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Lawyers for Libraries

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Lawyers for Libraries

by Joseph L. Gerken

The Office for Intellectual Freedom of the American Library Association created Lawyers for Libraries to educate attorneys in First Amendment principles as they apply to public, school and academic libraries. Since 1997, Lawyers for Libraries has offered seminars in First Amendment law, provided expertise to libraries litigating cases, and linked libraries to attorneys willing to advise and represent them.

The establishment of Lawyers for Libraries has proven to be quite timely, given the spate of recent legislation threatening the First Amendment rights of library patrons. ALA has participated in some of the most significant litigation in this area over the past few years, including successful challenges to Federal laws that would have required libraries to act as censors and restricted access to material protected by the First Amendment.

This writer was privileged to attend a two day Lawyers for Libraries training conference held in May in Chicago. The conference was an "eye opener" on a number of levels. Perhaps most striking was the degree of success that library advocates have had in Federal court, including cases decided by the Supreme Court. Presenters at the conference included attorneys from the law firm Jenner and Block, who challenged Federal laws that ban literature deemed "indecent", and that require public libraries to install filtering software on all public internet terminals. In both cases, the attorneys successfully argued that the Federal statute was unconstitutionally broad, in that they improperly prevented patrons from accessing material protected by the First Amendment. Another presenter, John Horany, of Dallas Texas, challenged a local policy that required that two children's books on gay parents be placed in a special section of the library, inaccessible to young readers.

While litigation was one focus of the conference, a common theme was that libraries can and should institute policies that will preclude the need for resort to the courts. Presenters stressed that libraries should consider adopting reasonable and clear policies in areas such as access to library materials, internet access, use of public meeting rooms and display cases and patron behavior. If such policies are put in writing, and are consistently followed, a library is much less likely to have to go to court to defend its practices.

The core principle of the conference is perhaps best summed up in the Supreme Court's decision in *Board of Education v. Pico*, 457 U.S. 853 (1982): "The right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press and political freedom." The struggle to preserve that right to receive ideas is an ongoing one, and libraries no doubt will encounter many challenges in this regard. It is encouraging to know that Lawyers for Libraries is available to attorneys and to librarians committed maintaining First Amendment principles in our libraries.