one could learn an awful lot from him.”

Richard Dannay, of Cowan, Liebowitz & Latman, recalled his first encounter with Karp as a young lawyer just starting out in copyright and publishing law, when “Irwin was already an established lawyer in those fields. It was a contract dispute, whether certain rights were granted or reserved. We had the better case on the facts and the law and won.

“But Irwin was the best lawyer in the fight. Brilliant and knowledgeable, of course. But also creative and resourceful—he made the facts work for him. I learned more in that litigation than I did from any other adversary—or lawyer—in the 40 years I’ve practiced since then.”

Irwin Karp, right, with outgoing Authors League Secretary Louise Silcox and her successor Mills Ten Eyck, 1961.
A. Although all contracts contain provisions giving authors the right to purchase copies when the book goes out of print (and generally specify a method for determining the purchase price), few specify what happens when the publisher has published different editions of the book but is remaining only one.

I suggest you ask the publisher what price it plans to sell the remainder copies for (these are generally bought in bulk by a company specializing in remainders) and offer to purchase your copies at the same price. You can also ask what it cost the publisher to print each copy of the paperback; these should be paper, printing and binding costs ("PPB") only, and exclude typesetting and similar one-time costs that would have been incurred regardless of the number of copies printed. Unless the person buying the remainders is paying a higher price, the price you pay for each copy should not exceed that PPB and, in fact, should be less. Because of basic set-up costs involved in printing and binding a book, most of the cost of printing a book is incurred whether a publisher prints 1,000 copies or 10,000 copies at the same time. Thus the cost per book for printing these later, additional copies (the "run-on cost") is generally significantly lower than the cost per book for printing the initial thousands of copies in the print run, as well as lower than the average cost per book of the entire print run. Since 50 percent of PPB or the price offered by others wanting to buy the remainders is often the price specified in publishing contracts for authors to buy remainder copies, it is likely that most publishers would agree to this method in determining what you should pay in the situation you describe.

Additionally, given the markups that publishers typically use in pricing their books, I'd wager that the PPB for your book was probably close to half the $7 your publisher is asking, if not less.

In future contracts, consider adding a sentence along these lines to the section of the contract dealing with your right to buy copies when all editions are out of print:

“When Publisher has more than one edition of the Work in print, the provisions of this Agreement concerning Author’s right to buy copies of the Work when the Work is out of print (including the

price at which Author may buy unsold copies) shall apply also to separate editions of the Work published by Publisher which Publisher declares out of print or remainders.”

Q. My book, which was published in hardcover about a year ago, earned out its advance by about $500, but the publisher has told me that it might hold back part of that money as a reserve against returns of the trade paperback edition that it is about to publish. Can the publisher do that?

A. A reserve against returns of a paperback edition should be withheld only from royalties payable to you on copies of the paperback that have actually been shipped to booksellers and wholesalers. If the paper-

back has not been published or shipped yet, there are no royalties payable to you on those copies against which a reserve can be established. Money received from other income, whether sales of the hardcover or the licensing of subsidiary rights, cannot properly be held back in anticipation.

All or part of the $500 can be kept by the publisher, however, if the amount it had held as reserves for the hardcover edition proved to be insufficient because the publisher got back more returns of that edition than anticipated. But if that were the case, it would mean that your advance had not earned out even though you and the publisher thought it had.

As with all questions answered in this column, of course, there could be specific language in your particular contract that would require a different result. The answers given here are based on language typically found in most contracts.

Q. Is there a commonly accepted schedule of royalty accounting and corresponding royalty payments? My publisher does its accounting only twice a year and sends that accounting and royalties to the author five months after the end of the reporting period.
A. Most trade publishers prepare author royalty statements twice yearly, for the January-June and July-December periods. Most academic publishers generally do their accounting only once a year, which authors of those books should always seek to change to twice yearly when negotiating their contracts. A handful of very small publishers do accountings (and pay royalties) more frequently, some even monthly.

A twice a year accounting and payment schedule is generally considered fair by most publishers and authors. Similarly, sending the royalty statements and paying the required amounts three months after the end of each royalty period is relatively standard and considered reasonable by most publishers and authors. Not paying royalties until the fifth month after the end of the reporting period is outrageous and unfair to authors (and, disappointingly, standard practice for at least one major publisher). Holding an author's money that long is simply a crass way for a publisher to, in effect, borrow money from an author at zero interest. Publishers that refuse to make royalty payments until 120 days or longer following the end of a reporting period should be embarrassed by the practice and pressured by adverse publicity to change that policy.

**Keep in Mind:** The importance of definitions in publishing contracts—or any kind of contract—should not be underestimated. A common mistake made by laypersons—and many businessmen—in reading contracts is to cursorily scan definitions and assume they are correct rather than to read them carefully and critically. If a contract defines “white” as “the color black,” then everywhere that “white” appears in the contract it means “black,” though that fact is rarely remembered by people when reading a contract quickly or reading subsequent drafts. This typically results in a contract meaning something substantially different from what

**Seminar Suggestions?**

This fall, the Authors Guild once again held our telephone seminars on book publicity, contract negotiation, relationship of authors and agents, copyright registration and tax tips for writers. We offer these popular seminars two to three times a year, in addition to our monthly website building sessions and the occasional Children's Book Group seminar. Do you have an idea for a seminar or roundtable discussion? If so, send it to Isabel Howe, ihowe@authorsguild.org.

at least one of the parties (generally the less legally sophisticated one) believed it to mean. Definitions can be negotiated like any other provision. If any terms are vague or ambiguous, it is advisable to define them precisely instead of assuming that you and the publisher—or anyone else who may be called upon to interpret the contract in the future (a judge or arbitrator, for example)—share the same understanding of what they mean.

**Questions have been somewhat edited and restated, both for readability and to make them more broadly applicable. Please send your questions to:**

QandAcolumn@authorsguild.org.

The answers provided in this column are general in nature only and may not include exceptions to a general rule or take into account related facts that may result in a different answer. You should consult a lawyer for information about a particular situation. No question submitted, or answer provided, creates an attorney-client relationship with the column’s author.  

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AUTHORS GUILD FOUNDATION SYMPOSIUM

Rules, Britannia! The Growing, Chilling Reach of Commonwealth Libel Laws

The long arm of the Commonwealth’s libel laws was the subject of a panel discussion sponsored by the Authors Guild Foundation at Scandinavia House in New York on September 25. Longtime Authors Guild Council member Victor Navasky, publisher emeritus of The Nation, Chairman of the Columbia Journalism Review, and author of Kennedy Justice, Naming Names, and A Matter of Opinion, served as moderator for a distinguished international panel that proceeded to give, in Mr. Navasky’s words, a “master class” on the subject of libel. Participating were Floyd Abrams, a partner in the New York law firm of Cahill Gordon & Reindell, the William J. Brennan Jr. Visiting Professor of First Amendment Law at the Columbia Journalism School, and author of Speaking Freely: Trials of the First Amendment; Peter Bartlett, head of the Minter Ellison Media and Communication Group in Melbourne, Australia, chair of the Media Committee of the International Bar Association, and co-chair of the Communications and Technology Committee of LAWASIA, an association of lawyers in the Asia Pacific; Mikaela McDermott, an associate at Kornstein Veisz Wexler and Pollard in New York, and author of the critical brief in defense of Rachel Ehrenfeld, subject of a libel suit filed in the U.K. for her book Funding Evil; and Mark Stephens, partner with Finers Stephens Innocent in London, whose practice covers a wide range of litigation involving the media, including defamation and intellectual property law.

VICTOR NAVASKY: Our subject this evening sounds esoteric, technical and somewhat abstract, but for a writer to have the Sword of Damocles, in the form of a lawsuit, hanging over him is far from abstract. And when the suit is brought not in the U.S. but in the U.K., where the law is more favorable to libel plaintiffs, the situation is worse.

I asked Jan Constantine, the counsel of the Authors Guild, if she could get me a copy of a typical warranty clause. In virtually all book contracts there’s a little clause that your eyes may glaze over, but it basically says that the author warrants that there is nothing defamatory in his manuscript or her manuscript and if the publisher gets sued, essentially you, the writer, warrant—indemnify—the publisher, unless you have an agent who softens that clause in some way. In many cases you’re dealing with a multi-national conglomerate and you’re a single writer and yet you’re indemnifying them, about something that you don’t know anything about essentially, because the law of libel and defamation is constantly changing and evolving.

Floyd [to Floyd Abrams], I don’t know if you had Fleming James when we were together at the Yale Law School, but I’ll never forget when he was describing the way it used to work in England and he said—[to audience] this was an old torts professor—and he said, “Then up rose Lord Mansfield and he spake like the Bible, the greater the truth sir the greater the Libel.” And I thought, well it doesn’t quite work that way anymore.

I won’t go into it in any detail, but as publisher of The Nation, there came a time in the mid-1990s when we had published a review of a book by Kanan Makiya, who is now much in the news in connection with the war in Iraq. It was a hostile review, and the reviewer, the late Eqbal Ahmad, confused two characters, one of whom was in the book and one of whom wasn’t. They both had the same last name; they both were in their mid-thirties; they both were in the financial world in London; they were distant members of the same family; and one of them was accused of financial shenanigans. Our reviewer, with no malice—
and our fact-checker, who relied on the same New York Times story as our reviewer—named the wrong guy, as it turned out. The magazine printed a correction as soon as the error was brought to our attention. Nevertheless, they brought suit. I had always believed that you never settle libel suits. I was an absolutist in the Abrams tradition. And yet what it came down to was that we had libel insurance, but the libel insurance had a deductible of $50,000, which means that you’re responsible for the first $50,000. We were told by counsel that we would almost certainly prevail. Nevertheless, it would have cost us $50,000 to not come to some kind of settlement with them. So we came to a settlement, and I feel badly about it to this day, because I know we were right. It was a human mistake that somebody made and we corrected as soon as we could. So from a First Amendment perspective, libel law is imperfect in this country and worse in the U.K. Having said that—Floyd, why don’t you start us off?

FLOYD ABRAMS: Victor and I were in the class of 1959 at the Yale Law School. I know you’re shocked to hear that looking at us, but I start that way as a way of saying that it was after we graduated—which is to say within living memory—that libel law in America was rewritten in a revolutionary fashion by the Supreme Court in the great case of New York Times v. Sullivan.

Victor’s asked me to talk with you a little bit about the nature of the changes wrought by that case. Let me introduce it by citing one of a number of cases I’ve worked on in which it was especially relevant and especially missed. I represented NBC in a case in the late 1980s, arising out of a television broadcast they had done dealing with how easy it was to import drugs from the Bahamas into the United States, and how the prime minister of the Bahamas, Mr. Pindling, always managed to turn the other way, when governments, especially the United States, advised him that drug dealers were using the Bahamas as a very easy stopping place from Colombia into the United States, and that he, so it was said, was personally friendly with a number of people in that field of drugs.

The piece for the Nightly News was prepared in New York and in the Bahamas. There were many people from the Bahamas who were on. Mr. Pindling had political enemies in his country, and when the broadcast ran, he immediately announced that he would sue for libel. And he did so, in Toronto. He started a lawsuit saying, I have a reputation here in Canada, this reputation has been damaged by your broadcast, and I’m entitled to have the case heard here in Canada. We struggled mightily, trying to persuade the Canadian court to dismiss the case on the ground that it had so little to do with Canada. Pindling had rarely been in Canada, the broadcast was prepared here and in the Bahamas, and under Canadian law, which is not unlike the English law, and not unlike the law when Victor and I were in law school in the United States, there were none of the First Amendment protections or Free Speech protections that the Supreme Court started to carve out in 1964, in the New York Times v. Sullivan case. Even so, I would say, when we did start to take Mr. Pindling’s deposition—and while depositions are much more sparingly permitted in Canada than here, they’re still permitted to some extent—after one day of close inquiry by our Canadian counsel, he did agree to drop the case with no apology, no money, nothing—just let him get out of there already. That’s a good sort of settlement.

Why were we so worried about Canadian law, English law? The other way to ask that question is to ask, what did the Supreme Court do in 1964 that was so revolutionary? I’m not going to spend time here, although I recommend to you Anthony Lewis’s book on the Sullivan case, Make No Law, a wonderful, wonderful book which has stood the test of time in the years since it was published, but basically it was a case that arose out of certain advertisements published in The New York Times, by people active in the Civil Rights struggle in the United States in the late 1950s and early 1960s, including Dr. Martin Luther King Jr.

It was an ad, and it sought contributions. “Heed Their Rising Voices” it cried out, asking for support and contributions, and it denounced a sheriff in Birmingham, Alabama, who was running the prison that Dr. King was then in. And it denounced the Alabama authorities, and Alabama judges, and basically the way of life that permitted the jailing of people who were doing God’s work on earth, by trying to deal with and change the segregationist nature of the society there. The libel suit was brought against the Times, and a half-million-dollar verdict was awarded by a jury. It was one of many verdicts from southern, all-white juries that came out around that time, and the ability of the national press to report on what we now call the Civil Rights Revolution was truly imperiled by this and other verdicts of the time. There was no reason to think that a white southern jury was ever going to rule in favor of one of these “northern publications,” as they were viewed, writing about what was going on in their part of the country.

Now, there was a defense that was allowed, and the defense was truth. If a story was true, from the beginning, from the time the Constitution was written, one could defend on grounds of truth. But that was about all, and southern juries were rejecting very strong proof of truth again and again and again in this highly charged, highly emotional subject area, which,
as we all know now, was tearing the country apart. The case went to the Supreme Court, and most people, I think, thought that the Supreme Court would reverse in some way, that the consequences of saying that stories like this couldn’t be written, or advertisements like this couldn’t be published, even if there was something or other wrong with it, or a jury thought there was something or other wrong with it, was just not acceptable from a societal point of view—and that the Supreme Court would find a way to deal with that dangerous prospect. But what the Court did in the course of its opinion did surprise people.

It wrote what was probably the most important opinion (written by Justice Brennan) about the nature of First Amendment protection in our nation’s history. We’ve had expansive dissents but we don’t usually get expansive majority opinions, and this was an opinion of the Court itself and what did it do? Well, for one thing it said we no longer would follow the rule that as a country we had followed since the very founding of this country, which is that if somebody brings a libel case, the person’s reputation is assumed to be good, criticism of the person is assumed to be false, and anybody saying anything bad about the person has the legal burden of proving it.

Doesn’t sound so terrible, but we were finding again and again that juries couldn’t be trusted simply to make a truth/falsity decision and especially in a legal system which, as is still the case, appellate courts do not review factual issues very closely. They basically leave those to juries.

So the first thing the Court said was—when somebody brings a lawsuit with respect to material said to be libelous, and the person who brings it is a public person, like the person running the prisons in Birmingham, like other public officials in Birmingham who were accused by the ad, then all the old rules about who has to meet what we call the burden of proof (and elsewhere is called the onus), the critical issue of who has to speak first, and who has to meet the burden of showing something is true or false—from now on, at least in cases with public officials, because it is so important for people to be free to criticize public officials, we will say that a public official has to prove what was said about him was not true.

And the second major thing they did, which is the most famous thing in the case, was to create and enforce the notion—phrased very poorly by the Court—of what we call “actual malice,” which, as one judge said later on, had nothing to do with “actual malice” as any intelligent literate person would use those words. What the Court said was, we’re going to leave some room for error in speech. If somebody, as Victor’s story illustrates, makes a mistake in writing about

Panelists Floyd Abrams, Peter Bartlett, Mikaela McDermott, moderator Victor Navasky and panelist Mark Stephens
Wall Street Journal Ruling May Liberalize British Libel Law

By David Curle

Not long after the evening of our “Rules, Britannia!” panel, an unexpected ruling in what may prove to be a landmark case offered hope that Britain had reinvigorated its public interest defense to libel claims. How broadly this latest ruling will be applied remains to be seen.

An October 11 ruling by Great Britain’s highest court will go a long way toward making British libel law more friendly to writers and more consistent with other countries’ laws. Until this ruling, British libel law has been notoriously hostile to writers by placing the burden on writers to prove the truth of statements alleged to be libelous. Jameel v. Wall Street Journal Europe clarifies a key test used by U.K. courts in libel cases, and has been hailed as a major victory for press freedom there.

The case involved a Wall Street Journal Europe article that documented various ways that the Saudi Arabian government cooperated with United States authorities to ensure that Saudi money was not passing into terrorist hands in the months after the 9/11 attacks. Author James M. Dorsey identified a number of prominent Saudis whose bank accounts had been monitored by the Saudi government on behalf of the U.S., including the owner of a large Saudi trading company, Mohammed Jameel. He sued the Journal in London, asserting that the article defamed him by implying he was a possible supporter of terrorism.

The court’s decision turned on its reinterpretation of a 2001 decision, Reynolds v. Times Newspapers, which had established a “public interest defense” against libel charges. The Reynolds decision identified ten factors that courts could use to determine whether a newspaper article constituted “responsible journalism” in the public interest and was thus entitled to protection from libel charges. Until now, U.K. courts have treated the Reynolds factors as a series of hurdles, any one of which could trip up a journalist’s claim of public interest if not met.

In revisiting the Reynolds decision, the court in Jameel concluded that the public interest test should be applied to the whole of a work, considering the entire context of the article to determine whether its subject matter was of public interest, and whether the author’s steps in gathering the information were responsible and fair. It ruled that the Reynolds factors were not “tests which the publication has to pass.” They were, rather, guidelines or factors used to determine, on a whole, whether the author’s work was reasonable and fair treatment of a matter of public interest.

Mark Stephens, a lawyer for the Wall Street Journal Europe in the case—and one of the participants in the Authors Guild Foundation’s panel on Commonwealth libel laws published in this issue—notes that the ruling is not limited to newspaper journalism. “Indeed in many ways I think it will benefit the book author much more than the newspaper, as the pieces book authors write are likely to be longer, more considered, less sensational and of real public interest.”

The new ruling has been called a major victory for press freedom in the U.K., and will bring British law closer to other countries’ laws. In the United States, public figures suing for libel must meet a fairly high threshold in order to prevail. Under the landmark case New York Times v. Sullivan, public figures must show not only that published statements about them were false, but that the author knew they were false or had reason to believe they were false. This new British ruling, while applying a different standard, has the similar effect of making it more difficult for plaintiffs to prevail in libel suits.

Harmonization of libel law around the world is of great importance in an age of Internet communications. Rachel Ehrenfeld, whose lawyer, Mikaela McDermott, appeared on the Foundation panel, recently found herself subject to a default libel judgment in the U.K. The court found that it had jurisdiction despite the fact that her book was not published in Britain, and only 23 copies of it were known to have been sold there, via online retailers. In an environment where virtually any work can easily find its way into any country, a harmonization of libel laws will certainly make life easier for authors tackling high-profile public issues. [See Mikaela McDermott’s comments in the transcript in this issue, and our earlier coverage of the Ehrenfeld case in the Summer 2006 issue.]
public officials, and if it is simply a mistake made in good faith, we will say, it is so important that people feel free to write what they believe, and to say what they believe, that even if it turns out not to be true, that speech will be protected. So, phrased as lawyers would phrase it, they said that even error was protected, so long as it was not made with actual knowledge of falsity, a lie, or serious doubts as to truth or falsity—though as one court said later, you have to either know it’s not true, or think it’s probably untrue.

That is a subjective test and there are some big problems with it being a subjective test, since it relates to the state of mind of the author or the journalist or the publication when all is said and done. And that, starting with New York Times v. Sullivan, became the law with respect to lawsuits by public officials, and then later on by public figures—people who are out of government but so famous that everything they do by definition is newsworthy, or people who thrust themselves into the vortex of public debate by sounding off with respect to what they think happened.

There are other things that the opinion did, but these two are probably the most important, and the effect of it has been that lots and lots of libel suits can be disposed of during the pre-trial stage, sometimes after laborious and expensive discovery—another problem in the legal system—but in any event not forcing authors, publications and the like to go through the burden of having a trial if they can simply demonstrate that when they said what they did they thought it was true. In fact, they don’t have to demonstrate it. The party suing has to demonstrate that they did not believe what they said was true; that they were deliberately lying.

That’s the law with respect to public figures and public officials. What about so-called private figures, people who are not in power, who haven’t thrust themselves into public issues? They have more rights to sue, and it is easier for them to win, but even there, the Supreme Court, in cases starting with New York Times v. Sullivan, have said that there has to be, at least, negligence or misconduct by the author. That is to say, even if the author gets it wrong, so long as the author made reasonable efforts to find out what the fact was there is not supposed to be liability, and the states were freed to give more protection than simple negligence, as New York has, for example. Under our law, a private person in a libel suit can win, but has to show not just that what was said was false but that it was said with gross irresponsibility, something a lot worse than behavior, a lot more offensive, less intellectually defensible certainly, than what we call simple negligence.

Well, those principles have had an enormous impact on that which can be published, that which can be defended, and it has really been made a part of American culture as well as American law. It’s not just lawyers who read materials in advance; it’s editors and it’s other people as well, and the effect of this is a lot of lawsuits that are brought abroad, routinely, are simply not brought here. It would be shocking in America if President Bush were to start a libel suit. People wouldn’t believe it. Presidents don’t bring libel suits; prime ministers do. And there’s nothing wrong with it. I’m just saying, as a cultural matter, in part because of more expansive notions of what we mean by freedom of speech and freedom of the press, presidents don’t and congressmen don’t and candidates don’t. And so what is routine abroad is almost unthinkable here.

A final note: People can win libel suits. We have not abolished the whole notion of libel suits in this country. Things are said, sometimes quite deliberately falsely. Material is published which fails even the very permissive standards set forth in our law. But for better or worse, and we can talk about that if you like, the culture here follows the law here, and there is this

“Phrased as lawyers would phrase it [the Court] said that even error was protected, so long as it was not made with actual knowledge of falsity, a lie, or serious doubts as to truth or falsity.”

—Floyd Abrams
“Mahfouz is a citizen of Saudi Arabia and has sued or threatened to sue in England for libel on at least 29 occasions that we know of. In December 2004, he sued [Rachel] Ehrenfeld based on the statements in her book [Funding Evil].

—Mikaela McDermott

enormous level of legal protection, all of which started five years after Victor and I moved out of law school.

NAVASKY: Thank you, Floyd. Mikaela, why don’t you tell us about the case that is working its way through the international legal arena at this point as distinguished from the American courts?

MIKAELA McDERMOTT: My law firm represents an American author by the name of Rachel Ehrenfeld. She’s a journalist and a scholar who works primarily on investigating the funding of international terrorism. In 2003, she published, in the United States, a book called Funding Evil, which is about funding international terrorism.

In that book she made some statements that linked a Saudi financier, Sheikh Khalid Salim a Bin Mahfouz, to terrorists. She said that organizations that he and his family owned and controlled had funded various organizations that were related to terrorism. Mahfouz is a citizen of Saudi Arabia and has sued or threatened to sue in England for libel on at least 29 occasions that we know of. In December 2004, he sued Dr. Ehrenfeld based on the statements in her book. She made a decision not to defend that suit in England for several reasons. The most important one, I think, which is tied to what Mr. Abrams was talking about, is that the law is very different in England. She would have had the burden of proving that what she said in this book was true. She wouldn’t have had the defense that even if it wasn’t true, she actually believed it to be true. Another reason she decided not to defend was that financially it would have been quite onerous. What she decided to do instead was to file a lawsuit against Mahfouz here in New York. She filed in the Southern District of New York, and brought what’s called a declaratory judgment action. Since she didn’t defend in England, there’s now a judgment against her there for the equivalent of more than $200,000. So she asked the federal court here in New York to rule, first, that if he tried to enforce that judgment here he would not succeed because of the protections that this country and the state of New York gives to free expression; and second, for the court to issue a statement saying that if he sued her here using the same allegations that he did in England he would not prevail.

We filed that suit in December of 2004, basically a day after the default judgment was entered against her in England. Mahfouz’s lawyers, who are based in Washington, moved to have the lawsuit thrown out on two grounds: The first was what’s known as subject matter jurisdiction, which says basically that you can’t bring a lawsuit in the United States unless you have an actual live controversy. Their essential argument, which I’m simplifying here, was that since Mahfouz has not attempted to enforce his English judgment here, there is no live controversy. The second ground they raised was that the New York court has no personal jurisdiction over Mahfouz. In order for a New York court to have jurisdiction over a foreign defendant they have to have some sort of connection to New York State. Even in federal court they look at the New York State statute, which is called the long arm statute and it basically says that in order to have jurisdiction over a foreign defendant that defendant must—and again I’m boiling this down—either have transacted business in New York or committed a wrongful act outside of New York that caused injury in New York. So those are their grounds. We got an adverse decision last spring from Judge Casey here in the district. He didn’t address the first question, which was the subject matter jurisdiction question, which he characterized as novel and somewhat complex. Instead he dismissed the lawsuit on the personal jurisdiction
grounds saying that first of all, filing a lawsuit in a foreign jurisdiction, i.e. in England, doesn’t constitute a transaction of business in New York, and second, that filing a lawsuit in England doesn’t constitute a wrongful act.

We have appealed that decision to the Second Circuit Court of Appeals. The thrust of our argument was that this was an American author who lives in New York, works in New York, published a book in the United States and never made any sort of effort to have it marketed or published in England. In fact, Mahfouz’s lawsuit in England is premised on the fact that only 23 copies made it into England, by virtue of being sold over the Internet through Amazon. We argue that as a result, his entire lawsuit was actually aimed at New York, because this is where she lives and works, and that it was therefore aimed at restricting her freedom of expression here, thereby creating a chilling effect. That’s the thrust of our argument.

As for the real world effect this has had on Dr. Ehrenfeld, it is very much the Sword of Damocles: Mahfouz has chased her to the precipice but he hasn’t shoved her off. He’s refraining from enforcing his English judgment here in New York, which creates a situation where she can really have no peace of mind. But as she said in her affidavit in connection with this case, she’s had to hold back research that she would ordinarily want to publish for fear that she would be sued again. She works at a nonprofit organization that is funded primarily through grants. She’s had situations where she’s been told that a grant is imminent from some sort of foundation and then just before it’s about to be awarded they find out about the judgment against her and as a result she hasn’t received the grants, which clearly inhibits her ability to make a living. She has also said that publications that normally would take articles from her have declined to do so again for fear of being sued. She’s also had the mental anxiety of having to live with this judgment without knowing what’s going to happen, and to invest energy and resources in this sort of litigation. That in a very brief nutshell is what’s happening in our case. The oral argument is scheduled for November 8 in the Second Circuit Court of Appeals and we expect a decision in the months thereafter.

NAVASKY: Do we know how many of those 23 copies the lawyers for the plaintiff bought?

McDERMOTT: They claim, and Judge Eady said, that none of them were but we have no way of knowing that.

NAVASKY: All right. Thank you both—Floyd for your brilliant concise explanations of the grand scheme of things and Mikaela for your description of the case. Now Mark. You’re the guy who told her not to show up in court, right?

MARK STEPHENS: I was. As authors, you’re spreading your work across national borders. I mean of course let’s be frank about this—that’s how you trouser most of the money that you make. And as a consequence of that you’re going to be bumping into legal standards which vary I suppose from Afghanistan to Zimbabwe, with the U.K. somewhere near both of them really, why does this matter? Sitting here in your ivory tower protected by Floyd here in New York, why should you be worried about that? Well, the answer really is that I come from a town named Sue. London is the global libel capital of the planet. In London, the Queen sues, politicians sue, princes and potentates sue, and that is why London has become the libel capital of the world! We have celebrities, crooks, brigands, all jetting in from across the globe, in order to launder their reputations in front of the libel courts of London, before grown men, bewigged, wearing the traditional silk stockings under their gowns.

And of course you have to say to yourself, why is this? The law like any other thing—Gap adverts for example—has trends, and the trend was started in this particular case by a Hummer-driving nouveau eco-friendly film star, Arnold Schwarzenegger. He was the first libel tourist to climb aboard the Concorde and come over to London in three and a half hours in order to skip up the Strand with a writ in his hand merely to issue it against an American author named Wendy Leigh, who’d written a book in this country about him and his life as a film star and all of those sorts of things. And she had revealed in this book, part of which was serialized in an English newspaper under the headline “Arnold: My Nazi Secret,” the fact that his father was a member of the Nazi party. Well, you know, this was demonstrably the fact. We had his father’s Nazi membership papers, so there wasn’t any doubt that his father was a member of the Nazi party in Austria. The complaint he made was not that his father was a Nazi; no, of course he was, but people might think that he knew and approved of his father’s Nazi past. And, of course, this is a gross calumny and a defamation! Certainly in London, anyway.

This was the first case that came forward. And so we decided that we were going to try to justify this story, so I went off down to Saint Lucia to take some evidence—well, it’s a hard job, someone’s got to do it—and I went to meet a former Mr. Olympia. Now, for those of you listening on WBAI, it doesn’t really work, but if perhaps someone can explain. What I’m going to do is try to strike a pose, in large measure because
of the overwhelming similarity between Arnold’s body shape and my own—

NAVASKY: I can tell the radio listeners he’s 100 percent accurate.

STEPHENS: I’d like to show you the pose that was struck. There’s a traditional bodybuilding pose called the Archer, and what the bodybuilder does is he pumps himself up to the max, and then does this kind of a pose where—let the record show that I’m bending my body in the form of a bow. This is a standard bodybuilding pose. And I was told that Arnold, in Berlin, went onstage and struck this pose more in this kind of way: Let the record show a Heil Hitler salute. Anyway, he apparently got booted by this German audience, and as a consequence of that, as he came offstage, this Mr. Olympia said, “Well, that didn’t go down very well, did it, Arnold?” And Arnold reportedly replied, “Ha! These Germans are nothing without an Austrian to lead them!” which I thought was interesting, made the trip to Saint Lucia almost worthwhile.

This was the sort of evidence that we were getting. Entirely coincidentally, and just to show that Arnold’s a good guy and I’m not anti-Arnold, Arnold donated about a million dollars to the Simon Wiesenthal Center at just about the same time as this case. I’m sure it was entirely unrelated, and altruistic. He’s genuinely a nice fellow. For a Republican.

Moving on, why would you come to London to sue? The answer—I’ve sort of given you a bit of a clue—is that you can win over the silliest of libels. We had an actor and playwright, Steven Berkoff, who was described as “hideously ugly.” Well, in my view, he is! But he got £75,000 for someone saying it publicly! We had a soap star who was described, again, in my view quite accurately—a man called Bill Roache—as boring, and he undoubtedly is. But indeed, not only was The Sun newspaper not actually describing Bill Roache, the actor, they were describing the person he played in the soap, Coronation Street. So, it was actually his fictional character they said was boring, and he still recovered £25,000 for damages. And then there’s this woman, Charlotte Cornwall, of whom it was said, in a review of her acting performance, that “She has a big bum, can’t sing, and has a stage presence that jams lavatories”—for which she recovered astronomical amounts of damages.

In the more modern era, just this last year, Vanity Fair went down to Roman Polanski, as opposed to vice versa. The point about that was that here you have a man who was a fugitive from justice in California, living exiled in France—where else?—for statutory rape, and he sues in London over what can only be described as a minor indiscretion at Elaine’s, where it is suggested that, rather too soon after his wife’s death, he put a hand on a model’s knee. I mean, I’m sorry. If you’re a convicted pedophile, it does seem to me that that’s a little rum, but an English judge and jury were happy to give him £75,000 worth of tax-free damages. So of course they’re all going to come over to us, aren’t they? Arnold’s been again. He was here just this last year. There was a television presenter called Anna Richardson, and Arnold was sued because his spokesman had suggested that she had sat on the governor’s lap and jiggled up and down, thrusting her breasts into his cupped hands—much against his will, I am sure. That case has just been settled out of court on confidential terms. I was entertained to note that Arnold signed into law in California, at almost the same time, that you can’t now, in California (at least), keep the terms of any settlement in relation to a sexual case confidential.

So what do we do about this? Well, for several years, we’ve had people like Kitty Kelley coming over, and really, what they’ve done, is they’ve either not been publishing or they’ve been filleting the books
that have been available in the U.K., because they all want to market to avoid the cost of claims, particularly in book publishing, that have led book publishers to be more cautious than broadcasters and newspaper publishers, and book publishers, unlike newspapers and broadcasters, look for these indemnities against their authors. So the problem’s really sort of followed through, and there’s been a whole series of cases that kind of track through the way we play this sort of mat-
ing game with the U.S. over our libel laws.

Before the advent of the Internet, back in April 1994, in a case heard here in New York in front of Judge Shirley Fingerhood that involved the publication India Abroad, Victor Kovner came up with the rather nice notion that U.K. libel law wasn’t compliant with the U.S. constitutional protections on free speech, and said, “You should refuse to enforce the judgment, Judge,” and she said, “I think that’s a good idea.” And part of it was about what Mikaela was talking about in terms of the reversal of the burden of proof; in the U.K., everything’s presumed to be false. So if you write something down, we always presume it’s a lie unless you can prove it to the contrary. We then moved on, and a few years later, in November of 1997, another U.K. libel judgment came to be considered, this time by the Maryland Court of Appeals. In that particular case, the court did a really good job of deconstructing English libel law, and found it was deficient on 20 separate grounds, from some of the constitutional protections that you all enjoy in this country—things like the absence of a public figure defense. That was all very well, and so we thought, well, as long as they’re not published in the U.K. or filleted for the English market there isn’t going to be a problem. But then Amazon started putting things into the U.K. jurisdiction, which started to open authors up to claims, and under the in-
demnity that Victor referred to, we started seeing claims coming back against the authors. One terrorist hunter, Jean-Charles Brisard, decided that some too many Gulf billionaires who’d been the alleged seed funders of al-Qaeda had sued in London, and under those circumstances probably the best thing to do was to put a clause into his contract which says, “I’ll sign this indemnity but you, the publisher, can’t sell the books in the U.K.” Seemed like a good idea didn’t it? That would seem to solve the problem.

No, it didn’t. Unfortunately, what happened was his publishers sold the book here and somebody walked the book back into London, and the judge said oh, that was foreseeable, you can see that somebody was going to come to America, buy it at JFK, fly it back to England, it’s been published in the U.K., you’re li-
able. They found him liable for damages in the U.K., even though he’d deliberately tried to avoid publica-
tion, done everything he possibly could to exclude the possibility that that book would reach the U.K. So that created a big problem.

We then got involved in a case here, Dow Jones v. Mohamed Al Fayed, the owner of Harrods, and the would-be putative father-in-law of Princess Diana, and effectively, what happened was, we tried this no-
tion of applying to the courts here, saying we want to stop Mohamed Al Fayed bringing proceedings in the U.K., because he’s suing an American newspaper. The Wall Street Journal, over an April Fool’s joke that they made. Because we now know that English libel judg-
ments aren’t enforceable in the U.S., we said, “What’s the point of going all the way over to London to lose the libel suit, then come back here, to have it not en-
forced? Seems a waste of money to everyone, doesn’t it?” And the judge here in New York said, “No, that’s not a very clever idea. I think you should go fight the case in London.” Unfortunately for us, we won the case in London, the only case anyone had ever won in a libel case that year. So we never actually got to test the point, but then we came full circle to Rachel Ehrenfeld’s case.

Now I got Rachel into the hole which she’s in, you know—large judgment against her, declaration that everything she’s ever written in this book, Funding Evil, available at all good bookshops, published by Bonus Books, is false! And of course the person that sued her, a man of enormous moral rectitude, the man behind the BCCI Bank—that’ll give you an idea of the sort of public interest in what she’s writing about—got a default judgment against her. What was in play here? What was in play was 23 books. If she’d fought the case, she would have had to fork out something close to $400,000 minimum, probably a considerable amount more in legal fees. Many of these terrorist financing cases, because they involve going to the Middle East and collecting evidence in many jurisdictions, can run up literally millions of dollars. Over 23 books. Doesn’t seem very much worth it. So I said to her, are you ever going to come to the U.K.? Can you live your life without coming to the U.K.? And she said, Yes, I can, and I said, Well, don’t turn up. They’ll get a default judg-
ment—and they did, about $50,000, something like that—and if they try to enforce it in America they’ll never manage to, so just stick two fingers up at the English court system. She did that, and that’s where we get to.

I made these points in somewhat jocular fashion, but the fact is that this is very, very serious and it’s very, very expensive. They did some research at London University about five or six years ago now, and some-
thing like 98.7 percent of libel cases [in England] are won by the claimant to the extent that at least you have
to pay their lawyer’s fees. So the plaintiff will receive at least their lawyers’ fees. Even if they don’t get an apology, even if they don’t get damages, you will end up paying their lawyers’ fees, because one of the simplest ways to buy off claims is actually to buy off their lawyers. And so actually, this is a part of the problem, because you will be liable for damages. So if you lose, and take the $400,000 that we were talking about earlier for Rachel Ehrenfeld, for her 23 copies of the book; if she loses you’re doubling it up, because you’re paying not only your fees, but you’re also paying the lawyers’ fees on the other side. So $800,000 for 23 books ain’t a great equation.

NAVASKY: Thank you for that good news, and the advice to stay out of London. Let’s hear now from Peter Bartlett and then let’s all talk together. What do you think about this, Peter?

PETER BARTLETT: I think it’s always very difficult to follow Mark. He talks about the chilling effect of defamation action in the U.K., and the flier being circulated to the audience cites the “Growing, chilling reach of Commonwealth libel laws,” but I think this is really a fallacy. I think that if you focus on the difference between the libel laws in the U.S. and the libel laws in the Commonwealth, it maybe is a little chilling, but as authors, I think that you should be a little more conscious that while what Mark talks about and what the U.K. and the Australian Commonwealth defamation laws can cost you is dollars, there’s something that’s a little more chilling than that. If you go, for example, to Singapore, you’re likely to face far more defamation actions than you would face in the U.K. or a place like Australia. We’ve seen two journalists this month jailed in Senegal, we’ve seen Zimbabwe cracking down on a free press, we’ve seen Guatemala on the ninth of September with a journalist shot dead. In Niger we have an editor and publisher jailed for 18 months for an article that was critical of their prime minister. In Thailand they have criminal liability, as many other countries do for libel, and I must say, just to digress for a little, I personally was sued for defamation in Thailand after my law firm had a disagreement with a number of ex-partners. We were sued in Bangkok and I received a copy of the writ and I asked for a translation. I received the translation and it talked about the criminal code of Thailand, and then I asked for a translation of the criminal code of Thailand and it said that we were in breach of clause 33, so I looked up clause 33 and it says, “Insulting the King, Penalty: death.” That’s fairly sobering. And I said, Well, what have we done to insult the king? This sounds a little serious, and when I queried it I found that it was a typo and should have been clause 35.

“As authors, I think you should be a little more conscious that while . . . the U.K. and the Australian Commonwealth can cost you dollars, there’s something that’s a little more chilling than that.”

—Peter Bartlett

But it does show, I think, that in jurisdictions like the Commonwealth, the libel laws are different, the risks for publishers are greater and you do need to be aware of those. I acted for Simon & Schuster a number of years ago when they were sued in Australia and also they were sued in the U.K. by a fellow named Rakimov, who they said was a leading businessman in Uzbekistan. He was refused admission to Australia for the Sydney 2000 Olympics, one of only two people who were denied entry to Australia for the Olympics, and this particular book alleged that he was a leader of the Russian mafia and running drugs in Central Asia. Now it’s all very well to publish books like that, but if you distribute them in these different jurisdictions you do need to recognize that it’s necessary to prove these allegations if in fact you’re sued. And when you make allegations against someone like that, you tend to find it difficult to get someone to go up in
the witness box and give evidence. As this conversation is being taped I won’t go into the details of why, but I’ll leave that to your imagination.

I acted for another U.S. publisher and I recommended that the book be withdrawn worldwide, and that was agreed to because there were significant problems with the book. A month later the plaintiff’s lawyer phoned and said the book’s still available in the U.S. and I said, That can’t be, we’ve withdrawn it worldwide. So I rang up the in-house lawyer in New York and said, I’m told this book’s still available in the U.S. and the response was, Well, you told me to withdraw it worldwide; we don’t think the U.S. is part of worldwide. Now that made me think Americans are a little different than Australians, because we would regard America as part of the world. So I’m now a little more certain of the words I use. I say can we withdraw it worldwide and in the United States.

But there are a number of these people who do go to the U.K. and to Australia. A couple of weeks ago we had Mohamed El Guerrouj, who had sued, I think, about 15 major publishers in the U.K. and recovered damages from them, and was threatening the Australian Broadcasting Corporation and Agence France-Presse, both in Australia. And so there are these risks. I think that now that more and more books are going online, you do need to recognize that a place like Australia, we had the Gutnick and Dow Jones case, which Mark didn’t mention—he doesn’t like the decision but—

STEPHENS: It’s an Australian decision, so it’s clearly wrong.

BARTLETT: Gutnick is an Australian businessman. He does have businesses in places like New York, Canada and other places, but he is Australian; he lives in Australia; his major business operations are in Australia; he sued for defamation based on the publication within one state of Australia—that being his home state—and he said, Well, I should have the courts in that state hear the case, and the Australian courts agreed. Now there have been decisions in the U.K. and in Canada since, which say that you really need something more than accessing the Internet for that place to have jurisdiction. You need something more than half a dozen hits or something, but that isn’t recognized by the Australian courts. It may well yet be if another Gutnick case ever goes to our highest court. But the difficulty for you as publishers is that at first instance, even that court of appeal will be bound by the highest court in our country, and so you will need to spend a lot of money. I think it’s important to recognize that even though you go to your lawyers and say, What I say in this book is totally and utterly accurate, and I’m confident I can prove it, if you get sued in an obscure country, your exposure to damages is probably reasonably restricted, because maybe half a dozen, or 20, or 30 or a hundred copies of the book actually got to that jurisdiction. The problem that you have is that the legal costs can be quite substantial, because you’ll have the costs of your attorneys here, and

“What is the solution aside from, ‘Don’t go to London’?”

—Victor Navasky

the costs of the attorneys in that jurisdiction where you’re sued. Now, I might say that’s a very good cause, going to the boys, but it can be quite costly for you. So you do need to be very careful when you decide where your books are going to be distributed. Think what the potential exposure is going to be in those jurisdictions.

NAVASKY: Thank you. Let me ask us all to give a hand to this quite extraordinary panel. Let me ask two questions, and then turn it over to the audience.

This to me is very important because the law of defamation takes place at the intersection of two great values that democracy has: One is free speech and the other is the search for truth. And so question one has to do with the search for truth. You know, I’m all for the bias of this panel—if the panel has any bias—which is on behalf of the writer who is going to be beleaguered. But what about the poor subject who literally is defamed? How do we protect the subject?

And the second question is, What is the solution aside from, “Don’t go to London”? Is the solution to be found in an international treaty? Is it to be found in legislation? Is it to be found in some kind of socialized insurance where we could all get together and, as the Authors Guild, maybe contact authors’ organizations in other countries and offer writers in other countries some kind of community protection? So those are my two questions. Anyone, feel free to jump in.

BARTLETT: Well, I might say I have only ever acted for publishers and therefore I am very biased in favor of publishers, but I tend to look at the American system and think that maybe it’s gone a little too far in favor of freedom of speech and doesn’t sufficiently protect the rights of someone who is damaged by an
error that's been published. I think since January 1 we've moved from eight separate jurisdictions in our country to one, and the new law that came into force on January 1 is aimed at protecting reporters and authors who act reasonably so that even if you've got it wrong, if you've acted reasonably—for example, if you look at print media and you phone up the person that you're attacking and give them the opportunity to respond and publish their response, and you investigate the allegations thoroughly then you will be protected, and I think that that move towards accuracy in journalism should be commended.

ABRAMS: You know one of the choices that the Supreme Court had when it was deciding the New York Times v. Sullivan case, and people have talked about this ever since, was not to revise, not to revolutionize, not to federalize the law of libel to the extent that we did but simply to limit the amount of damage. Not to get rid of damages in libel suits altogether, but to allow the law of libel otherwise to go on as before, with strict limitations on how much could be awarded. Indeed, some of our states have quite serious limitations on how much can be awarded. That has something to be said for it. What it doesn't deal with is the impact on newspapers, broadcasters, magazines, say, in pushing the tort. One of the interesting questions here is, when should a case be settled? Victor asks what should we do, what can we do? The New York Times has a no settlement policy with respect to libel suits, and they mean it. A lot of other publications simply don't settle libel suits.

I'm writing an article right now about a suit that a book company owned by the Times—a company which did settle libel cases some years ago—in which an author had accused someone, basically, of being in the SS during World War II, and acting on their behalf, and bearing responsibility for all that, was now living freely in America. The man sued and said, It's not true, I wasn't in the SS, I was leading my people throughout various areas of Eastern Europe, but I was never in the SS. Classic factual question: What was true and what was not true? At the same time, a question which would cost an enormous amount of money to prove one way or the other. As it happens—I'm talking now of the early Reagan days—we got an enormous amount of help from the Soviet Union. They gave us affidavits of people who said they saw him in an SS uniform; they saw him, they said, send people to be killed while wearing his SS uniform. The position of the plaintiff in the suit was, The Russians make up affidavits like this all the time; they can't be trusted. And there were indeed many cases, or situations, in which that was true.

Well, we had a chance to settle the case. The question came up. Should the case be settled or not? On this the Times wasn't sure. The insurers wanted to settle it. We were about to go off with video cameras to tape depositions, in the Soviet Union, of people that the Russians had told us would be helpful. I raised the question with the client, What do you want to do? And Mr. Sulzberger had only one question for me: Is he a Nazi or not? He said, I'm glad to have the insurance company pay and get rid of this case, but I really don't want to agree to pay it or authorize them to pay it, if the guy really did all these things and we published a book saying correctly that he did all these things. And I had to say I don’t know. The author had good sources and it was undoubtedly the case that his sources said what he said they said. On the other hand, the lawyers on the other side had people who said it was all untrue, and the sources hated him, etc., etc.

So what to do? Well, we found ourselves in the situation in which we had these affidavits from the Soviet Union and the United States government was totally unhelpful, totally unhelpful everywhere we went. And we settled the case. The insurance company paid the money. Everybody sort of gulped and said, You know, we don’t know. The guy may not have been a public figure and we would not have the benefits that I’ve described to you of the New York Times v. Sullivan case. And two months ago the CIA released documents demonstrating that this man had worked for the CIA for six years during the 1950s, and that they had gotten rid of him because they became persuaded that he had indeed worked for the SS, which didn’t bother them so much as that he had lied about it to them. And so a report was issued basically saying that. No one remembered the book anymore but it was right.

As someone who was involved in the case and played a role in trying to get the client to decide because I didn’t know what the right course of action was, it filled me with a sense of inadequacy in making decisions of this sort. One of the problems, as I see it, in the future, is that more and more publications—not my clients, incidentally—are becoming less and less vigilant in defending books, magazines, articles and the like. It’s easy to settle. Very often people who either did do the bad thing they were accused of or didn’t do the bad thing they were accused of don’t want money, they want a retraction, and the decision about a retraction is a very, very difficult one, as the story I just told you indicates.

A final thought: I just want to indicate what we mean by truth when we all use the words here, because lawyers use words in a way that are very clear to them, but have to be explained sometimes. Truth in
an English court means this really happened; it really happened just the way you say it happened. Not that you interviewed people who said it happened, not that you wrote books that said it happened. That’s not admissible evidence; that’s all hearsay. And it would be hearsay and inadmissible here, too, if we were not so interested in the state of mind of the journalist. But that’s one of the reasons it’s so important, at least in an American context, to have the defense of relying on reasonable sources, or, to put it differently, not deliberately lying about something. A reporter, a journalist or an author can say, “I believed that such and such happened because so and so said this, and so and so said that, and so and so wrote a book saying this and the like.” That’s admissible here, but only for the legal reason that we focus on the journalist’s state of mind. It is not admissible to prove “truth,” because we treat it as what we call hearsay.

I understand that there’s an element of legal technicality in that, but it has enormous practical impact. So when we say that in every country but this, maybe, if you publish something you have to prove it’s true, we don’t mean by that prove it’s true in the sense of saying you have reliable sources, scholars, eyewitnesses, this and that. What we mean is really being able to demonstrate in the way that the law interprets the word “truth” that it happened just the way that you said. And that’s one of the reasons it is such an important protection, in my view, of the whole notion of freedom of speech and freedom of the press, to have something like the system that we have here. I don’t think everybody’s got to have it, but in terms of our own country, at least, I think it works pretty well.

NAVASKY: Great.

STEPHENS: Britain’s greatest legal export is libel. I mean we exported it to the colonies when you were the colonies, we exported it to the whole of our Commonwealth. And one of the things that’s quite interesting is, it was developed to stop people dueling—to stop the sons of the landed gentry from dueling and erasing blots on the family escutcheon. It seems to me that we haven’t really come very much further in the Commonwealth. You, on the other hand, have changed. You’ve reversed the burden of proof that Floyd was talking about, but you don’t presume things to be false and you’ve introduced the Sullivan standard, and so what we now find ourselves with is a situation where you can find a set of facts where you publish something in this country and it is entirely unobjectionable at law; it can’t be actioned at all. Two very obvious examples of that seem to me to be the Roman Polanski case and the Rachel Ehrenfeld case; they couldn’t win those cases in this country. What has happened is that those people are then taking something which is perfectly legitimate and has probably been cleared by lawyers in this country and suing in London on a different legal standard, different rules, so it’s effectively like putting a metric slide rule over an imperial standard. Of course they’re not the same.

So the claimants coming to London want an order vindicating them. The order from the Royal Courts of Justice in the Strand, which comes with the Queen’s Crest on the top, and of course that’s what they want

“[Defamation law] was developed to stop the sons of the landed gentry from dueling and erasing blots on the family escutcheon.”

—Mark Stephens

...to wave around. I’ve come hotfoot today from a human rights NGO who are being sued in London, by a Rwandan national, who is accused of overseeing genocide in one of their reports. The problem is that most of the witnesses are dead, scared, displaced, in Rwanda, and it’s going to be very, very difficult (and expensive) to find them, and I think this is what he’s relying on. Because how do you go off into the bush in Rwanda and find people who will come to London and testify against someone like that? It’s very, very difficult, and that is the difficulty with our system—so we’ve got someone who actually should not be given a vindication and in those circumstances, it is likely to get one. And it will be a false vindication which they can then use around the world.

NAVASKY: Thank you. This is a master class.

AUDIENCE: I’m writing a memoir sort of thing, and I’ve created a “confessions club” which contains certain people that I know. They weren’t actually in this club and I don’t really libel them, but I do say things about them and I’ve put them in this club where they were not. I change them all around, so they’d hardly recognize themselves. Is that libelous?

NAVASKY: I’m going to repeat the question: This is someone who is writing a memoir and has changed around a lot of facts about the people she’s writing about, not in a libelous way, but the question is, are
"There was a great columnist... Murray Kempton, who would write these ornate sentences, and he was once sued for libel and the judge ruled that no one could understand what the guy was talking about, so it couldn't be libelous."
—Victor Navasky

such changes, per se, libelous? A second question is, is that a good thing for a writer to do or not? This guy Frey got in a lot of trouble for doing something like that, but let me ask the panel if they have any observation or answer.

ABRAMS: Well, you certainly ought to take care not to make them do things that are worse in your book than they really did, even if they’re not exactly the same things. Of course the other thing you might consider, obviously there’ve been lots of books based upon personal experiences and the like, where people fictionalize, but you know, make up new names. We do have a rather protective body of law protecting works of fiction.

There’s an old New York case in which an author wrote a book in which he described his former girlfriend in a very, very unflattering way, basically transformed her into a prostitute. She sued, saying everybody knows it’s me, you’ve described me physically in every way that all my friends know, including details of our relationship that all our friends know, could only be me, and then you’ve made me a prostitute. Well, the author said it’s a work of fiction. I meant it to be a work of fiction. Great authors throughout the ages, Shakespeare and more, have used stories based on reality, but have added enough to make it fiction and are thereby protected.

But you do have to be careful. The more it’s just like the person the closer you get, at least that the person doesn’t do anything worse, as I’ve said, than you can demonstrate really happened. I represented someone who wrote a book that was a work of fiction in which certain things are described which to anyone who knows the person, are based on a former husband of the person, in which the former husband is described as having been convicted of such and such a crime. Well it wasn’t that crime, it was another crime in the same area, and he, when he threatened to sue, said basically, but you’ve made me much worse than I am. You’ve transformed this so-called fictional character, that everyone knows is me, into something far worse than anything I was ever accused of. And that did raise some serious legal issues.

AUDIENCE: I’m wondering if there’s a difference in the U.S. and the U.K. in what is actually defamatory. It’s easy to talk about someone having been in the SS or not, and whether that’s true or not, but where does the line come when something becomes actually defamatory in legal terms?

STEPHENS: The argot of the London libel pleader has become refined to the point where it’s taken on the form of its own language. So for example, our society has moved to a point where to suggest that somebody is gay is not defamatory of them. We allow gay marriage, it’s legitimized and the rest of it. And right-thinking people think none the less of anybody who is accused or suggested to be gay. The problem is, what the libel lawyers have done is they’ve twisted that, and so you now see claims which say, Ah, but everybody knows I’ve denied being gay, so I haven’t taken offense at being called gay, but you’ve accused me of being a liar. And as a consequence of that, you’ve defamed me by implication that I’m a liar. And so what we’re seeing are incredibly strained meanings put on words, tortured meanings, and this is becoming increasingly common in London and this is part of the process that is causing the problems that we’re seeing.

NAVASKY: One of the marvelous things about libel law are the literary decisions. There was a great columnist in New York who many of you may remember, Murray Kempton, who would write these ornate sentences, and he was once sued for libel and the judge
ruled that no one could understand what the guy was talking about, so it couldn’t be libelous.

ABRAMS: One of the big differences between Mark’s description of English law and the law here is not so much the definition of what is defamatory or not, but what I take to be a far greater willingness on the part of the courts over there to allow lawsuits about things that we would call matters of opinion, and therefore not actionable. So to say someone is ugly is such a subjective matter here, to say an actress is ugly. If John Simon lived in England, I mean, he couldn’t have survived all these years. Things like that—to say that a restaurant makes terrible, terrible food that you cannot eat. One of my favorite cases here was a number of years ago in which a Chinese restaurant sued a French guide for saying that its pancakes were flat. And the proprietor of the Chinese restaurant came into court with his whole cooking gear. He brought the stove into court and said, It is defamatory to say of my restaurant that we make flat pancakes. I’ll show you. This is how we make the pancakes. And he showed how the pancakes were made, to make the argument that they could not be flat because of some ingredient he uses. He won the trial! And it was only when it got to the Court of Appeals that the court basically said, anything in a restaurant review is OK.

STEPHENS: You’re absolutely right, Floyd, to pick that point up, because one of the key differences, for example, is satire. Satire is not a defense to libel in London. The libel courts in London have no sense of humor. As a consequence of that, if you’re libel-vetting for a comedian, you have to be very, very careful. Because even if it’s an obvious joke, even if everybody in the room laughs, it’s still libelous, people can still sue and do.

NAVASKY: There was a restaurateur in New York called Toots Shor and he sued the owner of the Stork Club for saying, “I wish I had as much money as he owes.” And the court said, in this credit economy, it’s not libeling somebody to say they owe a lot of money.

AUDIENCE: Question for Mark. A few years ago there was a case that came down in England that some of us here thought was going to improve the situation in that it would create a defense other than provable truth in the court. It doesn’t seem to have quite done the trick. I wish I could remember the name of the case or the doctrine.

NAVASKY: Do you remember the case, Mark?

STEPHENS: Yes I do, it involved Albert Reynolds, who was the “Taoiseach,” or Prime Minister of Ireland, and he sued the Times, who’d published an article entitled “Goodbye Gombeen Man,” which was defamatory of him. And what the court said is, sometimes things are so overwhelmingly of public interest that there’s a risk you’ll get it wrong, but as long as you’ve been responsible in the process of actually collecting and gathering and presenting the information, then in those circumstances we’ll accept that risk as a society.

“Satire is not a defense to libel in London. The libel courts in London have no sense of humor. As a consequence of that, if you’re libel-vetting for a comedian, you have to be very, very careful.”

—Mark Stephens

and we’ll say that even if you get it wrong, there will still be a defense. And it gave 10 illustrations of things you should do to be responsible: You should put the gravamen of the story to the target, you should give him an adequate opportunity to respond, you shouldn’t sensationalize it, you should actually write it in as neutral terms as possible—for example, are you going to adopt the allegations that are being made?—and effectively what’s happened is whilst this was meant to be some kind of holistic balancing exercise between the 10 factors, the courts of first instance basically set out these 10 things as 10 tripwires, and the author can trip at any one of them, and off goes the explosion of libel damages to your side and you’re felled. And so this defense hasn’t reached its potential.

I think we’ve had 47 cases—I’ve just finished a House of Lords case on this—where we’ve actually been through and analyzed it and the House of Lords appeared very unhappy with the way in which the law is developing. There were 47 cases that we found where this defense had been deployed, and it had been successful in one, since about 2000. So that’s a great batting average, and as a consequence of that I think the law is about to be rewritten in that area.

AUDIENCE: In the Authors Guild there are a lot of freelance writers and independent journalists, and I’m wondering how easy it is to sue somebody. In fact, there doesn’t have to be any serious grounds, you can use it as a weapon because you put them into a situation where they have to hire a lawyer, and lawyers are
expensive. So if you’re an independent journalist or a freelance journalist do you have any protection against any assets you might have, like if you own a coop or a condo, if you write under an LLC?

NAVASKY: Interesting question. If you’re a freelance, independent writer but you incorporate yourself and take yourself to lunch on the company expense account, do you have any protection against being sued by someone you write about, and can they reach your condo or whatever it is that you may own?

AUDIENCE: Right, because even if you write for a major publication they can sue the publication.

NAVASKY: Right, they can sue the publication and the writer. And some publications protect their writers with their own libel insurance. Some provide counsel but their interests sometimes are different, so does anyone want to respond to that question? Do you have any protection if you incorporate yourself?

ABRAMS: The only thing I’d say is that it can’t be a sort of transparent effort to avoid liability under all circumstances. My law firm is an LLP now, as most law firms are now. But what I can’t answer is the real thrust of your question, as I take it to be: How much protection do you get by the sort of personal incorporation and the like? I just don’t know. What about you Victor? Do you know?

NAVASKY: I don’t know the answer but it’s a good question.

STEPHENS: One of the things, moving away from the incorporation point, one of the things that I negotiated for the Writers Guild in the U.K., and started telling people to do, was to actually just write to the commissioner and say, That’s fine, but my terms of business are that you will indemnify me in the event that I’m sued or you’ll provide me with counsel in the event of a suit. And what I found was that the publishers were so lazy or disorganized, that actually a very good percentage of the journalists and independent authors managed to get protection on that basis.

McDERMOTT: It’s still difficult to negotiate, but you wouldn’t have to write under the byline of your LLC.

NAVASKY: I think Floyd’s point though is well-taken. If they see it as a fraud on the court, that you’re just trying to protect yourself and you’ve still libeled somebody, they might pierce the corporate veil, as it used to be known.

AUDIENCE: I have a question about the use of documents such as pretrial depositions. I write for a U.K. publication, and I quoted a pretrial deposition which is actually posted on the Internet, and the lawyers for the U.K. publication insisted on taking it out.

NAVASKY: Is that a legal matter, an editorial matter or some other kind of matter?

STEPHENS: One of the things is that lawyers in the U.K. talk an awful lot of bunkum about court documents. The basic rule about documents in our courts is that until they’re read into the court record, they’re not public. But that doesn’t mean that you can’t get hold of them. If one side or the other gives you their evidence—they can’t give you the other side’s evidence—but if they give you their evidence, then you’re quite at liberty to do it. The other thing is that if you get it from a third party, an independent source, like the Internet, you’re again perfectly entitled to say, and it’s quoted on the Internet, rather than referring to a court record which might be under seal. So you can perfectly happily go ahead that way.

AUDIENCE: It’s my understanding that you can’t libel the dead in this country. Is this also true in the U.K.?

STEPHENS: You can’t libel the dead in the U.K., and many people who wrote about the famous publisher Robert Maxwell breathed an enormous sigh of relief, and most of the more accurate biographies of him came out after his death, untimely as it was. But be careful, because in most of Europe you can libel the dead. In France, for example, you pass down the right to sue to your heirs, and in many Far Eastern jurisdictions as well, the same is true, because it’s seen as not a personal action, you are besmirching the family’s name and the family’s honor, and therefore people feel almost obliged to take libel actions against you, and these often are countries which have criminal libel suits, as Peter was talking about earlier.

AUDIENCE: I’m curious as to the role of Bonus Books in the Ehrenfeld case, if there was any role at all, and also was the book published in any foreign territory?

McDERMOTT: Bonus Books chose not to defend but also not to be a plaintiff here in the United States, and as far as I know the book has not been published anywhere other than the United States.

NAVASKY: I want to thank you. It’s a great audience and a great panel.
and Child said, “This would make the perfect setting for a thriller.” That book, Relic, was published in 1995, and the two men have collaborated on 10 more novels.

GIDE’S RULE: From Andre Gide’s Journals, Volume III: “The novel requires a certain slowness of progress that allows the reader to live with the characters and become accustomed to them. . . . Allow the indispensable to subsist was the rule I imposed on myself—nowhere more difficult and dangerous to apply than for the novel. The writer must achieve the reader’s cooperation by first securing his understanding.”

ACORN MAN: Novelist Philip Roth’s latest book is Everyman. Roth told the AARP magazine, “What I have in mind when I start to write could fit inside an acorn—an acorn, moreover, that rarely if ever grows into an oak. Write fiction and you relinquish reason. You start with an acorn and you end up with a mackeral. Unfortunately, my weekday does not support the argument for a universe of ‘intelligent design.’ Chance and staying power. That’s the hand the imagination’s dealt.”

FOR KIDS: Next spring, Mary Higgins Clark, best-selling mystery novelist, will publish her first children’s picture book, Ghost Ship: A Cape Cod Story. PW reported that Wendell Minor is doing the illustrations.

ON THE ROAD: Has any book you read triggered an itch to travel? The New York Times asked that question. Authors were quoted:

Jonathan Franzen, author of The Corrections: A Novel and The Discomfort Zone: A Personal History, said that he would “like to go into the back country of Iceland, where Halldor Laxness set his masterpiece, Independent People, before the island becomes a temperate beach destination.”

E. L. Doctorow, author of The March, wrote, “I was bedridden for some months at about the age of eight and remember devouring Richard Halliburton’s Book of Marvels. Halliburton swam in the Panama Canal, slept one night at the Taj Mahal, and climbed up the cables of the Golden Gate Bridge or was it the George Washington?”

Simon Doonan, author of Nasty: My Family and Other Glamour Varnints, wrote, “I read The Man Who Watched Trains Go by Georges Simenon when I was a teenager. The depiction of Paris—sordid, violent and full of strippers and hoodlums—filled me with appalled fascination. Despite the idyllic veneer, I still see Paris this way. Ditto Hubert Selby Jr.’s Last Exit to Brooklyn. I am always looking for Tralala whenever I cross the bridge.”

Al Franken, author of Lies and the Lying Liars Who Tell Them, wrote, “I want to spend time in Iraq. George Packer’s Assassins’ Gate had a big effect on me. Mr. Packer conveys a sense of place of the awful deterioration there—of what is happening to normal people in Iraq and what is happening to a culture—in a way that is infinitely more nuanced than what you see on the news.”

Elizabeth Kostova, author of The Historian, wrote: “Treasure Island made me think of travel as pure excitement.” Patrick Leigh Fermor’s Between the Woods and the Water made her “love the element of imagination in travel; Stevenson imagined adventure, but Fermor, walking across the map, imagined history.”

HOW TO: Billy Collins’s poem “Advice to Writers” is in his collection Sailing Alone Around the Room. It starts with “Even if it keeps you up all night, wash down the walls and scrub the floor/of your study before composing a syllable.”

The poem ends with: “cover pages with tiny sentences/like long rows of devoted ants/that followed you in from the woods.”

EDITOR-NOVELIST: Sterling Lawrente, editor in chief of W. W. Norton & Company, has written a novel, The Lightning Keeper. The New York Times said that the plot is partly based on stories he heard when he spent summers at the estate his family has occupied for nearly a century in northwest Connecticut. The family was once the biggest landowner in the area.

As an editor, Lawrence acquired Sebastian Junger’s Perfect Storm for $35,000 and Junger credits Lawrence with helping him find a structure for the book’s multiple stories.

Another best-selling author, Michael Lewis, published Liar’s Poker with Lawrence and then left for Knopf. Lewis said, “Knopf had no idea what to do with me,” so Lewis returned to Lawrence. Lewis said, “He has the storytelling equivalent of perfect pitch.”

VIEWPOINT: The late Willie Morris, onetime editor of Harper’s Magazine and author of North Toward Home and My Dog Skip, wrote: “A writer’s life, the totality of it, is at best bizarre, and at worst horrendous. . . . That is why most writers choose, whenever possible, to forget the books they have written, because each takes a specific piece out of you, a big chunk of your own personal history. It is reported that William Faulkner, among others, always got the drunkest between books.”

According to Rovere, “There are some writers who make us privy to human experience; there are others who subject us to it. Faulkner, it seems to me, belongs to the second group. Those who make us privy to experience are, among moderns, men like Shaw, Forster, Gide, Mann, Lawrence, Orwell—the teachers and moralists of a generation. Reading them, we observe human conduct, we speculate upon it, we extend the range of our perceptions and sympathies. . . . With Faulkner, we come about as close to the assimilation of another’s sensations as it is possible to come in literature, which is to say a good deal closer than, as a rule, it is possible to come in life.”

BACKGROUND NOISE: Carly Phillips’s latest, Hot Item, is a best-seller on the paperback mass market list. She told PW that she writes her books with her MacBook Pro in her lap, TV blaring and two daughters flitting about the house. She claims that “these sights and sounds swirl in my brain and contribute to the developing story tapestry.”

A PLACE FOR EGO: The following quote is from Janna Malamud Smith’s memoir of the novelist Bernard Malamud, My Father Is a Book: “Fiction writing is nearly impossible without substantial ego. It takes strength to bear the preposterousness of the endeavor, the inevitable defeat.”

ALIVE: A reviewer in the Sacramento Bee praised Thriller, a collection of stories he said were written by “John Lescroart, James Rollins, Denise Hamilton, Gayle Lynds, Liz Sansborough and Lee Child.” Gayle Lynds sent us the quote and added by e-mail: “I feel like a proud mama. I created Liz [Sansborough] to star in two of my thrillers—The Coil and Masquerade—and she’s the heroine of my short story in the collection reviewed.” Lynds added: “Characters do have a way of taking over.”

IN TUNE: Do you listen to music when you write? Historian Douglas Brinkley, 45, is the author or editor of 17 books. His latest is The Great Deluge: Hurricane Katrina, New Orleans, and the Mississippi Gulf Coast. He wrote the book between Thanksgiving last year and March, and upon publication, it quickly climbed onto the bestseller lists.

As background for his labor, Brinkley told The New York Times that he listened to Bob Dylan and Willie Nelson.

CHALLENGED: Marisha Pessl, 29, is author of Special Topics in Calamity Physics, her first novel. She told PW her toughest challenge was: “Many writers say they hate writing, but like having written. I’m sort of the opposite. I enjoy the mental challenge of figuring out how to herd my characters from point A to point B.”

Pessl, a photogenic blonde, became the subject of an article in The New York Times entitled, “You Can’t Judge a Book by the Photo on the Cover.”

Sarah Weinman, crime fiction columnist for The Baltimore Sun, wrote on her website that the book was “just the publishing world’s almost masochistic desire to let attractive packages, so to speak, dictate their buying guidelines.”

A reviewer for The New York Times Book Review wrote of Pessl, “Her talent and originality would draw wolf whistles if she were an 86-year-old hunchback troll.”

WHO-DONE-IT? Who is Gary Troup and why is his novel, Bad Twin, on the bestseller list?

Gary Troup is a fictional character from television’s series Lost. Troup was on Flight 815, the jet that crashed on the show’s first installment. His book has 300,000 copies in print. Rumor has it that Stephen King may be the author.

Margaret Maupin of the Tattered Cover bookstore in Denver told The New York Times that Bad Twin sold out quickly. “I’m not sure that the people who are buying this are your general book buyers,” she said, “but they love the TV show.”

LEGAL LIMBO: Letters found last April revealed that Charlotte Bronte offered to rewrite parts of Jane Eyre because of a legal threat from the headmaster of the school on which she based Lowood, an infamous place where the students were half-starved. The Reverend William Carus-Wilson, headmaster, was upset by the book and wrote to Bronte, a former student, and threatened her with legal action.

She sent him a new version of her story with the offending passages cut, but she never changed the book, and he failed to pursue his case.

HAPPY TALK: Kate DiCamillo’s The Tale of Despereaux won the 2004 Newbery Medal and has now been translated into 24 languages, including Indonesian, Latvian and Afrikaans. An animated feature film is in the works.

PW reported that DiCamillo wrote to her website, “I think of myself as an enormously lucky person: I get to tell stories for a living.”

The new paperback has 350,000 copies in print.

FIRST-TIMER: Ira Berkowitz’s first novel is Family Matters. The retired advertising executive is 66 years old and lives in Ardsley, N.Y. The main character in this mystery is a suspended New York police officer named Steeg.

Berkowitz told The New York Times that he taught himself to write by reading books by Robert Parker, Hubert Selby Jr., William Kennedy and other authors he admires. He said he did no research
but asked himself: “How long should a book be? What is a voice? How do you propel people from one chapter to the next? What do people say to each other?”

Berkowitz has written a second Steeg novel, Double Down, and is at work on a third. “Steeg is my buddy,” the author said. “I’m fleshing out his life.”

ART IN HER PAST: Alyson Richman’s third novel is The Last Van Gogh. She told PW why she enjoyed writing about the famous artist:

“When I was applying to college, I applied almost exclusively to art schools. At the last minute, I panicked and thought maybe I don’t want to be an artist for the rest of my life. But it’s probably me mourning that I don’t paint anymore. I love it so much. I can easily place myself in the shoes of a character who is an artist.”

Richman is at work on a new novel about the painter Egon Schiele.

FEEDING TV: Rupert Murdoch’s News Corporation owns Fox Television Studios and HarperCollins. Fox has hired Karen Glass to scout projects based on the publisher’s books. The synergy will start with Lisa Scottoline’s thrillers, which feature female partners in a law firm.

Elizabeth Noble’s novel, The Reading Group, has also been optioned for possible development into a TV series. The book tells about a year in the life of a women’s book group.

AND ON CLUBS: Diana Loeyv is the author of The Book Club Companion: A Comprehensive Guide to the Reading Group Experience. The book not only provides the titles of hot books, but the food to serve with their discussion: “strawberries are the go-to-book-club fruit.”

Ann Patchett’s Bel Canto should include opera arias, smoked salmon and chocolate cake with strawberries. Loeyv also suggests rituals and dressing up. Go shop for flowers when the book is Virginia Woolf’s Mrs. Dalloway. Wear blue or gray kerchiefs for any book about the Civil War.

COUPLE: Poet Carl Sandburg wrote the following form letter for readers who sent him complaints about his work:

“Dear Blank Blank,

“Thank you for your letter. I shall try to do better.”

COMBINATION: Laurie King has written four police procedurals about a San Francisco homicide detective named Kate Martinelli. She has also written eight novels about a clever girl, Mary Russell, who marries Sherlock Holmes.

King’s editor, Kate Miciak at Bantam, suggested that King write a novel that included both characters. King recalls telling Miciak, “That’s the most ridiculous thing I’ve ever heard; the whole thrusts of the two series are just incompatible.” Then King added, “Kate knows me well. When she plants an impossible idea in my head, I won’t ignore it.”

PW reported the result: King’s new novel, The Art of Detection.

A SAMENESS: British novelist Elizabeth Bowen wrote in her essay, “English Novelists”: “Poor novels do pass away with their time; they pass because they concern themselves only with the ephemeral parts of human experience, not with its lasting essentials. But in the great novel, we recognize those essentials that run through all experience, independent of time. We may, in fact, see for the first time what those essentials are. We see, too, why fundamentally men and women have changed so little.”

CONTEST: The New York Times Book Review asked the question:

“What is the best work of American fiction of the last 25 years?” The winner, with more than 100 notable writers and editors as judges, named Toni Morrison’s Beloved. The runners-up were Underworld by Don DeLillo, Blood Meridian by Cormac McCarthy, Rabbit Angstrom: The Four Novels by John Updike and Philip Roth’s American Pastoral.

NO MYSTERY: John Updike, 74, has written 22 novels. The most recent is Terrorist. He told The New York Times, “All my life there has been one more thing I think I can do—but only one. I feel I’m very near the bottom of my barrel at every moment of my career—not like Dostoevsky, who had a notebook full of ideas when he died. I try to see the next book in my mind, and I see a slightly plump book with a lot of people in it, like Gosford Park. But it’s not a murder mystery because I’m not clever enough to write one of those.”

Updike told an interviewer for Details magazine: “There is a make-it-big-or-you’re-out mentality in publishing. And publishers are not, unlike when I was young, willing to carry an author who never makes it big—does respectable work and has a small following. So no, I don’t think you’re going to see another Hemingway or even another Mailer. I just don’t think there’s the ability of the writer to grab the reader’s attention—and it’s the sort of thing that could be proved wrong tomorrow. Somebody can come along who produced books that people feel compelled to read.”

WHAT’S IN A NAME?: When did Margaret Mitchell change the name of her Gone With the Wind heroine from Pansy to Scarlett? Why did Rex Stout name his detective after the Roman emperor Nero?

These questions are answered in André Bernard’s Madame Bovary, C’Est Moi: The Great Characters of
The book is described as "a casual stroll through the lives and imaginations of some of the world's greatest writers as they struggled to find just the right names for the heroes and heroines of their novels and stories."

OUT: Andrew Holleran is the author of Dancer from the Dance, a novel published in 1978. The New York Times described it as "one of the most famous novels in modern gay literature." Holleran's real name is Eric Garber. He took a pseudonym because, when Dancer came out, he had not told his parents he was gay.

Now Holleran has published Grief, his fourth novel and first in 10 years. Mary Todd Lincoln is "the presiding spirit" of the new book.

In an interview, Holleran said, "Proust claimed that he had no imagination. And I think it's true in a sense. But on the other hand, he also said that he was against the literature of strict notation. He was confusing his reality with something else. I was relieved when I read that, because you always feel guilty as a writer for not imagining more."

POETS' DUEL: It works like this: Two writers are given 15 minutes each to compose a poem based on "inspiration" provided by an editor. They type their poems for quickmuse.com, founded by Ken Gordon of Newton, Mass. The first duel pitted Pulitzer Prize winner Paul Muldoon against Thyliaan Moss, author of 10 books and a professor at the University of Michigan.

The inspiration was from Elizabeth Bishop: "Writing poetry is an unnatural act. It takes great skill to make it seem natural." Moss wrote about a headache. Muldoon wrote about where poetry comes from. Readers of the site can see the keyboard strokes unfold and follow the poets' erasures and false starts.

Gordon, editor of Jbooks.com, said, "Improvisation makes it fresher, more vital. It doesn't give poets a chance to be careful. It offers them the opportunity to surprise themselves, to say things they didn't know they wanted to say, things their fingers know but their brains do not."

Poet Mark Strand declined to take part in a duel. He said, "Being spontaneous doesn't interest me nearly as much as getting 'it' right—'it' being the poem. I write slowly, come to conclusions slowly, and for better or worse I am just a slow poet."


At BookExpo, novelist John Updike denounced a digital future composed of free downloads of books and the mixing and matching of snippets of text, calling it a "grisly scenario."

Anne Fadiman, author of The Spirit Catches You and You Fall Down and Ex Libris, told the Times that a digital library of all books would be a "godsend" during research, allowing her to "sniff out all the paragraphs" on a given topic. But she said, "That's not reading. For reading, you have to read a book in its entirety, and I think there's no substitute for the look and feel and smell of a real book—the magic of the paper and thread and glue."

But the Times said that "For unknown authors struggling to capture the attention of busy readers, the Web offers an unprecedented way to catapult out of obscurity. Glenn Greenwald, a lawyer who started a political blog, "Unclaimed Territory," just eight months ago, was recruited by a foundation to write a book. The book, How Would a Patriot Act? Defending American Values from a President Run Amok, jumped to No. 1 on Amazon.com before it was published, and it immediately hit the nonfiction paperback bestseller list.


Joni Evans, identified as someone who "has worked for many years as an editor, publisher and literary agent," wrote a letter to the Book Review:

"Digitization is optional," Evans commented. "The Internet operates in the world of Also, Either/Or, Not One Way. Updike's intentions of privacy and intimacy are safe; his copyright thoroughly protects his choice to remain nonenhanced, nondigitized, non-hyperlinked and nonsearchable.

"But what is good for John Updike is not necessarily good for the millions of authors the current system has locked out. Creativity does not flourish when books can't find publishers or when audiences cannot be sustained. Those authors whose works remain unpublished, out of print, out of stock or out of date will be the ones to march in the digital revolution. Updike is a large, elite fish in a small pond. The digital pond is primarily for other species—smaller, less recognized, exotic fish that need the oxygen this new world provides."

GHOST: Peter Petre, a senior editor at Fortune magazine, will help Alan Greenspan, former chairman of the Federal Reserve, write his memoir. Greenspan sold the book for an $8.5 million advance.

Petre was paid a reported half million for his work on General Norman Schwarzkopf's book. Petre
also worked on a book by IBM’s Thomas J. Watson Jr. Both books were bestsellers.

STAGED: Three short stories by Ian McEwan were turned into short plays for the stage in Manhattan and presented under the title In Between the Sheets. “Dead as They Come” is a monologue presented as it was written. It’s about a man who falls in love with a shop window mannequin. “Pornography” is about two women and an ex-lover they shared, and “Psychopolis” is about violence in Los Angeles.

A critic for The New York Times wrote, “Pleasing Mr. McEwan” might express the show’s purpose more than any other title, since the director’s hand is not firm enough to stand in for the authorial voice that holds the original material together.”

LA DIFFERENCE: David Brooks, in his New York Times column, mulled over a survey that proved that men and women have different tastes in books. The men liked novels written by men. Camus’s The Stranger, Salinger’s Catcher in the Rye and Vonnegut’s Slaughterhouse-Five topped the list.

Women preferred books written by women. The top six books they named were Jane Eyre, Wuthering Heights, The Handmaid’s Tale, Middlemarch, Pride and Prejudice and Beloved.

The point of Brooks’s column was that “in most classrooms boys and girls are taught the same books in the same ways.” He said that men now make up a smaller share of teachers than at any time in the past 40 years. And he concluded, “Cons- ciousness raising doesn’t turn boys into sensitively poetic pacifists. It just turns many of them into high school and college dropouts who hate reading.”

ADVICE: The New York Times published the advice handed out to graduating classes by a few notable speakers at commencement ceremonies. Historian David McCullough told seniors at Bates College: “However little television you watch, watch less. Read. Read for pleasure. Read for happiness.”

FETE: In 1922, James Joyce and Marcel Proust ate dinner together at the Majestic in Paris. (OK, Stravinsky, Diaghilev, Picasso and a few other celebrities were there too.) Richard Davenport-Hines describes their meeting in his new book, Proust at the Majestic.

According to a review in The New York Times Book Review, “Joyce arrived drunk, and either fell asleep at the table or pretended to. Reports of the actual conversation between Joyce and Proust vary. One version has them saying that they have not read each other’s books, while in another—heard by William Carlos Williams on a trip to Paris in 1924—they discuss their physical ailments (‘My eyes are terrible,’ said Joyce. ‘My poor stomach,’ said Proust. ‘It’s killing me’).”

Aren’t you sorry you missed that party?

KILLER: Conservative blonde Ann Coulter ripped across TV screens in a brief black cocktail dress (even on the early morning Today Show), promoting her new book, Godless: The Church of Liberalism, saying cruel things about the widows of the 9/11 attack victims. According to The New York Times’s David Carr, Coulter’s immoderate method of selling books inspired adjectives like “mean-spirited,” “despicable,” “vicious” and “hate-monger.”

Carr wrote, “By now, she, along with Crown Publishing, have come up with a dexterous formula for kicking up the kind of fuss that sells books.” She has learned “that hyperbole is best sold by the ton . . . . Once attention, negative or otherwise, turns toward her, she is all knuckles and know-how.”

Bob Wietrack of Barnes & Noble, said, “Every single book she has done has become an instant bestseller. Her fan base is phenomenal and she is in the media constantly. When she is in the media, it creates more media coverage. And every single day, the book sells more.”

QUIET ADVERTISEMENTS: Sean Stewart and Jorday Weisman are authors of a YA novel, Cathy’s Book: If Found Call (650) 266-8233. In an early manuscript, the heroine talked about a “killer coat of Clinique #11 Black Violet’ lipstick.”

According to The New York Times, the publisher had signed a marketing partnership with Cover Girl products. The mention of a Clinique product was removed. No money changed hands, but Procter & Gamble, Cover Girl’s maker, promoted the book on a website that is directed at adolescent girls.

“By now, television and movie viewers,” the Times said, “have be-
come used to this kind of thing: when they see sneakers or cars on a show or in a film, they generally assume that these appearances have been paid for by the companies that make the brands.

"But product placement in books is still relatively rare."

COUNTING: The average vocabulary today is about 2,000 words. Most authors today have a vocabulary of about 7,500 words.

In Shakespeare's time, the average was under 500 words, but Shakespeare used his vocabulary of more than 20,000 words.

NAMED: Donald Hall, 77, of Wilmet, N.H., succeeded Ted Kooser of Nebraska as poet laureate. Hall is the author of 20 books of prose, 18 books of poetry and 12 books for children, and an outspoken member of Poets Against War who declined Laura Bush's invitation to a 2003 gathering of poets at the White House because of his opposition to the Iraq War.

Robert Pinsky, poet laureate from 1997 to 2000, told The New York Times, "There is something nicely symbolic, and maybe surprising that they have selected someone who has taken a stand for freedom."

The job pays $34,000 and has a $5,000 travel allowance. Usually, it lasts just one year.

After years of making a modest living as a freelancer, Hall wrote a children's book called Ox-Cart Man, based on a New Hampshire story. The book won a Caldecott Medal, and the publisher ordered a new printing of 80,000 copies. The fat check bought an addition to Hall's old farmhouse. Above the bathroom door is a bronze plaque that proclaims that it is the "Caldecott Room."

CHOICES: New York Times critic A. O. Scott wrote in the Book Review: "Like any other widely practiced kind of writing, the memoirs that crowd the front tables of your local bookstore sort themselves into distinct if not always mutually exclusive subgenres. Every person is different, of course, but the accounts that our utterly special fellow citizens give of their lives and families nonetheless tend to conform to certain recognizable templates. There are coming-of-age stories; anthologies of family eccentricity; chronicles of addiction and recovery; anecdotes of grief and loss."

Take your pick.

END OF ERA: Janet Maslin wrote in The New York Times, "Chick lit appears to be in its death throes. At the very least, the form has bred copycats and lost its novelty and sense of humor. More and more of these featherweights have been bought flat, and some of the genre's exhausted stalwarts have even done the unthinkable: they have grown up.

"That means progressing past the giddiness of first jobs, bad boyfriends, mean employers, instant messaging and brand-name shopping into the realms of divorce, parenthood and even mortality. It's hard to trivialize that sort of subject matter, let alone package it in pastels."

AFTER CHICK LIT: Voice, a new imprint at Hyperion, will publish its first title next April. Publisher Ellen Archer told The New York Times that she wanted to publish books that addressed issues she felt were largely ignored by the news media.

She said, "I felt that I, as a 44-year-old woman, working, married and a mother, did not see my life reflected in any of the media stories. I wanted to create a demographic of women in their mid-30s to later that could better illustrate the landscape of a woman's life."

The books are intended for graduates of chick lit.

AH, SWEET MYSTERY: In a cover article, PW asked, "What do women want? . . . Now more and more publishers think they've solved the mystery: women want sex."

SOLD: Pierre Beres, a 93-year-old collector in Paris, decided to sell 177 manuscripts and rare editions valued at $7.5 million. At auction were manuscripts by Balzac, Proust, Rimbaud, and a copy of Flaubert's Madame Bovary dedicated to Alexandre Dumas. The sale brought in a record $17.5 million.

The French government used its preemptive right and bought six sections of a diary by Stendhal, 570 pages. They will be added to 16,000 pages displayed at a museum dedicated to Stendhal.

NEW APPROACH: A package from Tupelo Press included a press release that said, "Tupelo Press is an independent literary press, committed to giving voice to extraordinary new and established literary talent. . . . The press has offices in Dorset, Vermont, and Charlottesville, Virginia."

The catalog for 2006 included an introduction by Jeffrey Levine, publisher and editor in chief. He explained, "Tupelo Press is a nonprofit 501 C3 corporation and relies upon the generous donations of individuals, foundations and corporations. . . ."

The catalog includes an invitation to "join the Tupelo Press Family." A membership for readers costs $25 to $99 and provides 20% discount on purchases of Tupelo Press books; a handsome Tupelo Press pen; name listed in the annual report and all catalogues. One can join as a Writer ($100-$249). For larger amounts you can be an Associate, Literati, Sponsor, Benefactor, Laureate, Editor's Circle and Publishers' Circle. You can become an Angel by contributing $25,000 plus.

The sample paperback (After the Gold Rush, stories by Lewis Buzbee)
is handsomely designed and printed on creamy paper that is nice to touch.

BELLOWS PAPERS: Nobel Laureate Saul Bellow taught at the University of Chicago for 30 years. The university issued a statement: “The acquisition of Bellow’s papers, which will be combined with the university’s existing Bellow archive, is in accordance with Bellow’s own wishes and brings his professional papers to one location.” Bellow died in 2005.

CASINO READINGS: “Publishers are constantly looking for ways to increase exposure for their writers and increase sales,” The New York Times said. “Bookstore readings, while still a mainstay, are now being supplemented by appearances at fashion stores, corporate headquarters and even at car dealerships. Casinos are just the latest, glitziest addition to that list.”

Foxwoods Resort Casino in Mashantucket, Conn., has featured Janet Evanovich, Augusten Burroughs, Erica Jong, Robin Cook, Nora Roberts and Sue Grafton.

Book sales also generate revenue for Foxwoods because it owns the bookstore on its retail concourse. At her appearance, Evanovich sold 1,125 copies of her latest mystery novel, Twelve Sharp.

TALKER: Comedian Ron White’s I Had the Right to Remain Silent . . . But I Didn’t Have the Ability made the extended bestseller lists. The New York Times described the book as “a pretty scrawny production, basically a compilation of his concert material.” White told The Atlanta Journal-Constitution, “My stories are conversational, [so the book] should read well. Not that I’ve actually read it.”

O EXCLUSIVE: The headline was a grabber: “Harper Lee Writes Again.” Ever since To Kill a Mockingbird was published in 1960, and sold 2.5 million copies in its first year, readers have waited for Lee’s next book. None has been forthcoming, and Lee, now 80, has tried to stay out of public view.

In July, The New York Times breathlessly reported that Lee had written a letter for Oprah Winfrey’s magazine. Lee noted that books were scarce in the 1930s in Monroeville, Alabama, the town where she still lives part-time. The scarcity of books in a town without movies or parks made them a special treasure. “Now,” Lee wrote, “75 years later in an abundant society where people have laptops, cellphones, iPods and minds like empty rooms, I still plug along with books.”

FAME: In Gabriel Garcia Marquez’s One Hundred Years of Solitude, Macondo is the name he used for Aracataca, Colombia, the town where he grew up. City fathers thought that by changing the name to Aracataca-Macondo, tourists and prosperity would come to the “down-at-the-heels town,” as Reuters called it.

Already, a bus company has been named the Nobel Line in honor of the Nobel Prize in Literature that Marquez won. The house where he was born has been turned into a museum. The town held a referendum changing its name, but Mayor Pedro Sanchez said, “turnout was not high enough for the vote to count.”

WRITERS TALK: TV’s PBS had a summer series featuring several writers. It was entitled “Bill Moyers on Faith and Reason.” Edward Rothstein, in The New York Times, reported that Mary Gordon said she put thorns in her shoes when she was 12, schooling herself for Christian martyrdom. Richard Rodriguez said he had a religious experience before surgery for cancer.

Salman Rushdie commented on the conflict between the faith of Islamic fundamentalists and reason. He said that writers might help mitigate disputes because of their “ability to get into the skin of the other.”

David Grossman, an Israeli novelist, said that Samson became “the first suicide killer” when he brought down the Philistine temple.

AT LAST: Nathaniel Hawthorne died in 1864. His wife, Sophia Peabody Hawthorne, moved to London, where she died in 1871. She was buried there. In June, after being separated for 142 years, the bodies of Sophia and the Hawthorne’s daughter Una (who died in 1877) were returned to the U.S. and buried beside Hawthorne in Concord, Mass.

The reunion was paid for by the Dominican Sisters of Hawthorne, a Catholic order of nuns that Nathaniel and Sophia’s younger daughter, Rose, founded.

Imogene Howe, 67, Nathaniel and Sophia’s great-great-granddaughter, told The New York Times, “It’s overwhelming. It’s very emotional. They know now in spirit that everyone is reunited.”

COOKING CRAZE: Bill Buford’s Heat, about learning to be a chef, became a bestseller. Dwight Garner of The New York Times Book Review asked Buford about the current boom in food writing. Buford said that until now it “has been a niche thing, like writing about airplane tires or computer software or snowboards. But I think people have recognized a need for food writing that acknowledges everything food can be about. One of the great charismas of food is that it’s about cultures and grandmothers and death and art and self-expression and family and society—and at the same time, it’s just dinner.”

TO COMICS: Jodi Picoult’s latest best-selling novel is The Tenth Circle,
about a comic-book artist whose teenage daughter is raped.

Now Picoult is writing a five-issue comic series about Wonder Woman. The first will be published next year. Picoult told The New York Times, “When I was approached by D.C. [Comics], I was completely taken aback that they were even thinking of me. It’s a complete honor.”

KILL HARRY: Charles McGrath, in The New York Times, speculated that Harry Potter might die in J. K. Rowling’s seventh and final volume. He commented, “Readers overwhelmingly prefer happy endings to sad ones, according to a survey taken in England in March, and they particularly mind it when a beloved character—a Tess, a Beth March, an Anna Karenina, a Harry, for that matter—has to die. A number of those surveyed said that if they could, they would rewrite their favorite books and make them turn out differently.”

Authors Rowling, John Irving and Stephen King took to the stage at Radio City Music Hall for a charity reading entitled “An Evening with Harry, Carrie and Garp.”

Rowling said that in the forthcoming last volume of the Potter series, “A couple of characters I expected to survive died, and one character got a reprieve.”

Irving and King begged her to allow Harry to live.

BOOK BOOSTER: Harlem Moon is the name of Janet Hill’s imprint at Doubleday. Hill referred back to the time when slavery laws prohibited blacks from reading. She told The New York Times, “There has to be a high value placed on literacy and on books—books in the home, books in the schools. I think it’s important for us to keep telling stories; there is so much power in stories and storytelling.”


Pollitt said that her writer friends claimed the negative review her book got was a great asset. Pollitt wrote, “The very things that made it bad made it good; its frivolity displayed my depth, its confusion threw into relief my steely logic, its snark showed all too clearly who the real wit was.”

My computer insists that there is no such word as snark. Perhaps, Microsoft’s spell-check muses, the writer meant snack, snare, snarl, sink, shark or spark. My dictionary does not list any snark.

The essay then turns into instructions on how a writer can improve a book’s sales rating on Amazon.com just by ordering copies.

PAPERBACK STARS: There are books that sell only modestly as hardcovers but then, as paperbacks, become bestsellers. A recent example, cited by The New York Times, was this summer’s The Memory Keeper’s Daughter, a first novel by Kim Edwards.

Edwards told PW, “During the writing of The Memory Keeper’s Daughter, I returned to classic novels with secrets at their center, especially Dostoyevsky’s extraordinary Crime and Punishment and Hawthorne’s The Scarlet Letter. I’m also midway through Thomas Mann’s quartet of novels based on the story of Joseph and his brothers; these archetypal stories are informing the next novel I plan to write as well.”

Other books which achieved glory as paperbacks include Anita Diamant’s The Red Tent, Ann Patchett’s Bel Canto, The Secret Life of Bees by Sue Monk Kidd, and The Kite Runner by Khaled Hosseini.

Marty Asher, editor of Vintage/Anchor Books, noted that books like Kazuo Ishiguro’s Never Let Me Go tend to appeal to readers who prefer the lower price of a paperback. “Sometimes,” Asher told the Times, “it just takes a while until people realize what’s going on, and word of mouth takes over on a different level.”

SOLUTION: Alan Furst’s name is often mentioned with that of Eric Ambler and Graham Greene. Furst’s latest novel, The Foreign Correspondent, is a bestseller.

With the fall of the Berlin Wall, writers of spy fiction found themselves at a loss. Furst solved this problem by creating the historical spy novel. He told The New York Times, “By the time I got to The Foreign Correspondent I’d finally evolved back to what everyone else started out with: narrative, declarative sentences, past tense, a plain and simple telling of a story.”

HIS LOCALE: Danielle Steel’s 69th book, Coming Out, is set “near the old meat-packing district of the West Village” in Manhattan. Rachel Donadio, in The New York Times Book Review, commented, “What next? If the once grubby, now pain-fully hip meat-packing district is a suitable object of Middle American longing, buy now, before Steel discovers Brooklyn!”

PULP PROSE: When Mickey Spillane died in July (see Deaths below), The New York Times provided a “sampling of Mr. Spillane’s unmistakable prose.” Spillane’s novels sold more than 200 million copies. Here is a small sampling of the Times’s samples:

“Sunday morning in New York is like no other time. From dawn until 10 the city is like an unborn fetus.” (The Killing Man, 1989)

“I could bury the ax in his belly.
That would be fun, all right. Stick it right in the middle of his skull and it would look a lot better.” (The Girl Hunters, 1962)

“It was a soft, teasing, tasting kiss, as if she were sampling the juice from a plum before buying the lot.” (The Snake, 1964)

“Silence has a funny sound.” (The Body Lovers, 1967)

ON-DEMAND: The New York Times reported that “The print-on-demand business is gradually moving toward the center of the marketplace. What began as a way for publishers to reduce their inventory and stop wasting paper is becoming a tool for anyone who needs a bound document. Short-run presses can turn out books economically in small quantities or singly, and new software simplifies the process of designing a book.”

The free software is available from Blurb.com.

SECONDHAND: Scott Smith’s first novel was A Simple Plan. His second, The Ruins, was a summer bestseller. It is set at an archaeological site in Mexico, a country Smith has never visited.

He told The New York Times, “I’m embarrassed to admit that I’ve never traveled to that part of the world. My research consisted of Internet surfing and tour book browsing, and I have no doubt that this has resulted in countless errors. The bulk of the novel takes place on a single hillside in the jungle, though, and this is a place that exists only in my imagination.”

FIRST TIMER: Jed Rubenfeld, a Yale law professor, wrote a novel, The Interpretation of Murder. Last fall, Holt paid him $800,000 and is spending $500,000 to market the book about a high-society murder in New York, and the role played in the investigation by a visiting Sigmund Freud. The first printing was 185,000 copies. His agent, Suzanne Gluck at William Morris, said that the rights had been sold in 28 other countries.

John Sterling, Holt’s president and publisher, said, “The readers are not going to come to a book just because it is good. You really have to make a book.” Sterling said, “Jed did an amazing job of researching the history to provide a foundation of real interesting facts for the reader.”

Reporter Motoko Rich of The New York Times, commented, “With the smash success of The Da Vinci Code, publishers have been increasingly attracted to entertaining fiction with a dollop of erudition.”

TITLE TRYOUTS: F. Scott Fitzgerald submitted a novel with the title Trimalchio in West Egg. The publisher hated it, and editor Maxwell Perkins asked Fitzgerald to come up with another. The author suggested The Great Gatsby.

Margaret Mitchell tried out the titles Tote the Weary Load, Not in Our Stars and Bugles Sang True, but finally chose Gone With the Wind.

The publisher of Peter Benchley’s Jaws didn’t like the title, but the author couldn’t come up with anything better.

Joseph Heller’s Catch-18 became Catch-22 because, at the same time, Leon Uris was publishing a novel called Mila 18.

Hitler wrote a book with the title Four and a Half Years of Struggle Against Lies, Stupidity and Cowardice. The publisher didn’t think that title would sell, so it was changed to Mein Kampf (My Struggle). The New York Times said the book became a bestseller only after Hitler came to power.

OLD NAZI: Nobel Prize-winning author Günter Grass, 78, admitted in his new autobiography, Peeling Onions, that at 17 he had joined the Waffen SS. Joachim Fest, a historian, told the magazine Der Spiegel, “After 60 years, this confession comes a bit too late. I can’t understand how someone who for decades set himself up as a moral authority, a rather smug one, could pull this off.”

The New York Times quoted a German newspaper that said that Grass’s confession “leaves behind a bad taste of book promotion.”

Agence France-Presse reported that Grass had told the German news agency DPA that his service in the Waffen SS shamed him, and that he had tried ever since to lead an upstanding life. In a statement, Grass said, “I would like to keep the right to say that I have understood this painful lesson that life taught me when I was a young man. My books and my political activity are the proof.”

Novelist John Irving told the Associated Press: “The fulminating in the German media has been obnoxious. Grass is a daring writer, and he has always been a daring man. Grass remains a hero to me, both as a writer and as a moral compass.”

The book was rushed into German bookstores two weeks earlier than planned.

SHIFT: The New York Public Library is rearranging the 25,000 reference books in the main reading room. The books had been located according to a system invented in 1896. The New York Times said, “Its greatest drawback is that no one but the system’s librarians really understands it.”

The change is expected to take a year. When it’s completed, readers will have an easier time locating many of the most commonly consulted works, from the Encyclopaedia Britannica to Shakespeare’s plays.

For example: In the old system, three English authors—Shakespeare,
**Milton** and **John Bunyan**—and one Spanish author, **Cervantes**, had separate call numbers. The four authors will now be reintegrated into the sweep of their national literatures.

**OH:** The New York Times Book Review published an essay about artists’ colonies. The best known are the MacDowell in Peterborough, N.H., and Yaddo in Saratoga Springs, N.Y.

There is a saying, the Review reported, that “the sex is better at Yaddo but the work is better at MacDowell.”

**RACY:** Among the hottest books at the moment are racy novels for older teenage girls. The New York Times said, “Characters in the books go clubbing, drink, smoke marijuana and have sex.”

“As they kissed, she couldn’t help but think that sex with Dan might be a whole lot more meaningful than it had been with Clark,“ reads a line from **All I Want Is Everything**, one of nine books in The Gossip Girl series.” The A-list series has “younger girls clamoring for the books, too, upsetting parents and leading some bookstores to move the books from the children’s section.”

**Diane Garrett,** owner of Diane’s Books in Greenwich, Conn., said she had moved the books to the adult section. “We try to keep them separate. The language is bad and there’s no value to them.”

The Gossip Girl series by **Cecily von Ziegesar** is intended for readers 14 and older, but **Jennifer Lawton**, owner of Just Books in Old Greenwich, Conn., said that when younger girls ask for the books, she suggests others that are more appropriate. Some girls, however, “are adamant,” Lawton told the Times. “There’s a lot of peer pressure and a need to feel you’re part of things,” Lawton said. “Reading **The Princess Diaries** is passe; it’s not racy enough.”

**HOT PROPERTY:** The late **Frank Herbert** wrote the novel **Dune** 40 years ago. It is the best-selling sci-fi novel of all time—5.6 million copies. The four sequels that followed sold more than a million copies each.

After Herbert died in 1986, his son, **Brian Herbert**, and **Kevin J. Anderson** wrote five prequel novels. Their sixth, **Hunters of Dune**, out in August, is based on an outline written by Frank Herbert that Anderson said was found in a safety deposit box.

**PROLIFIC:** At the end of August, romance writer **Nora Roberts** published her 166th novel, **Morrigan’s Cross**. The New York Times devoted a feature article to her career and described her as “the most prolific romance writer of all time. At 55 she has written more books than **Sidney Sheldon**, **Harold Robbins**, **Judith Krantz**, and **Danielle Steel** combined.”

Thirty-one of her books have made their debut at No. 1 on the bestseller list. She also writes police procedurals under the name of J. D. Robb.

In her books, love is always more important than money. And Roberts promised: “There’ll always be a satisfying ending, always. People aren’t all going to end up dead. I’m not going to write **Anna Karenina**.”

**CULT MAN:** **Harry Crews**, 71, has written 23 novels including his latest, **An American Family**. The New York Times described the books as “his continuing saga of the roughneck South.” He taught at the University of Florida for nearly 30 years before retiring in 1997. He lives in Gainesville.

He told The New York Times, “I had an ex-wife and I had an ex-kid and I had an ex-dog and I had an ex-house and I’m an ex-drunk. I’ve supported whores and dopers and drunks and bartenders. Thank God I don’t do that anymore. It’s a bummer of a way to spend your life.”

“Now I just keep wondering how this life’s going to wind down. It’s time to die, but I don’t feel like dying. I feel good all the time,” he said. “Except when I don’t.”

**MAILER RETURNS:** **Norman Mailer’s** first novel in 10 years, **The Castle in the Forest**, will be published in January. The almost 500-page novel, according to The New York Times, “explores three generations of Hitler’s family, including incestuous relationships and family estrangements, while meditating on Hitler’s evil.”

**PYNCHON TOO:** **Thomas Pynchon’s** first novel in nine years, **Against the Day**, will be published in December. It’s set at the turn of the 20th century.

**NEW OUTLET:** **Mitch Albom’s** memoir ** Tuesdays with Morrie** spent 206 weeks on the hardcover nonfiction bestseller list and 157 on the paperback list. His first novel, **Five People You Meet in Heaven**, sold six million hardcovers and spent 101 weeks on the bestseller list.

His latest book, a novel entitled **For One More Day**, came out in September and, along with espresso, was offered for sale in 5,400 Starbucks stores in the U.S. The New York Times reported that Albom did readings at Starbucks in eight cities.

**TALE TELLER:** “I’m a teller of stories,” **Gary Paulsen**, 67, told The New York Times. “I put bloody skins on my back and dance around the fire, and I saw what the hunt was like. It’s not erudite; it’s not intellectual. I sail, run dogs, ride horses, play professional poker and tell stories about the stuff I’ve been through. And I’m still a romantic; I still want Bambi to make it out of the fire.”
Paulsen has won three Newbery Honor awards. His best-known novel for the young is Hatchet, about a teenage survivor of a plane crash in the Yukon. He has lost count of the number of books he has written, but his website says it is more than 175.

Paulsen said he stopped writing for adults 10 years ago. He said, “It’s artistically fruitless. Adults are locked into car payments and divorces and work. They haven’t got time to think fresh. Name the book that made the biggest impression on you. I bet you read it before you hit puberty. In the time I’ve got left, I intend to write artistic books—for kids—because they’re still open to new ideas.”

**INSPIRATION:** Ian Falconer does both text and illustrations. He appeared on the Today Show to promote his fourth picture book, about a little pig, Olivia Forms a Band.

Falconer brought along his niece and explained, “The Olivia books were made for Olivia, who was the first grandchild in our family. She really was something of a little terror.”

“I was not!” the real Olivia told the Today audience.

**ABSENT:** Nell Freudenberger’s first novel was Lucky Girls. Her new book is entitled The Dissident.

The Dissident is set in Los Angeles. Freudenberger told PW: “For me it’s always easier to write about somewhere I’m not currently living. When you’ve been away, a place takes on this shimmer. In the case of L.A., the shimmer is probably smog.”

She ends the interview with: “Setting out to write a book about something you don’t know inevitably corrupts your story—it takes it somewhere the characters wouldn’t take it.”

**CRITIC AT HOME:** Claire Messud’s new novel is The Emperor’s Children. Her first two novels were When the World Was Steady and The Last Life. She started another novel but showed it to her husband, James Wood, literary critic for The New Republic. The New York Times reported that when he compared it to a special on Lifetime television, she dumped it.

Messud told the Times she wasn’t interested in writing about people who were simply likable. “I don’t trust people who are likable,” she said. “We are all unappealing. It is just a matter of how much we let people see it.”

**IDEAS:** Kay Hooper is the author of a best-selling paperback, Chill of Fear. PW asked her where she gets her ideas.

Hooper said, “I see or hear something, and my plot-trained conscious mind begins to spin a possible story . . . I get my ideas from everywhere—but mostly from inside my head. I read a great deal, I watch TV and movies, I talk to people.”

**THE END?:** On Sunday, August 27, The New York Times thought it notable enough to mention that, for the first time in years, The Da Vinci Code was on neither the hardback nor paperback bestseller lists.

**JOB CHANGES, NEW TITLES**

Peternelle Van Arsdale is executive editor of G. P. Putnam’s Sons.

Leah Spiro has joined McGraw-Hill as senior editor of the business group.

Hilary Redmon has been promoted to editor at Viking.

Alessandra Lusardi has moved up to associate editor at Viking.

Meg Lemke, formerly an assistant editor at Houghton Mifflin, is editor at Seven Stories Press. She will acquire nonfiction, literary fiction and graphic novels.

Amy Pierpont is a senior editor at Clarkson Potter.

Gretchen Hirsch is assistant editor at Harcourt Children’s Books.

Chelsea Green has launched a new imprint, Sciencewriters Books.

Lynn Margulis and Dorion Sagan are in charge of science books for the general public.

Colin Robinson is a senior editor at Scribner.

Peter Genna is publisher of a new unnamed imprint at Bloomsbury. The focus will be on fiction.

*Compiled from Publishers Weekly.

**DEATHS**


Vern Leroy Bullough, 77, died June 21 in Thousand Oaks, Calif. He was the author of The Care of the Sick: The Emergence of Modern Nursing (1978) and edited several other books on nursing and sexuality.

James W. Carey, 71, died in Wakefield, R.I. A journalism profes-
Marilyn Monroe was the author of the iconic novel "The Last Angry Man" (1956), and several works of nonfiction.

Fritz Klein, 73, died May 24 in San Diego, Calif. The psychiatrist was the author of "The Bisexual Option" (1978) and helped edit "Bisexual and Gay Husbands: Their Stories, Their Words" (2001).


Mary Martin McLaughlin, 87, died June 8 in Millbrook, N.Y. The scholar of the Middle Ages was co-editor of two anthologies: "The Portable Medieval Reader" (1949) and "The Portable Renaissance Reader" (1953). A biography, "Elise and the Paraclete," will be published in 2008.

Judith Moore, 66, died May 15 in Berkeley, Calif. She was the author of "The Left Coast of Paradise: California and the American Heart" (1987) and "Never Eat Your Heart Out" (1997). A memoir, "Fat Girl," was nominated last year for a National Book Critics Circle award.

Craig Morris, 66, died June 13 in Manhattan. The archaeologist was co-author (with Adriana von Hagen) of "The Inca Empire and Its Andean Origins" (1993), "The Cities of the Andes" (1998) and a forthcoming book on the ancient Andes.

Arlene Raven, 62, died August 1 in Brooklyn, N.Y. She was the author or editor of nine books, including "Feminist Art Criticism" (1988) and monographs of the artists June Wayne, Betye Saar, Michele Oka Donner and Nancy Grossman.

Philip Rieff, 83, died July 1 in Philadelphia. He was the author of "Freud: The Mind of the Moralist" (1957), "The Triumph of the Therapeutic: Uses of Faith After Freud" (1966) and "Fellow Teachers" (1973).

Michael Riffaterre, 81, died May 27 in Manhattan. The Columbia professor was the author of "Semiotics of Poetry" (1978), "Text Production" (1983) and "Fictional Truth" (1990).


Howard Shanet, 87, died June 19 in Manhattan. The conductor, composer and professor was the author of "Philharmonic: A History of New York's Orchestra" (1975) and "Learn to Read Music" (1956).

Anatole Shub, 78, died July 2 in Washington. He was the author of "The Return of Stalin's Ghost" (1976).

William A. Shurcliff, 97, died June 20 in Cambridge, Mass. The physicist was author of "Solar Heating: One Hundred Daring Schemes Tried and Untried; Air-to-Air Heat Exchangers for Houses and Thermal Shuttlers and Shades: Oeer 100 Schemes for Reducing Heat Loss Through Windows.

Mickey Spillane, 88, died July 17 in Murrells Inlet, S.C. The creator of Mike Hammer was the author of "I, the Jury" (1947), "Vengeance Is Mine, My Gun Is Quick, The Big Kill, Kiss Me Deadly" and many other novels. (See item in Publishers Row column.)

MEMBERS MAKE NEWS

The International Thriller Writers presented their annual Thriller Awards on July 1 in Phoenix, Arizona. Runners-up included Jeff Abbott, Panic, and Jess Walter, Citizen Vince, for Best Novel; Mark Gimenez, The Color of Law, for Best First Novel; and Jeffrey Anderson, Sleeper Cell, and Michael Wieck, Exit Strategy, for Best Paperback Original.

Kenyon College awarded poet Diane Ackerman an honorary degree at their 2006 commencement ceremony.

Landscape with Silos, a poetry collection by Deborah Bogen, received the 2005 X. J. Kennedy Poetry Prize—$200 and publication by the Texas A&M University Press Consortium.

The eight nominees for the 2007 Beverly Cleary Children’s Choice Award include Marlene Targ Brill, Bronco Charlie and the Pony Express, Betsy Byars, The SOS File, and Stephanie Greene, Owen Foote, Mighty Scientist. The award encourages children in elementary school to read and vote for their favorite book.

Lambda held its 18th Annual Literary Awards on May 18 in Washington, D.C. Abha Dawesar won best Lesbian Fiction for her novel Babyjji, David Rakoff won in the Humor category for Don’t Get Too Comfortable, and Sherrill Tippins won best Biography for February House. Runners-up included Kate Clinton, What the L?, Humor; Michael Allen Dymochno, White Tiger, Gay Men’s Mystery; Tania Katan, My One Night Stand with Cancer, Belles Lettres; Barry McCrea, The First Verse, Gay Men’s Debut Fiction; and Alex Sanchez, Rainbow Road, Children’s/Young Adult.

Candace Fleming was a finalist at the Society of Midland Authors’ annual dinner on May 9, in Chicago. Her book, Our Eleanor: A Scrapbook Look at Eleanor Roosevelt’s Remarkable Life, was honored in the Children’s Nonfiction category.

Meredith Gould received first place in a contest sponsored by Magnificat magazine for her essay “Our Eucharistic Heritage.” Her most recent book, Come to the Table: A Catholic Passover Seder, received an IPPY award in the religion category at the Independent Publisher Book Awards in May. Other 2006 IPPY award winners included Yolanda Barnes, When It Burned to the Ground, for Multicultural Fiction Adult, and William Hoffman, Lies, a finalist in General Fiction.


Joseph Kanon was awarded the 2005 Hammett Prize for Alibi: A Novel. Presented by the North American branch of the International Association of Crime Writers. The award was presented in June at a ceremony in Toronto, Canada, during the Bloody Words mystery convention. Don Winslow was nominated for his book The Power of the Dog.

Peg Kehret’s novel, Escaping the Giant Wave, was awarded the Iowa Children’s Choice Award, the Nevada Young Reader Award, the Nebraska Golden Sower Award, and the Florida Sunshine State Award. Her book Spy Cat won the South Dakota Prairie Pasque Award. All awards are voted on by children from a list of librarian-recommended titles.

Larry L. King was honored with the renaming of the Austin Playhouse in Texas, now the Larry L. King Theatre. The playhouse, recently enlarged and refurbished, will be the site of the annual Larry L. King New Play Festival. King is the author of numerous books as well as the plays The Best Little Whorehouse in Texas, The Night Hank Williams Died and The Dead Presidents’ Club.

Kevin Lavey was awarded the Grand Prize in the Maryland Writers’ Association’s 2006 International Novel Contest for Who’s There?

Gayle Lynds’s The Last Sypmaster won the 2006 Novel of the Year award from the Military Writers Society of America, an association of 500 authors, poets and artists who have either served in the military or whose subject matter includes aspects of the military.

Megan Marshall’s The Peabody Sisters: Three Women Who Ignited American Romanticism, a finalist for the 2006 Pulitzer Prize in biography and memoir, was recently awarded the Francis Parkman Prize from the Society of American Historians, for the best-written work of American history; the Mark Lynton History
Prize, presented by the Columbia School of Journalism and the Nieman Foundation at Harvard; and the Massachusetts Book Award in nonfiction.

Show; Don’t Tell! Secrets of Writing, by Josephine Nobisso, won the 2006 Global Learning Initiative’s award for Best Trade Book with Educational Application, given by the GLI, the Association of Educational Publishers, and the Bologna Children’s Book Fair. Nobisso was honored at the fourth annual awards ceremony in March in Italy.

The State University of New York at Albany has created a graduate fellowship and an undergraduate scholarship in American History, awarded annually, in honor of author Joseph E. Persico. Persico, a biographer and historian, has donated papers relating to his 10 books to the school.


Paula Whymann was awarded the 2006 Washington Writing Prize for short fiction at the annual conference of the Washington Independent Writers (WIW) in June for her story “Driver’s Education.”

Irene Willis was awarded the Violet Reed Haas Prize for Poetry by Snake Nation Press, for her second poetry collection, At the Fortune Café. She received $500, publication, and a reading at the Wiregrass Literature and Literacy Festival of the Deep South in Valdosta, Ga.

Jeannette Winter’s picture book Mama: A True Story in Which a Baby Hippo Loses His Mama during a Tsunami, but Finds a New Home, and a New Mama was selected as an honors book by The Horn Book, a magazine about books for children, as part of the 2006 Boston Globe-Horn Book Awards for Excellence in Children’s Literature.

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**BOOKS BY MEMBERS**

Clint Adams: My Watch Doesn’t Tell Time; Elisa Albert: How This Night Is Different: Stories; Gilbert Allison: Always Too Soon: Voices of Support for Those Who Have Lost Both Parents; Susan Allport: The Queen of Fats: Why Omega-3s Were Removed from the Western Diet and What We Can Do to Replace Them; Jennifer Armstrong: The American Story: 100 True Tales from American History; Sandy Asher (and David L. Harrison) (Eds.): Dude!: Stories and Stuff for Boys; Linda Ashman: What Could Be Better Than This?; William Ashworth: Ogallala Blue: Water and Life on the High Plains;

Kate Banks: Max’s Words; Molly Barrow: Matchlines: Book One of the Low-line Series; Dave Barry (and Ridley Pearson): and the Shadow Thieves; Nona Kilgore Bauer: Dog Heroes of September 11th; Richard Bausch: Thanksgiving Night; Sheri Bell-Rehwoldt: Great World War II Projects You Can Build Yourself: A Children’s Activity Book; James R. Benn: Billy Boyle: A World War II Mystery; Jeremy Blackman: Anonymous Lawyer; Lucy Jane Bleddsoe: How to Survive in Antarctica; Francesca Lia Block: Psyche in a Dress; Lawrence Block: Hit Parade; Deborah Bogen: Landscape with Silos; William Boyd: Restless; Kelly Braffet: Last Seen Leaping; Karen Brichoux: Falling Into the World; Poppy Z. Brite: Soul Kitchen; Elise Broach: Cousin John Is Coming!; Terry Brooks: Armageddon’s Children; Jared Brown: Moss Hart: A Prince of the Theatre; Carole Bruno: Lessons from the Top Paralegal Experts: The 15 Most Successful Paralegals in America and What You can Learn from Them; Eve Bunting: Reggie; Meg Cabot: How to Be Popular; Adrian Calabrese: Sacred Signs: Hear, See and Believe Messages from the Universe; Bebe Moore Campbell: Stompin’ at the Savoy; Michael Cart (Ed.): Rush Hour: Reckless: A Journal of Contemporary Voices, Vol. Four; Victor D. Chase: Shattered Nerves: How Science is Solving Modern Medicine’s Most Perplexing Problem; Will Clarke: The Worthy: A Ghost’s Story; Andrew Clements: A Million Dots; Room One: A Mystery or Two; Margaret Coel: The Drowning Man; Elaine Coffman: Alone in the Dark; Mark Coggins: Candy from Strangers; Michael Connelly: Echo Park; Alan Cook: The Hayloft: a 1950s mystery; Elisha Cooper: Bear Dreams; Susan Cooper: Victory; Cynthia Cotton: Abbie in Stitches; Elizabeth Cox: The Slow Moon; Doreen Cronin: Dooby Dooby Moo;


Jane Yolen (and Heidi E. Y. Stemple): Fairy Tale Feasts: A Literary Cookbook for Young Readers and Eaters (Adapt.);

Muriel Kagan Zagar: Murder on the Mount of Olives; Jean Zimmerman: The Women of the House: How a Colonial She-Merchant Built a Mansion, a Fortune, and a Dynasty
From the President

Continued from page 4

his French on that one), need-to-know basis, preach to the choir, gynotikolobomanophilia, french military victories, common denominator, marlon brando, c’est la vie and kicking a cow to move it. The ones I checked were consistently cogent. Unless Kung-fu Jesus is a house name, he—well, see the definition by “danny boy” of lexicographer.

Less authoritative authors may still be entertaining. Before we get to some of the definitions of book, let’s take a look at a couple of other entries, both from someone who goes by Krys, whose spelling I quote exactly:

1. authoritative [one up, two down]
   With authority; superiority over others.
   “I wrote ‘authoritative’ on my English paper, and Mr. Gately thought it was real. Turns out the real word is ‘authoritative.’”

1. authoritative [no thumbs]
   A word that Willis put on his paper that isn’t really real.
   “Hey wow, I put ‘authoritative’ on my English paper and Mr. Gately thought it was real.”

It wasn’t Krys (aka Willis?) who authored the number one definition of book:

1. book [199 up, 81 down]
   An object used as a coaster, increase the height [sic] of small children, or increase the stability of poorly built furniture.
   “Where do you want me to put your drink?”
   “Oh, just leave it on top of that book.”

Anonymous authored that one. After it we plunge into a kaleidoscopic series of non literary definitions. There are various versions of the venerable street-derived “run or leave in a hurry” and of the text-message-coinage “cool,” explained as follows:

In the T9 predictive text [something to do with text-messaging, I take it] on cell phones, the numbers 2665 spell both “book” and “cool,” but “book” is the first word to display. To save time, it is left and understood to mean “cool.”

Other alleged senses of book, involving ways of deceiving parents, may cause you to resist the urge to feel ephebephobia, defined as “hatred of teenagers.” Still others take us back, not very encouragingly however, to the book we authors hold dear:

4. book [89 up, 49 down]

A tool rarely used by todays [sic] societies, because it is not “cool” to read a book . . .
Which is a shame, really, because once upon a time (and today, in countries with little money) a book was a precious commodity.

12. Book [11 up, 10 down]
   A collection of paper strips, usually bound together and labelled on the cover or binding. The strips, or pages, contain various sections, or chapters, which relate facts or a story.
   Generally, all topics discussed in the book relate to each other and form a point, which is the main theme of the book. Many books relate stories, whether funny, action-packed, romantic, horrible, dramatic, etc. Some books are very evil and discuss topics boring and very fact-based. These are called School books, and should be burned.

If we proceed to a separate listing, Books, we find that the top definition, 31 up to 4 down, is by someone on our side: “Did you know there HAVE been books printed since the fifties and the new ones are cool? They have them so anyone can understand them . . . They come with cuss words, funny characters and you might understand some of those weird things . . . that’s right, Words.” The author of this is Out-crowder, but haven’t we all been there? On the other hand, the third-highest definition of Books, 10 up, 7 down, is “Something we stopped caring about after the Internet came along. Why would I wanna read books when I can check about it on the internet?” That one is by FlareNUKE.

Anonymous (probably not the same one as above) takes top ranking under literacy, 20 up, 4 down, by defining it as “What 99.9% of urbandictionary.com is lacking.” But that is too negative. I have learned quite a bit from Urbandictionary.com. For instance, a 16, in rap, is one verse, sixteen lines (two more than a sonnet). Some of you may be interested in seeing what your name means in slang. Let’s see, trillin: “cross between trippin’ and chillin’”; offit, short for “off the hook,” which means “cool; happening”; robinson . . . No, I’m sorry Roxana, that one’s not so great. It’s less insulting, though, than all the other author names I’ve been trying for the last hour. Hoping to end on a positive note.

Let’s see, look up writer. Number one is “a graffiti artist who practices any form of Graffiti Art.”

Hmm.

The definitions of president are not entirely relevant here either, I hope.

Well, I’ll say this: Kung-fu Jesus ought to get something down on strips of paper and join the Guild.

See you next in meatspace maybe. ✤
Letters

Continued from page 2

the lying, it is shocking that they do not use their talents to keep yelling about it. Why? Whose fault is it? Ours.

Don’t many of the hoaxes that you mentioned show the gullibility of writers and editors?

Ronald Mirman
New York, NY

Perry Glasser’s Letter to the Editor makes some valid points about the limitations of contests. However, contests play a positive role in the larger literary community.

As Mr. Glasser notes, contests are profitable, and some are sponsored by marginal publishers. However, most sponsors are legitimate, reputable literary organizations, journals or small presses. Many journals struggle financially and rely on volunteer staff. Entry fees leave a writer slightly poorer—that is true—but the fees cover the cost of awards and judges. These fees also provide a modest infusion of income for the journals. For many journals, this represents their only income; subscriptions rarely cover the cost of printing. This furthers the cause of good literature, helping these magazines survive. And some contests do not require an entry fee, like the New Rivers Press competition.

Survival of literary journals and small presses is critical for emerging writers. Poets, essayists and short story writers have limited outlets for publication. Large circulation magazines like The New Yorker or The Atlantic are largely inaccessible. Major publishing houses are usually interested only in novels or memoirs. Small presses, literary journals and contests offer alternatives for writers. These small presses and contests are often the only routes to publication for those with a collection of stories or poems.

If a writer wins a contest, he or she can put this on a resume and query letters. This is no small thing. In a large field of new writers, a contest honor can be the one item that causes an editor to take a second look at a manuscript.

Contests serve another, often overlooked function—they give writers a deadline and sometimes affirmation. Entering one may motivate a writer to revise a manuscript. Even if a writer isn’t chosen as winner or finalist—which is the most common scenario—a judge or reviewer may give comments on a rejection; this can boost a writer’s morale. In the current publishing climate, even small bits of feedback, paltry as they may seem, can be encouraging.

Contests are just one option a writer can choose. They often cause disappointment, and aren’t the answer to hopes for publication or a guarantee of discovering first-rate literature. But they do not create the great harm that Mr. Glasser contends. The proliferation of contests has more to do with the growth of the writing community than with exploitive publishers. The number of contests has increased just as the number of MFA programs and writing conferences have.

Each writer is free to decide whether to enter a competition, whether the sponsor is reputable and constitutes what Mr. Glasser terms “an important venue for a writer’s work.” The judge chooses a winner based on taste and subjective standards. However, becoming a winner or finalist is not merely a “real nifty resume line” or a part of some “lit-biz,” but an honor.

Writing itself or winning a contest rarely brings fame and fortune. But seeing one’s efforts in a literary journal or book form brings special satisfaction. A contest is clearly a gamble with tough odds and an expense. It is just one of many ways to pursue the dream of a book. A writer will not gain hundreds of thousands of readers as a result of winning or be catapulted to fame by Oprah. But there will be more readers for a writer’s work and the opportunity to share one’s vision than if the manuscript stayed hidden in a desk drawer.

Ronna Wineberg
New York, NY

Legal Watch

Continued from page 11

communications under Section 47 USC §223 for the posting of six particular derogatory comments made about him. Though Dimeo acknowledged that the message board posts were not made by Max, he held him responsible for the publication “of defamatory statements” through his website. Max in turn admitted that he removes and alters posts to his message boards as he sees fit, but requested that the case be removed to U.S. District Court for the Eastern District of Pennsylvania, then filed a motion to dismiss.

The district court first considered whether Section 509 of the Communication Decency Act (codified at 47 U.S.C. § 230) barred Dimeo’s defamation claim against Max. The District Court found that 47 U.S.C. § 230(c)(1) and 47 U.S.C. § 230(c)(3) prevent providers and users
of “interactive computer services” from being treated as a publisher of information provided by others for liability purposes. To qualify for immunity from defamation claims under Section 230(c)(1), three statutory elements must be satisfied:

- First, the defendant must be a provider or user of an interactive computer service.
- Second, plaintiff’s claims must treat the defendant as a publisher or speaker of the defamatory information.
- Finally, the challenged communication must be “information provided by another information content provider.”

In regard to the first element, the court found that Max’s website provided and used an “interactive computer service” because it is a service that enables computer access by multiple users to a computer server, and as such, is a provider of such service under the statutory definition. Next, the court found that Dimeo’s complaint alleged that Max was the publisher of these posts in that he had the ability to alter, edit and delete the content and that Max’s website did publish the defamatory content. Finally, the court concluded that the defamatory statements were provided and authored by message board users other than Max. Ultimately, the court found that all three statutory elements were satisfied and dismissed the defamation claim.

The court next considered whether Max was civilly liable under 47 USC § 223 (a)(1)(c), which criminalizes “utilizing a telecommunications device . . . without disclosing one’s identity and with intent to annoy, abuse, threaten or harass any person . . . who receives this communication.” The court found this claim to be inappropriate, as it is a criminal statute. The court further noted that Dimeo did not even try to show that this section allows a private right of action. Regardless, the court found that the claim would independently fail because § 223 (a)(1)(c) applies only to one who uses a telecom device without “disclosing one’s identity.” Dimeo, the court noted, did not, and could not allege that Max did not disclose his identity. Moreover, the pertinent section of the law applies only to someone who makes a telephone call or utilizes a telecom device, not to someone using an interactive computer service, which Congress had explicitly exempted from the provision. Accordingly, the court dismissed this claim as well and ultimately dismissed the entire suit.

—Michael Gross
Staff Attorney

Legal Services Scorecard

From June 23 through October 23, 2006, the Authors Guild Legal Service Department handled 305 legal inquiries. Included were:

- 50 book contract reviews
- 10 agency contract reviews
- 16 reversion of rights inquiries
- 41 inquiries on copyright law, including infringement, registration, duration and fair use
- 10 inquiries regarding securing permissions and privacy releases
- 8 electronic rights inquiries
- 2 First Amendment inquiries
- 168 other inquiries (including literary estates, contract disputes, periodical and multimedia contracts, movie and television options, Internet piracy, liability insurance, finding an agent, and attorney referrals)

Steinbeck Heirs Reclaim Rights from Longstanding Agreements

Steinbeck v. McIntosh & Otis, Inc.
U.S. District Court for the Southern District of New York

Following a ruling by Judge Robert Owen of the Southern District of New York, John Steinbeck’s heirs succeeded in recapturing control over the copyright interests of several of the author’s most celebrated works.

Thomas Steinbeck, the author’s son by his second marriage, and Blake Smyle, the author’s granddaughter, relied on the statutory language of the 1998 Sonny Bono Copyright Term Extension Act (“Sonny Bono Act”) when they served five “Notices of Termination” to a variety of rights licensees, including the Penguin Group, longstanding publisher of many of Steinbeck’s works, as well as to McIntosh & Otis, the author’s literary agent. Starting in 1929, the young author had entered into licensing agreements with The Viking Press (acquired by the Penguin Group in 1975) for several works, including Tortilla Flat ©1937; Of Mice and Men ©1937; and The Grapes of Wrath ©1939.

Other grants the Steinbeck heirs hoped to clear in-
cluded motion picture rights licensed to Paramount Pictures, Inc. for *The Long Valley* and *The Red Pony*; motion picture rights licensed to Twentieth Century Fox for *The Wayward Bus*; and motion picture, radio and television rights granted to Rogers & Hammerstein for *Cannery Row*.

Right of termination is a feature of copyright law that allows creators or their heirs to re-appropriate licensing interests in their works. The right serves to mitigate the disadvantage young authors face in assessing the potential value of their work when entering into agreements with publishers and other entities. Before the Copyright Act of 1976, termination of all rights, interests or licenses in a copyrighted work was automatic when a copyright came up for renewal at the end of the first 28-year term.

The Copyright Act of 1976, which extended copyright term lengths generally, also gave to copyright owners of pre-1978 works a right of termination of all extant licenses and transfers during a five-year window that began at the completion of the second 28-year term of renewal, or on January 1, 1978, whichever occurred later.

The Sonny Bono Act, which extended the general term of copyright by another 20 years, again granted to creators and their survivors of pre-1978 works in renewal terms an opportunity to exercise the right of termination, by means of a second five-year window that begins 75 years after the original registration date, if the first window of opportunity (provided by the Copyright Act of 1976) had not been seized. Using this extension, the Steinbeck heirs asserted their right of termination in 2004.

By a residuary clause in his will, all of John Steinbeck’s copyrights passed to his third wife, Elaine Steinbeck. However, right of termination functions as a property right distinct from the ownership of the copyright. By the language of the statute, the right of termination passes entirely to the surviving spouse of the creator unless there are surviving children, in which case any surviving children or grandchildren are entitled to share one-half of the termination interest among them, and the widow takes the other half. Ms. Steinbeck’s opposition to taking measures to re-claim the licenses to her husband’s works was sufficient to block Mr. Steinbeck’s and Ms. Smyles’s aspirations. Upon Ms. Steinbeck’s death in 2000, the author’s son and granddaughter asserted their right.

Penguin and other defendants argued that in 1994 Elaine Steinbeck entered into a “new agreement for continued publication” whereby she negotiated for higher compensation. The defendants point to an express term of that agreement that purports to “cancel and supersede the previous agreements.” The defendants claim that the 1994 agreement acts as a post-1978 grant of copyright, nullifying the plaintiffs’ claim.

Judge Owen rejected the argument that a later agreement could eradicate the termination right. Indeed, the plain language of the statute specifies that the right of termination will be upheld “notwithstanding any agreement to the contrary.” The judge found evidence that right of termination had been carried forward by the 1994 agreement because a term of that agreement allowed for certain contingencies “if Elaine Steinbeck exercises her right to terminate grants made to the Publisher in this agreement.” Further, Judge Owen found troubling that the right of termination could be alienated in an agreement to which Mr. Steinbeck and Ms. Smyley, owners of half of that termination interest, were not party.

In contrast to Judge Owen’s ruling, the U.S. Court of Appeals for the Ninth Circuit ruled in a similar case last year against Clare Milne, granddaughter of Winnie the Pooh’s creator, A. A. Milne. In 1983, the Milne estate renegotiated various licensing and royalties agreements with Disney and Stephen Slesinger, Inc., an early licensee of Winnie the Pooh toy profits. The 1983 agreement considerably increased the flow of revenue to the Milne estate, but after the Sonny Bono Act, the Milne estate sought to profit from the new termination opportunity. The court ruled that the 1983 agreement had effectively acted as a post-1978 grant of copyright, so that the family held no claim of right to terminate licenses granted therein to Disney. The Supreme Court declined to hear the case on appeal.

The Steinbeck heirs succeeded in recouping full rights and title to the early works that are Penguin holdings. As for the later literary works, including the alleged holdings of Twentieth Century Fox; and Rogers & Hammerstein, the court found that since Steinbeck’s death occurred in 1968 (before he had a chance to renew these copyrights) the renewal of copyright never vested in the grantees. Instead, at the end of the first 28-year term, all rights, interests and licenses were released, and the renewal copyright automatically had passed to the next of kin. In other words, Twentieth Century Fox and Rogers & Hammerstein had no licenses in 2004 to relinquish; all had reverted to Elaine Steinbeck in 1978.

—John Merchant
Legal Intern
The Ohio State University Press is offering its annual prize for a manuscript collection of short fiction. The winning author will receive a standard book contract and a cash prize of $1,500 as an advance against royalties. To enter, send a manuscript of short stories, novellas, or a combination of both, of between 150 and 300 typed pages. Individual stories must not exceed 125 pages. Previously published stories or novellas may be included in the collection. Deadline: January 2006 (manuscripts must be postmarked in the month of January). Include a fee of $20 and a self-addressed stamped envelope. Send manuscripts to Fiction Editor, The Ohio State University Press, 180 Pressey Hall, 1070 Carmack Road, Columbus, OH 43210-1002. www.ohiostatepress.org.

Main Street Rag's Annual Poetry Book Award includes publication, $1,000 and 50 copies of the published work. To enter, send between 48 and 80 pages of poetry with no more than one poem per page, a cover letter with manuscript title, author's name, and author's contact information, and a $20 reading fee. To ensure anonymity, do not include author's name in the manuscript and do not include a Dedication or Credits/Acknowledgements page. Deadline: January 31, 2007. For full submission guidelines, visit www.mainstreetrag.com/PoBkCont.html. Main Street Rag, 4416 Shea Lane, Charlotte, NC 28227.

BkMk Press of the University of Missouri-Kansas City is accepting applications for the G. S. Sharat Chandra Prize for Short Fiction and The John Ciardi Prize for Poetry. Winners will receive $1,000 and publication of their book. To enter, send a single-spaced book-length manuscript of 50 to 110 pages for poetry, or for short fiction, a double-spaced manuscript of 150 to 300 pages. Include two title pages: one with the author's name, address, and phone number, a second without any author information, and a $25 reading fee. Deadline: January 16, 2007. For full submission instructions, visit www.umkc.edu/bkmk/poetry.html. BkMk Press, University of Missouri-Kansas City, 5100 Rockhill Road, Kansas City, MO 64110-2499.

The WILLA Literary Awards, presented by Women Writing the West, are awarded annually to books featuring stories about women set in the American West. Books initially published in 2006 are eligible for the awards, which are given in the categories of Contemporary Fiction, Historical Fiction, Original Softcover Fiction, Creative Nonfiction, Scholarly Nonfiction, Poetry, and Children's/Young Adult Fiction and Nonfiction. Each award carries a cash prize of $100 and winners will be honored at the annual ceremony in October, 2007, in Colorado Springs, CO. The application fee is $50. Deadline: February 1, 2007. Send entries to Jane Kirkpatrick, Women Writing the West, 8547 E. Arapahoe Road, #J-541, Greenwood Village, CO 80121. jane@jkbooks.com, (541) 565-3475. To view the full submission guidelines or download an application, visit www.womenwritingthewest.org, or contact Jane Kirkpatrick at (541) 565-3475 or jane@jkbooks.com.

Highlights Magazine's annual fiction contest will focus on mystery stories this year. Three winning stories will win $1,000 and publication in Highlights. All submissions will be considered for publication. To enter, send stories of up to 800 words in length, or up to 500 words for stories for beginning readers, and a self-addressed, stamped envelope. Indicate the word count in the upper right-hand corner of the first page of the manuscript and write “Fiction Contest” on the manuscript or envelope in order to be considered for the contest. There is no entry fee. Postmark deadline: Between January 1 and February 28, 2007. Highlights for Children, 803 Church Street, Honesdale, PA 18431.

The Ledge Magazine is offering fiction prizes for previously unpublished short stories. The three winners will receive $1,000, $250, and $100, as well as publication in the magazine. To enter, send stories of up to 7,500 words with an entry fee of $10 for the first story and $6 for each additional story. Send $18 for a two-issue subscription and free entry for one story. Include name, mailing address, and e-mail address on each story. Deadline: February 28, 2007. The Ledge 2007 Fiction Awards Competition, PO Box 310153, Jamaica, NY 11431. www.theledgemagazine.com.
wanted to write—and you end up having spent money to write it. Most of my life, until a couple years ago, I’ve voluntarily done that."

What happened a couple years ago was initially a modest impulse. Allen’s years of caring for her children—not to mention reading the children’s books of her husband—had given her a deep appreciation for youthful fables, which combined with the more irreverent and adult observational humor that fueled her stand-up comedy to produce a single story. Called “The Long Chalkboard,” it was the brief fictional tale of a woman who mounts a chalkboard in her apartment in a failed attempt to nurture her children’s creativity, and the hilarious and sad uses to which the chalkboard is put over the course of generations. Allen showed the story to her husband, who was encouraging enough that she sent it to an illustrator friend in the hopes that he would offer to illustrate it—with no luck. She sent it to various children’s book editors, who rejected it on the grounds that, as a childlike tale for adults, it was an awkward blend of two genres and thus impossible to market.

Eventually Allen’s husband “took pity on me,” she guesses, and offered to illustrate the story himself, whereupon she sent the package off to a former publisher friend who referred it to Shelly Wanger, an editor at Pantheon Books who fell in love with it. The editor’s only demand was that Allen add more stories to the volume. Allen, recovering from an operation, had the rare opportunity to spend quality time in bed, which she used to write two additional stories, one about a cranky children’s book author—whose temperament is based more on her own than her husband’s, she points out—and the other about a woman who cooks a chili with the mystical power to embolden its eaters. Feiffer illustrated the lot of them, and The Long Chalkboard and Other Stories was published in October to widespread acclaim for precisely the kind of genre-bending wit and sophisticated simplicity that once seemed to make the venture, well, impractical.

“I was terrified to take a chance like this,” Allen reflects, “and then it’s like falling off a log. I don’t know what I was thinking. Did I think I was going to get in trouble?” Eventually Allen’s theorizing, like her wry and original book, turns comedic. “It may be an age thing: I mean, with only so many years left in my life, how much do I really have to lose?”

there’s some magical “it” out there that I need to quickly find before I stop researching. This usually leads to several hours—sometimes days—of frenetic busywork that nearly always ends up having been unnecessary.

As for fiction, the question “What am I doing?” is in a way what propels me through the process. I write with a sense of blindness and confusion about what I’m up to; in my good moments this yields a thrilling sense of discovery and adventure, and in bad ones I feel like a fraud who should just admit that I’m not qualified for this job and quit. Moving through the novel is, for me, a very slow process of figuring out what I’m doing. And when I really, truly know the answer to that question, I’m usually close to being finished.

Q: How long have you lived in Brooklyn? Do you give readings with other Brooklyn-based writers?

EGAN: I’ve lived in Brooklyn almost six years. I haven’t yet given readings with other Brooklyn-based writers, but God knows there are a lot of us around here, and I’m going to read with many at the Brooklyn Book Festival next weekend.

Q: How old are your kids? Have they shown an interest in the writing life?

EGAN: They’re three and five years old, both boys. They seem extremely interested in books and writing. The older one often makes “books,” which I staple for him. He started doing that when he could barely draw figures. They both lust for stories in a way I recognize—they’ll do anything for another chapter. Of course I fantasize that they’ll both become writers, but knowing the way the world works, they’ll probably end up in Hollywood! ✦
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The Authors Guild is the oldest and largest association of published authors in the United States.

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