

Peltz, R. (2005, June). Pieces of *Pico*: saving intellectual freedom in the public school library. *Brigham Young University Education & Law Journal*, Retrieved October 4, 2008, from Academic Search Premier database.

This article provides a concise overview of the history of school libraries, and of the US legal decisions which affect them. He traces the bifurcated mission of the school library through history, and demonstrates how the basis of the *Pico* decision in 1982 upholds this distinction, while subsequent decisions and legislation disregard it. Peltz argues that school librarians in support of Internet filtering undermine not only the personal liberties of students, but also the mission and authority of their own profession.

Peltz advocates with lucid passion for the legal preservation of the school library as a resource for students' personal inquiries, and extends this doctrine from text sources to unfiltered Internet access. Though carefully acknowledging that school librarians face many challenges when supervising unfiltered Internet use, discussion of acceptable alternatives is outside the scope of this article. Some current controversies are not addressed, as the article predates by a few crucial years the explosion of social networking websites.

Several years ago news reached my high school debate classroom of an approaching Internet filtering system which had been installed by our county office of education. Soon my students and I became acquainted with some of the peculiarities of this filtering system: it would block the Democratic Party website as “political”, but not the Republican; block a Buddhist source as potentially “controversial”, but allow a fundamentalist Christian site. Within a few days my students had figured out routes for circumventing this system, which subsequently faded away in a tangle of technical difficulties. Over the years this filter has been replaced by several different versions, varying in their egregious bias, but alike in their pattern of interference, circumvention, and decay. During all these iterations, however, I continued to regard this phenomenon as local idiocy—I never considered these filtering systems as part of a larger social and legal development. Beginning research into Internet filtering systems in public school libraries, I am currently in search of references which are foundational—providing context, background, and trends. An excellent source for this purpose is Richard R. Peltz’s 2005 article from the *Brigham Young University Education & Law Journal*: “Pieces of Pico: Saving Intellectual Freedom in the Public School Library”. Mr. Peltz teaches at the University of Arkansas at Little Rock; one of his areas of special expertise is First Amendment and Freedom of Information Law. (UALR). Strangely, Peltz has recently been in the news, as he is suing for defamation two of his students who accuse him of racism (Browning).

Peltz begins his article with a detailed examination of the history of school libraries. Peltz finds sources on the history of public school libraries to be few, and it is interesting to note that he relies heavily for this historical material on two unpublished theses by women laboring in the graduate departments of small universities. One, Stella McClenahan, seems to be known now only through this one use of a 1966 microfilm copy of her thesis, while the other, Rosemae Wells

Campbell, became a well-known librarian and writer, who was alive at the time Peltz' article was published. It's extraordinary to picture these obscure young women, drudging bravely away in their school libraries, and then to see their research used seventy years later in support of a technology barely imagined in their time. Peltz's historic overview actually begins with the "libraries of the gods" in the Koran, the Talmud, and the Vedas (110), proceeds through the cuneiform collection of the Assyrian King Asurbanipal, and considers the school libraries of the Babylonian, Egyptian, and Roman periods, before touring American school libraries as they develop from hornbooks through Harvard, Franklin, Horace Mann and Dewey. At first this amount of background seems excessive, but it quickly becomes clear that the precedent Peltz is citing gains strength as it can be traced back into antiquity: since inception, school libraries have had a double purpose. On the one hand, they have always been intended as curricular support: a student may do research on an assigned topic, or receive instruction in research through the library. On the other hand, the school library has always maintained a non-curricular mission: students are allowed to pursue their private interests and queries unsupervised during their free time. This second mission has been valued in education and law as a tool for developing, through access to a wide range of literature, a love for reading and, through a balanced collection of text resources, the critical discernment required of an involved citizen. In the 1982 *Pico* decision, this distinction became crucial.

Peltz' article does an excellent job of tracing the development of public library and public school library law through the past few decades, and his most compelling argument should be addressed in terms of this background. In the *Pico* case, a plurality decision with several dissenting opinions, the Court rejected the efforts of a parent group to remove nine books from a high school library on the grounds that they were, as quoted in *Pico*, 'anti-American, anti-

Christian, anti-Sem[i]tic, and just plain filthy”(Peltz, 103). The plurality rejected the proposition that the youth of the students should be considered as limiting, and also refused to grant local autonomy in the matter. Peltz shares Justice Brennan’s inspiring words, “Students must always remain free to inquire, to study, and to evaluate, to gain new maturity and understanding...[In the school library] a student can literally explore the unknown...the students learns that a library is a place to test or expand upon ideas presented to him, in or out of the classroom” (130). In later years, of course, several decisions have substantially restricted the freedoms granted by *Pico*. Peltz quotes the 1969 *Tinker v. Des Moines* decision, where Justice Fortas expressed the well known dictum, “[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the school house gate” (132), As the Civil Rights activist era of the 1960’s Court gave way to the more restrictive decisions of the Rehnquist justices, cases such as *Hazelwood School District v. Kuhlmeier*, with its focus on local jurisdiction, increasingly narrowed the scope of minors’ rights. Peltz argues persuasively that the precedents of *Pico* are not overturned by these rulings, and continue to carry judicial weight which gives a special protection to the school library, continuing into these post CIPA [the Children’s Internet Protection Act]¹ days, when the rights of even adults to Internet access are restricted in public libraries.

Peltz issues a provocative call to action to school librarians. School libraries, frequently understaffed and overcrowded, face special difficulties in supervising students when Internet access is unfiltered, and yet this supervision is the legal and moral responsibility of the school librarian. In the interests of pragmatism and self-protection, school librarians have often acceded in filtering efforts, even before the federal filtering requirements went into effect. Since CIPA, many schools have instituted policies similar to Peltz’s example-- the Baltimore Maryland Public

¹ CIPA (Pub. L. No. 106-554, app D, §§ 1701-1741, 114 Stat. 2763A-336-351 (2000))

School System's Internet access policy. This policy, presented with enthusiastic support by librarians at a district workshop which Peltz attends, specifically states that computers in the school library are for curricular use only—all personal use is prohibited. While simplifying the librarian's monitoring task, Peltz points out that ceding the entire use of any of the school library's resources to the exclusive control of mandated curriculum is weakening the special protection school libraries still enjoy, even under increasingly restrictive legislation and decisions. He makes the controversial argument that a librarian who colludes in restricting students' civil rights is also abetting the diminution of her own.

Peltz is not insensitive to the practical challenges of unfiltered Internet use in school libraries--he merely regards these difficulties, quite correctly, as insignificant when compared to the constitutional principles involved. His main warning is against allowing Internet restriction to be justified by the curricular use rationale. However, difficulties which are not of the highest priority still exist and must be mitigated. Few argue for student access to pornographic material in a school library, but Peltz does not discuss the difficulty of blocking selectively. In fact, as Peltz acknowledges in passing, choosing and editing of resources for the school library has always occurred, and the criterion for that judgment has been the use of the balance and fairness which promote free inquiry. (126) Unrestricted Internet access may not be the solution most similar to the traditional library's carefully selected resources. Also, the author's entire argument is based on the uses of the Internet which are analogous to traditional library activities: reading and research. His article predates by a year or so the explosion in social use and increase in commercial use of the Internet.

The voluntary, personal inquiries made under the auspices of the school library have not traditionally included looking for a date or buying expensive sneakers. "Pieces of *Pico*" left me

feeling divided between horror at the fragility of our eroded civil rights, and recognition that there are real difficulties inherent in school Internet use which cannot be ignored.

Browning, L. (2008, May 1). Law professor accuses students of defamation.

[electronic version] *The New York Times*

UALR William H. Bowen School of Law Richard J. Peltz. (2006). Retrieved October 2,

2008, from UALR William H. Bowen School of Law Web site:

<http://www.law.ualr.edu/faculty/bios/peltz.asp>